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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 353

[Docket No. 99–030–2]

Accreditation Standards for Laboratory Seed Health Testing and Seed Crop Phytosanitary Inspection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the export certification regulations to provide specific standards under which non-government facilities may be accredited to perform laboratory seed testing and seed crop field inspection services to serve as the basis for the issuance of a Federal phytosanitary certificate, export certificate for processed plant products, or phytosanitary certificate for reexport. The accreditation standards for these laboratory testing and field inspection services were developed to provide the basis for non-government facilities to become accredited to perform the testing or inspection services that may be used as supporting documentation for the issuance of certificates for certain plants or plant products.

EFFECTIVE DATE: August 17, 2001. The incorporation by reference provided for by this rule is approved by the Director of the Federal Register as of August 17, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Narcy G. Klag, Program Manager, Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8262.

SUPPLEMENTARY INFORMATION:

Background

The export certification regulations contained in 7 CFR part 353 (referred to below as the regulations) set forth the procedures for obtaining certification for plants and plant products offered for export or reexport. Export certification is not required by the regulations; rather, it is provided by the Animal and Plant Health Inspection Service (APHIS) as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry. After assessing the condition of the plants or plant products intended for export relative to the receiving country's regulations, an inspector will issue an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578), if warranted.

Since 1975, APHIS has participated with State governments in the Cooperative Phytosanitary Export Certification Program, which allows certain State and county officials, as well as APHIS officials, to issue phytosanitary certificates, phytosanitary certificates for reexport, or export certificates for processed plant products. Because the number of Federal inspectors is limited, the use of State and county inspectors is a considerable benefit to exporters of plants and plant products in terms of both time and convenience.

On June 20, 2000, we published in the **Federal Register** (65 FR 38218–38223, Docket No. 99–030–1) a proposal describing standards to be used to evaluate facilities for accreditation to perform laboratory seed testing and seed crop field inspection in accordance with 7 CFR part 353.

We solicited comments concerning our proposal for 60 days ending August 21, 2000. We received 28 comments by that date. They were from seed companies, seed industry associations, plant health associations, and individuals. All the commenters generally supported the proposed rule, although three commenters suggested certain specific changes to it. All issues raised by the commenters are discussed below.

Two commenters suggested that we should replace references to *seed crop field inspection* in the rule with the term *seed crop phytosanitary inspection* or a similar term, and clarify that this activity includes inspection of greenhouses or growth chambers where plants are grown for seed production as well as visual inspection of seed crops. The same commenters suggested that we replace references to *laboratory seed testing* with the term *laboratory seed health testing.* They stated that in both cases, the terms in the proposal did not unambiguously identify the purpose of the inspection and testing.

We agree, and have made the requested changes. We have also clarified in the discussion of the procedures for seed crop phytosanitary inspection in § 353.9(b)(2)(i) that this activity includes inspection of greenhouses or growth chambers where plants are grown for seed production, as well as visual inspection of seed crops.

One commenter suggested that the rule should specify that the activities performed by approved facilities include seed sampling for the purpose of laboratory seed health testing and visual inspection of seed just prior to export. We believe it is fairly clear in the rule that facilities that perform seed crop phytosanitary inspection and laboratory seed health testing may perform these activities as part of accomplishing the purpose of their inspection and testing. For example, the rule directs facilities to Reference Manual B for detailed procedures on seed sampling. However, we have added these two activities to § 353.9(b)(2)(i) as examples of functions facilities may perform.

Two commenters suggested, regarding the proposal's discussion of physical plant and equipment requirements for facilities, that a laboratory may need all the required equipment for full seed health testing but not for diagnostic activities in support of phytosanitary inspection, which often only requires a hand lens. They suggested that we change the rule to state that the accredited facility must ''have access'' to this equipment should it be necessary; i.e., make the equipment required test-dependent.

The intent of the proposed rule was to require facilities to have specified equipment only if it is needed to perform the tests for which the facility is accredited. Proposed § 353.9(b)(2) stated that a facility ''must use the equipment required to conduct the laboratory testing or seed crop phytosanitary inspections for which it is accredited.'' To clarify this point, we are

changing that sentence in this final rule to read that a facility ''must have access to all equipment required to conduct the laboratory testing or seed crop phytosanitary inspections for which it is accredited.''

One commenter noted, regarding the proposal's discussion of serological testing, that some laboratories may use ''field ready test kits'' that do not require all the equipment listed in § 353.9(b)(2)(v).

We agree. Proposed § 353.9(b)(2)(v) stated regarding serological tests that ''These tests require grinding, extraction, and sample purification equipment; fluorescent microscopes; plate readers; spectrophotometers; and the appropriate assay materials.'' We are adding to the end of that sentence the phrase ''or appropriate equipment to use field ready test kits.''

The same commenter also asked whether APHIS intended to prohibit field determinations, or to require field determinations to be confirmed by laboratory diagnostics. If laboratory confirmation is required, the commenter asked whether APHIS must accredit the laboratory providing the diagnostic confirmation.

APHIS intends to allow field determinations that are conducted in accordance with the procedures authorized by Reference Manual B. In the normal practice of field inspection, samples are routinely sent to a laboratory for identification or confirmation of a visual identification. It is not APHIS' intention to accredit these laboratories. However, the procedures to provide this laboratory support, including the identity and qualifications of the laboratory, must be detailed in the accredited facility's quality manual. A facility's procedures for confirming field inspections may be reviewed during the initial approval and periodic audits of the accredited facility.

Two comments addressed the proposed requirement in § 353.9(b)(4)(i) that ''Evaluation of plant or tissue samples must be undertaken by a plant pathologist or by laboratory technicians under the supervision of a plant pathologist.'' These commenters noted that by using modern communications and computer technology, technicians may work ''under the supervision of a plant pathologist'' even if the pathologist is at a different location.

We agree, and have added the following phrase at the end of the sentence in § 353.9(b)(4)(i): ''who may provide such supervision either on-site, or from a remote location.''

One commenter suggested that the Association of Official Seed Analysts should be added to the National Seed Health System (NSHS) Working Group identified in Reference Manual A.

Membership in the NSHS Working Group is outside the scope of this rulemaking. This commenter should contact the current chair of the NSHS Seed Technical Working Group to address this issue.

One commenter addressed a sentence in the economic analysis section of the proposed rule that read: ''It is expected that, like any business, seed testing laboratories will recoup these expenses by appropriate structuring of the fees they set for their services.'' This commenter noted that, in addition to laboratories, this is also true for non-laboratory accredited entities providing other phytosanitary inspection services.

We agree, and have modified the language in this final rule's economic analysis accordingly.

One commenter asked for APHIS to clarify whether only non-government entities are eligible to apply for accreditation under the rule. In particular, this commenter asked about the eligibility of public universities that administer seed certification units.

Even though most of the examples discussed in the proposed rule were private, non-government entities, the rule does not preclude accreditation of governmental agencies or other public institutions, including public universities. These agencies may apply for accreditation and, if eligible, will be accredited.

One commenter asked how APHIS will accept and protect confidential business information submitted by applicants for accreditation.

The regulations already in place at § 353.8(b)(5) state that ''All information gathered during the course of a non-government facility's assessment and during the term of its accreditation will be treated by APHIS with the appropriate level of confidentiality, as set forth in the U.S. Department of Agriculture's administrative regulations in § 1.11 of this title.'' APHIS will protect the confidentiality of such information. To make sure that such information is clearly identified by the applicant, we are adding the following sentence to paragraph § 353.9(a) in the rule, which describes how to submit application material: ''If there are portions of the application deemed to contain trade secret or confidential business information (CBI), each page of the application containing such information should be marked 'CBI Copy.' ''

One commenter asked whether specific test methodologies and materials will be in Reference Manual B, or in a facility's quality manuals. As stated in the proposal, Reference Manual B will contain specific methodologies to conduct tests, field inspections, sampling, and related procedures. The facility's quality manual will document the quality system designed to ensure that the methodologies in Reference Manual B are followed, and will address matters such as purity of materials, and calibration of equipment, and so forth. Quality manuals may summarize or quote methodologies from Reference Manual B to the extent that facilities find it useful to do so.

One commenter asked whether APHIS accepts liability for incorrect diagnostics or field inspections carried out by accredited entities.

APHIS does not accept liability for inaccurate results. Once accredited, individual facilities retain the same liability for conducting tests that are inaccurate or fraudulent that they bore before becoming accredited. Facilities should be protected against liability if they follow the methodologies required by APHIS and report test and inspection results accordingly. If evidence accumulates that a particular methodology does not yield reliable results, APHIS may have to revise that methodology, but accredited facilities are only responsible for properly conducting and reporting the required procedures.

One commenter asked for details regarding how often Reference Manuals A and B will be revised, and when they will be incorporated by reference. These manuals are currently posted on the APHIS website (http://www.aphis.usda.gov/ppq/pim/accreditation) in the form in which they have been incorporated by reference by this final rule. We expect that the manuals, especially Reference Manual B, will require updating as new tests are added or as improved test and inspection methodologies are validated. APHIS intends to update the copies of the Reference Manuals on the website, and the copies incorporated by reference with the Office of the Federal Register, as needed, perhaps about twice per year.

One commenter noted that APHIS has stated that the Iowa State Seed Science Center will be used on the assessment team to evaluate and audit facilities applying for accreditation. This commenter stated that APHIS would need additional help to meet its evaluation workload in order to process all the applications from interested facilities, and stated that State governmental agencies could also be used to meet this need.

We agree that APHIS will likely need additional assistance to meet the workload involved in evaluating and auditing facilities. Since APHIS does not have the capability or expertise to provide the necessary testing and auditing, we will utilize selected public facilities to conduct these activities. The Iowa State Seed Science Center will be used as the initial ''accreditation unit'' under this system; however, it is anticipated that APHIS may need to utilize other organizations, including State agencies, to properly evaluate all the private facilities that wish to be accredited.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule will amend the export certification regulations to provide standards under which facilities may become accredited to perform laboratory seed health testing or inspection services that can serve as the basis for the issuance of Federal phytosanitary certificates for export, phytosanitary certificates for reexport, or export certificates for processed plant products. Accrediting such facilities is currently allowed under 7 CFR 353.8. The existing regulations provide a framework upon which accreditation programs could be established, but they do not, in and of themselves, entail any costs to APHIS or any facility. However, when facilities are accredited under the accreditation criteria contained in this rule for seed laboratories and field inspection facilities, that action will entail costs to both the entities being accredited and the accrediting body (i.e., APHIS). Those costs, and the benefits expected from the accreditation program, are summarized below and were fully evaluated in the economic analysis section of the previous final rule that established a program for accrediting facilities, published in the **Federal Register** on January 8, 1999 (64 FR 1098–1106, Docket No. 95–071–2).

The accreditation program is expected to be self-supporting, and any costs to APHIS should be recouped through accreditation fees. Costs for establishing each accredited facility will vary, depending on the range of activities for which a facility seeks accreditation, the initial cost of the APHIS preaccreditation assessment, the type and number of any proficiency tests that will have to be conducted, and the frequency with which post-accreditation evaluation activities such as check tests and site visits will have to be conducted. It is expected that, like any business, seed testing laboratories and other accredited facilities will recoup these expenses by appropriate structuring of the fees they set for their services.

The seed industry is expected to benefit from this action because domestic seed exporters routinely require the services of inspectors and agents in order to obtain the phytosanitary certification required by most, if not all, importing countries; benefits can be realized in terms of more timely certifications, which in turn can lead to reduced costs as well as increased U.S. exports.

The value of seed exported from the United States to other countries continues to grow rapidly, from $665 million in 1994–95 (July to June), to $705 million in 1995–96, to more than $800 million in 1996–97. There has been a concomitant rise in demand for laboratory testing and inspection services to meet other countries import requirements. The ability of Federal, State, and county testing and inspection services to meet this growing demand will be increasingly strained. Already there are instances in which the availability of accredited facilities would have prevented the loss of export sales.

For example, some seed export opportunities have been forfeited because the results of preharvest field inspections are usually not known until after harvest, due to the limited number and heavy workload of government laboratories available to perform seed testing. It is common for seed from several fields to be blended after harvest and before shipment. If the sample from one field is subsequently reported to contain an actionable pest, then none of the blended seed—which may have been harvested from as many as eight or nine fields—could be exported. In one case in which this occurred, the affected seed company lost foreign sales worth $250,000. Such losses are much less likely to occur if there is more timely reporting of preharvest inspections; accredited inspection facilities may be able to make such timely reports. In general, we expect that adding a number of non-government facilities providing testing and inspection services will allow the future demand for these services to be distributed among facilities in a manner that will readily adjust to fluctuations in the demand for these services, and will allow both government and non-government facilities to report results in a timely manner.

Overall, the economic benefits that should result from the availability of accredited non-governmental seed laboratories and field inspection facilities greatly exceed the costs. By providing access to services by accredited non-government facilities to support the issuance of phytosanitary certificates that many trading partners require as a condition of entry for U.S. goods, this action should greatly enhance export opportunities for U.S. producers. While this rule does not directly create or open any new markets for U.S. seed exports, it makes it easier for exporters to obtain necessary certification in a timely manner. This should result in U.S. companies obtaining more contracts in which delivery time is of the essence. While we do not have data to exactly estimate the value of such potential contracts, comments from seed companies suggest that their value may be on the order of $10 million per year.

We do not have detailed information on the number of small businesses engaged in exporting seeds or in testing seeds. Seed and bulb producers are combined in Standard Industrial Classification (SIC) 0181 with several other types of businesses, and seed testing laboratories are combined with other types of testing laboratories under SIC 8734. From the data available, there appear to be several hundred seed producers that may be small businesses, but very few of these engage directly in export. Instead, they sell seed to wholesale seed brokers who sell to export markets. None of these wholesale seed brokers appear to be small businesses. Several very large seed production companies are known to sell their products directly to export markets. With regard to seed testing laboratories, we estimate that a dozen or so laboratories, some of which are small businesses, will become accredited in accordance with this rule and will increase their revenue from inspection and testing services.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires

intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 353

Exports, Incorporation by reference, Plant diseases and pests, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 300 and 353 are amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, new paragraphs (c) and (d) are added to read as follows:

§ 300.1 Materials incorporated by reference.

* * * * *

(c) *Reference Manual A.* The *Reference Manual for Administration, Procedures, and Policies of the National Seed Health System*, which was published on February 25, 2000, by the National Seed Health System (NSHS), has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of Reference Manual A:

(1) Are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW, Suite 700, Washington, DC, and the APHIS Library, U.S. Department of Agriculture, 4700 River Road, Riverdale, MD 20737; or

(2) May be obtained by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, and on the APHIS Web site at http://www.aphis.usda.gov/ppq/pim/accreditation.

(d) *Reference Manual B.* The *Reference Manual for Seed Health Testing and Phytosanitary Field Inspection Methods*, which was published on February 27, 2001, by the National Seed Health System (NSHS), has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of Reference Manual B:

(1) Are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW, Suite 700, Washington, DC, and the APHIS Library, U.S. Department of Agriculture, 4700 River Road, Riverdale, MD 20737; or

(2) May be obtained by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, and on the A APHIS Web site at http://www.aphis.usda.gov/ppq/pim/accreditation.

PART 353—EXPORT CERTIFICATION

3. The authority citation for part 353 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7718, 7751, and 7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. In § 353.1, definitions of *Reference Manual A* and *Reference Manual B* are added, in alphabetical order, to read as follows:

§ 353.1 Definitions.

* * * * *

Reference Manual A. The *Reference Manual for Administration, Procedures, and Policies of the National Seed Health System*, published by the National Seed Health System (NSHS). Reference Manual A describes the structure, administration, procedures, policies, and working practices of the NSHS and also contains relevant documentation, forms, and references for the NSHS. Reference Manual A is incorporated by reference at § 300.1 of this chapter, and is available by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, and on the APHIS Web site at http://www.aphis.usda.gov/ppq/pim/accreditation.

Reference Manual B. The *Reference Manual for Seed Health Testing and Phytosanitary Field Inspection Methods*, published by the National Seed Health System (NSHS). Reference Manual B contains the detailed seed health testing, seed sampling, and inspection procedures for the NSHS. Reference Manual B is incorporated by reference at § 300.1 of this chapter, and is available by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, and on the APHIS Web site at http://www.aphis.usda.gov/ppq/pim/accreditation.

* * * * *

§ 353.8 [Amended]

5. Section 353.8 is amended by adding a new sentence at the end of the section to read as follows: ''(Approved by the Office of Management and Budget under control number 0579–0130)''.

6. A new § 353.9 is added to read as follows:

§ 353.9 Standards for accreditation of non-government facilities to perform laboratory seed health testing and seed crop phytosanitary inspection.

(a) *Application for accreditation, certification of accreditation, and monitoring of accredited facilities.* A facility may apply to be accredited to perform laboratory seed health testing or seed crop phytosanitary inspection, or to renew such accreditation, by submitting an application in accordance with § 353.8(b)(2) of this part. If there are portions of the application deemed to contain trade secret or confidential business information (CBI), each page of the application containing such information should be marked ''CBI Copy.'' The application must be accompanied by a copy of the facility's quality manual and a nonrefundable application fee of $1,000. The applicant must make additional deposits to cover the costs of gaining and maintaining accreditation into a trust fund established in accordance with § 353.8(c) of this part upon request by the Administrator.

(1) Upon determining that a facility is eligible for accreditation, the Administrator will issue the facility a certificate of accreditation. Accreditation will be for a period of 3 years from the date of issuance of the certificate of accreditation and may be renewed by submitting a new application and application fee in accordance with this paragraph.

(2) The Administrator may deny or withdraw accreditation in accordance with § 353.8(a)(2) of this part. A facility may appeal denial of accreditation in accordance with § 353.8(a)(2)(i) of this part, and may appeal withdrawal of

accreditation in accordance with § 353.8(a)(2)(ii) of this part.

(3) A facility that has been denied accreditation or had its accreditation withdrawn may not reapply within 60 days of the date the facility was notified in writing that accreditation was denied or withdrawn.

(4) After a facility is accredited, the facility must allow APHIS access to the facility and all of its equipment and records for the purpose of conducting unannounced audits to determine the facility's continuing eligibility for accreditation. Such audits will occur at least once a year and may be performed more frequently at the discretion of the Administrator.

(b) *Standards for accreditation.* A facility that, in accordance with § 353.8(b)(2) of this part, applies to be accredited to perform laboratory seed health testing or seed crop phytosanitary inspection will be evaluated for accreditation against these standards:

(1) *Physical plant.* The facility's physical plant (e.g., laboratory space, office space, greenhouses, vehicles, etc.) must:

(i) Have laboratory and office spaces enclosed by walls and locking doors to prevent unauthorized access;

(ii) Conform to all State and local zoning and other ordinances; and

(iii) Provide a work area that is dedicated to laboratory functions and has sufficient space to conduct the required tests and store the materials and samples required for the tests in a manner that prevents contamination by other samples in the laboratory and from other sources.

(2) The facility must have access to all equipment required to conduct the laboratory testing or seed crop phytosanitary inspections for which it is accredited. Specific test methodologies, materials, and the calibration and monitoring of the equipment must conform to Reference Manual B, which is incorporated by reference at § 300.1 of this chapter. The general requirements for each test category are as follows:

(i) *Seed crop phytosanitary inspections.* Seed crop phytosanitary inspection may also include related activities such as collection of seed samples for later laboratory testing, visual inspection of seed just prior to export, and inspection of greenhouses or growth chambers where plants are grown for seed production, as well as visual inspection of seed crops. In the field, inspectors must use accurate field maps, hand lenses, and secure containers for the collection, storage, and transportation of samples. Inspectors must have direct access to a laboratory that is fully equipped to carry out any necessary diagnostic tests needed for field samples.

(ii) *Direct visual examination.* Visual examination of seed requires a stereo microscope. Visual examination of tissue requires a compound light microscope. Visual examination of loosely attached or accompanying material requires a centrifuge and shaker.

(iii) *Incubation.* Required equipment includes incubation chambers, laminar flow hoods, media preparation equipment, scales, pH meters, distilled and sterile water, gas burners, an autoclave, and the appropriate media for the specified tests.

(iv) *Grow-out tests.* Grow-out tests require a greenhouse, growth chamber, or an outdoor quarantine location, and access to a laboratory that is fully equipped to carry out any required diagnostic tests.

(v) *Serological tests.* These tests require grinding, extraction, and sample purification equipment; fluorescent microscopes; plate readers; spectrophotometers; and the appropriate assay materials; or the appropriate equipment to use field ready test kits.

(vi) *DNA probes.* To conduct these tests, a laboratory must be equipped with polymerase chain reaction (PCR) equipment, including thermal cyclers, electrophoresis and gel blotting equipment, and the reagents and DNA polymerases necessary to conduct the PCR.

(3) *Methods of testing and inspection.* The facility must conduct its laboratory seed health testing and seed crop phytosanitary inspection procedures in accordance with Reference Manual B. The facility must have a quality manual documenting its quality system for laboratory seed health testing and seed crop phytosanitary inspection procedures. The quality system must follow the general guidelines described in ANSI/ASQC Q9001–1994, *American National Standard: Quality Systems-Model for Quality Assurance in Design, Development, Production, Installation and Servicing.* Acceptable models for quality systems for accredited facilities are also described in detail in Reference Manual A, which is incorporated by reference at § 300.1 of this chapter. The personnel who perform the testing and inspection services must comply with the quality manual, and management must enforce this compliance. The facility must maintain documented procedures for identification, collection, indexing, access, filing, storage, maintenance, and disposition of quality system records. The facility must maintain quality system records to demonstrate conformance to the quality manual and the effective operation of the quality system.

(4) *Personnel.* There must be a selection procedure and a training system to ensure technical competence of all staff members. The education, technical knowledge, and experience required to perform assigned test and inspection functions must be documented and clearly defined. In addition:

(i) Evaluation of plant or tissue samples must be undertaken by a plant pathologist or by laboratory technicians under the supervision of a plant pathologist, who may provide such supervision either on-site, or from a remote location. Where personnel are required to be trained at a facility to evaluate the particular types of plants or tissue samples handled by the facility, the training program must be evaluated by APHIS and determined to be effective.

(ii) All staff must have access to and be familiar with the reference materials, guides, and manuals required for the routine performance of the tests and inspections they conduct.

(Approved by the Office of Management and Budget under control number 0579–0130.)

Done in Washington, DC, this 11th day of July 2001.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17839 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–048–1]

Pine Shoot Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by adding counties in Illinois, Indiana, Maine, Maryland, New York, Ohio, Pennsylvania, Vermont, and West Virginia to the list of quarantined areas. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine products, into noninfested areas of the United States. We are also making nonsubstantive revisions to the entries

for Illinois, Indiana, Michigan, New York, and Ohio to address inconsistencies in the county listings and correct misspellings.

DATES: This interim rule is effective on July 18, 2001. We invite you to comment on this docket. We will consider all comments that we receive by September 17, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–048–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–048–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Jones, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees that can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur. During ''maturation feeding,'' young beetles tunnel into the center of pine shoots (usually of the current years growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Factors that may result in the establishment of PSB populations far from the location of the original host tree include: (1) Adults can fly at least 1 kilometer, and (2) infested trees and pine products are often transported long distances. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), spruce (*Larix* spp.), and larch (*Picea* spp.) are not hosts of PSB.

Surveys conducted by State and Federal inspectors revealed 83 additional areas infested with PSB in 9 states (Illinois, Indiana, Maine, Maryland, New York, Ohio, Pennsylvania, Vermont, West Virginia). Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found.

In accordance with these criteria, we are designating De Witt, Macon, and Whiteside Counties, IL; Boone, Clinton, Johnson, Parke, Shelby, and Vermillion Counties, IN; Oxford County, ME; Frederick County, MD; Delaware, Otsego, and St. Lawrence Counties, NY; Butler, Champaign, Clark, Darke, Fairfield, Greene, Guernsey, Hamilton, Madison, Miami, Montgomery, Muskingum, Pickaway, Preble, Shelby, Vinton, and Warren Counties, OH; Huntingdon County, PA; Caledonia County, VT; and the remaining 50 counties in West Virginia, as quarantined areas, and we are adding them to the list of quarantined areas provided in § 301.50–3(c).

Miscellaneous

We are also making nonsubstantive revisions to § 301.50–3(c) to address inconsistencies in the county listings and correct misspellings in the entries for Illinois, Indiana, Michigan, New York, and Ohio.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent PSB from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.50–3 is amended as follows:

a. In paragraph (c), under Illinois, by adding new counties in alphabetical order and by revising the entries for Cook, Du Page, Iroquois, Kankakee, and Livingston.

b. In paragraph (c), under Indiana, by adding new counties in alphabetical order and by revising the entries for Benton, De Kalb, Delaware, Grant, Huntington, Miami, Tippecanoe, and White.

c. In paragraph (c), by adding a new entry for Maine.

d. In paragraph (c), under Maryland, by adding a new county in alphabetical order.

e. In paragraph (c), under Michigan, by revising the entries.

f. In paragraph (c), under New York, by revising the entries.

g. In paragraph (c), under Ohio, by adding new counties in alphabetical order and by revising the entries for Erie and Knox.

h. In paragraph (c), under Pennsylvania, by adding a new county in alphabetical order.

i. In paragraph (c), under Vermont, by adding a new county in alphabetical order.

j. In paragraph (c), under West Virginia, by revising the entries to include the entire State.

k. In paragraph (d), by revising the map.

§ 301.50–3 Quarantined areas.

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(c) * * *

Illinois

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Cook County. The entire county.

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De Witt County. The entire county.

Du Page County. The entire county.

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Iroquois County. The entire county.

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Kankakee County. The entire county.

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Livingston County. The entire county.

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Macon County. The entire county.

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Whiteside County. The entire county.

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Indiana

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Benton County. The entire county.

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Boone County. The entire county.

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Clinton County. The entire county.

De Kalb County. The entire county.

Delaware County. The entire county.

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Grant County. The entire county.

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Huntington County. The entire county.

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Johnson County. The entire county.

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Miami County. The entire county.

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Parke County. The entire county.

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Shelby County. The entire county.

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Tippecanoe County. The entire county.

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Vermillion County. The entire county.

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White County. The entire county.

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Maine

Oxford County. The entire county.

Maryland

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Frederick County. The entire county.

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Michigan

Alcona County. The entire county.
Allegan County. The entire county.
Alpena County. The entire county.
Antrim County. The entire county.
Arenac County. The entire county.
Barry County. The entire county.
Bay County. The entire county.
Benzie County. The entire county.
Berrien County. The entire county.
Branch County. The entire county.
Calhoun County. The entire county.
Cass County. The entire county.
Charlevoix County. The entire county.
Cheboygan County. The entire county.
Chippewa County. The entire county.
Clare County. The entire county.
Clinton County. The entire county.
Crawford County. The entire county.
Delta County. The entire county.
Eaton County. The entire county.
Emmet County. The entire county.
Genesee County. The entire county.
Gladwin County. The entire county.
Grand Traverse County. The entire county.
Gratiot County. The entire county.
Hillsdale County. The entire county.
Huron County. The entire county.
Ingham County. The entire county.
Ionia County. The entire county.
Iosco County. The entire county.
Isabella County. The entire county.
Jackson County. The entire county.
Kalamazoo County. The entire county.
Kalkaska County. The entire county.
Kent County. The entire county.
Lake County. The entire county.
Lapeer County. The entire county.
Leelanau County. The entire county.
Lenawee County. The entire county.
Livingston County. The entire county.
Luce County. The entire county.
Mackinac County. The entire county.
Macomb County. The entire county.
Manistee County. The entire county.
Marquette County. The entire county.
Mason County. The entire county.
Mecosta County. The entire county.
Midland County. The entire county.
Missaukee County. The entire county.
Monroe County. The entire county.
Montcalm County. The entire county.
Montmorency County. The entire county.
Muskegon County. The entire county.
Newaygo County. The entire county.
Oakland County. The entire county.
Oceana County. The entire county.
Ogemaw County. The entire county.
Osceola County. The entire county.
Oscoda County. The entire county.
Otsego County. The entire county.
Ottawa County. The entire county.
Presque Isle County. The entire county.
Roscommon County. The entire county.
Saginaw County. The entire county.
St. Clair County. The entire county.
St. Joseph County. The entire county.
Sanilac County. The entire county.
Schoolcraft County. The entire county.
Shiawassee County. The entire county.
Tuscola County. The entire county.
Van Buren County. The entire county.
Washtenaw County. The entire county.
Wayne County. The entire county.
Wexford County. The entire county.

New York

Allegany County. The entire county.
Broome County. The entire county.
Cattaraugus County. The entire county.

Cayuga County. The entire county.
Chautauqua County. The entire county.
Chemung County. The entire county.
Chenango County. The entire county.
Cortland County. The entire county.
Delaware County. The entire county.
Erie County. The entire county.
Genesee County. The entire county.
Jefferson County. The entire county.
Lewis County. The entire county.
Livingston County. The entire county.
Madison County. The entire county.
Monroe County. The entire county.
Niagara County. The entire county.
Oneida County. The entire county.
Onondaga County. The entire county.
Ontario County. The entire county.
Orleans County. The entire county.
Oswego County. The entire county.
Otsego County. The entire county.
St. Lawrence County. The entire county.
Schuyler County. The entire county.
Seneca County. The entire county.
Steuben County. The entire county.
Tioga County. The entire county.
Tompkins County. The entire county.
Wayne County. The entire county.
Wyoming County. The entire county.
Yates County. The entire county.

Ohio

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Butler County. The entire county.

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Champaign County. The entire county.
Clark County. The entire county.

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Darke County. The entire county.

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Erie County. The entire county.
Fairfield County. The entire county.

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Greene County. The entire county.
Guernsey County. The entire county.
Hamilton County. The entire county.

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Knox County. The entire county.

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Madison County. The entire county.

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Miami County. The entire county.
Montgomery County. The entire county.

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Muskingum County. The entire county.

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Pickaway County. The entire county.

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Preble County. The entire county.

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Shelby County. The entire county.

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Vinton County. The entire county.
Warren County. The entire county.

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Pennsylvania

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Huntingdon County. The entire county.

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Vermont

Caledonia County. The entire county.

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West Virginia

The entire State.

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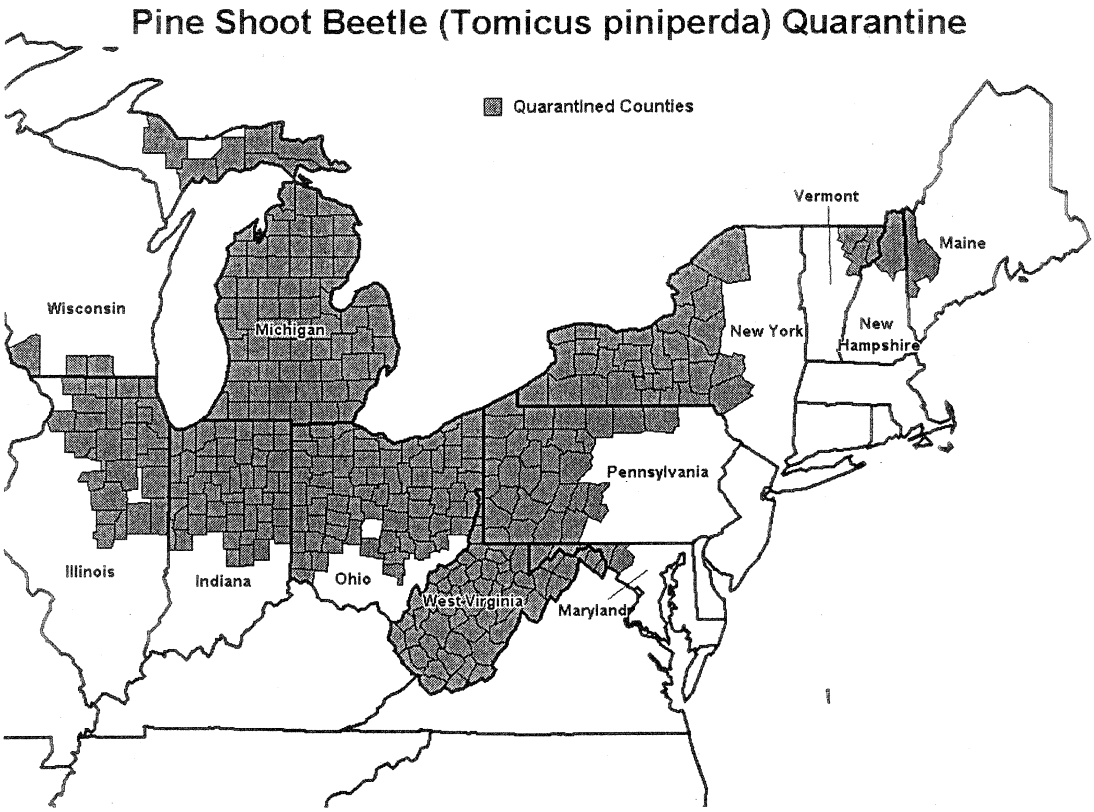
(d) * * *



Done in Washington, DC, this 11th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17902 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1773

RIN 0572–AB66

Policy on Audits of RUS Borrowers; Management Letter

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that comments were received regarding direct final rule, 7 CFR Part 1773, Policy on Audits of RUS Borrowers; Management Letter, and confirms the effective date of the direct final rule. This notice also serves to address the comments received.

DATES: The direct final rule published in the **Federal Register** on May 21, 2001 (66 FR 27829) is effective July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Annan, Chief, Technical Accounting and Auditing Staff, Program Accounting Services Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1523, Washington, DC 20250–1523. Telephone: 202–720–5227.

Background

Title 7 part 1773 implements the standard RUS security instrument provision requiring RUS electric and telecommunications borrowers to prepare and furnish to RUS, at least once during each 12-month period, a full and complete report of its financial condition, operations, and cash flows, in form and substance satisfactory to RUS; audited and certified by an independent Certified Public Accountant (CPA), satisfactory to RUS, and accompanied by a report of such audit, in form and substance satisfactory to RUS.

The Rural Utilities Service (RUS) published a direct final rule on May 21, 2001, at 66 FR 27829, in the **Federal Register** revising the requirements for the management letter. Section 1773.33(c) is revised to address continuing property records (CPRs) rather than the term plant records. In addition, the requirement that the CPA state whether the CPRs have been established, is expanded wherein the CPA must state that the CPRs are established, maintained on a current basis, and are reconciled to the general ledger plant accounts. The requirements for the CPA to determine that the borrower secured RUS approval for the sale of plant in § 1773(c)(5) is expanded to include the sale, lease, or transfer of assets secured under the mortgage and to state whether the proceeds were handled in conformance with RUS requirements.

The following requirements under § 1773.33 are eliminated: (1) The requirement for the CPA to determine that loan funds were deposited in banks designated in the loan documents; (2) a corresponding requirement in the telecommunications management letter; (3) the requirement for the CPA to determine that the borrower has complied with the RUS requirement for approval of any lease of a building or land, standard traffic settlement agreement, billing and collecting agreements, toll pooling arrangements, directory service agreements, and joint-use agreement; and (4) the requirement for the CPA to determine borrower compliance with the requirement to maintain a net plant to secured debt ratio or a funded reserve for certain loans wherein the maturity period exceeds the economic life of the plant facilities being financed.

Section 1773.33, Management Letter, specifies the minimum requirements for the CPA's management letter. RUS borrowers have increasingly diversified into other utility and nonutility related activities through the formation of subsidiary and affiliated companies. RUS has need of information on investments in these subsidiary and affiliated companies to assist in its efforts to monitor loan security issues and respond to claims of cross subsidization. A new requirement for the CPA to provide a detailed analysis of borrowers' investments is therefore being added to the management letter requirements. The CPA is required to disclose certain general and financial information regarding each of a borrower's investments in subsidiary and affiliated companies accounted for on the cost or equity basis. This information should readily available in the borrower's investment subsidiary records.

In previous versions of part 1773 the sample reports, financial statements, and management letters were contained in four appendices, two for electric borrowers and two for telecommunications borrowers. Beginning with this revision of part 1773, the appendices will no longer be codified in the Code of Federal Regulations. The appendices will be available in new RUS Bulletin 1773–1, which will contain all of 7 CFR part 1773 and the appendices. Appendix A will contain the sample reports, financial statements and management letter for electric borrowers while Appendix B will contain similar sample for telecommunications borrowers. The exhibits of the management letters, which are included in the appendices, are attached to this notice for information only. Publishing part 1773 in bulletin form will provide the RUS audit policy in a user-friendly format. A single copy of this publication will be provided to all RUS borrowers and certified public accounts approved to perform audits of RUS borrowers and will be available at http://www.usda.gov/rus/ruswide.htm.

RUS received three comments on this direct final rule from one party, Kiesling Associates LLP, Madison Wisconsin, which RUS deemed to be not adverse. All of the comments were regarding the requirement to include a supplemental schedule of each investment in subsidiary and affiliated companies in the management letter as required in § 1773.33(i). A summary of their comments and the responses follows:

Comments

Comment: Keisling stated that the audited financial statements of an RUS borrower already include disclosures of equity method investments and similar information is reported in Part G of the RUS Form 479. In addition, RUS requires the submission of supplemental schedules of financial condition and statement of operations for each subsidiary for consolidated financial statements. Kiesling also noted that Generally Accepted Auditing Standards (GAAP) also requires such disclosures.

Reply: The supplemental schedules containing the statement of financial condition and the statement of operations submitted with the audited consolidated financial statements contain only the information for the current and prior year for each subsidiary or affiliated company. However, if the investment is not considered material the supplemental statements are not required to be submitted with the consolidated financial statements. Only footnote disclosure would be required in such instances. The RUS requirement for the supplemental information regarding investments included in the management letter will provide a summary of the financial condition since inception for each individual

subsidiary or affiliated company. For this reason RUS does not consider this information to be duplicative of similar RUS or GAAP reporting requirements. The information submitted with the RUS Form 479 is in the aggregate for all subsidiary companies.

Comment: Keisling also commented that similar disclosure requirements for investments accounted for on the cost method should not be required as such investments are typically not of a material nature. And if such investments were material they would be properly disclosed in the footnotes to the audited financial statements.

Reply: While investments accounted for on the cost method may or may not be material, RUS' purpose for including similar disclosures for investments accounted for cost method is to provide a means for RUS to track the RUS borrowers' investments in rural infrastructure. When called upon to provide this information from Congressional and government oversight agencies, RUS has not been able to readily gather and summarize such data. The disclosure of all investments in subsidiary and affiliated companies, whether accounted for on the cost or equity method, will provide the appropriate information for such inquiries.

Confirmation of Effective Date

This is to confirm the effective date of July 5, 2001, of the direct final rule 7 CFR Part 1773, Policy on Audits of RUS Borrowers; Management Letter, published in the **Federal Register** on May 21, 2001, at 66 FR 27829.

Dated: July 12, 2001.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 01–17933 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1773

RIN 0572–AB62

Policy on Audits of RUS Borrowers; Generally Accepted Government Auditing Standards (GAGAS)

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that no adverse comments were received regarding the direct final rule 7 CFR part 1773, Policy on Audits of RUS Borrowers; Generally Accepted Government Auditing Standards (GAGAS), and confirms the effective date of the direct final rule.

DATES: The direct final rule published in the **Federal Register** on May 21, 2001 (66 FR 27833) is effective July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Annan, Chief, Technical Accounting and Auditing Staff, Program Accounting Services Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1523, Washington, DC 20250–1523. Telephone: 202–720–5227.

Background

The rule amends Part 1773 to incorporate two amendments to Generally Accepted Government Auditing Standards (GAGAS) adopted in 1999 by the General Accounting Office. Among other requirements the GAGAS amendments require the auditor to document in the working papers the basis for assessing risk when certain assertions are significantly dependent on computerized information systems; expands the requirements for the auditor's communication with the borrower; replaces the term irregularities with the term fraud; and requires the auditor to emphasize in the auditor's report the importance of the report on compliance and on internal control over financial reporting. In addition to the GAGAS amendments, this rule corrects errors and omissions in previous versions of Part 1773.

Confirmation of Effective Date

This is to confirm the effective date of July 5, 2001, of the direct final rule, 7 CFR Part 1773, Policy on Audits of RUS Borrowers; Generally Accepted Government Auditing Standards (GAGAS), published in the **Federal Register** on May 21, 2001, at 66 FR 27833.

Dated: July 12, 2001.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 01–17932 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 560, 563, 566, and 584

[No. 2001–51]

RIN 1550–AB42

Liquidity

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is adopting as final an interim rule that removed the regulation that required a savings association to maintain an average daily balance of liquid assets of at least four percent of its liquidity base, and retained a provision requiring a savings association to maintain sufficient liquidity to ensure its safe and sound operation. The interim rule implemented the statutory repeal of the percentage liquidity requirement.

DATES: Effective July 18, 2001.

FOR FURTHER INFORMATION CONTACT: Josephine Battle, Program Analyst Trainee, Office of Corporate Governance and Controls, Office of Supervision Policy, (202) 906–6870; or Sally Warner Watts, Counsel (Banking and Finance), Regulations and Legislation Division, Office of Chief Counsel, (202) 906–7380, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Persons wishing to access any of these telephone numbers by text telephone (TTY) may call the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 1201 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (Pub. L. 106–569, 114 Stat. 2944) repealed the statutory liquidity requirement for savings associations. *See* section 6 of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1465 (1994). OTS published an interim rule implementing this repeal on March 15, 2001 (66 FR 15015). The interim rule removed part 566, which implemented the percentage of assets liquidity requirement of section 6 of the HOLA. The interim rule also moved a general requirement that each savings association must maintain sufficient liquidity to ensure safe and sound operations from part 566 to § 563.161 and made a few conforming changes.

Discussion of Comments

OTS received three public comments: one from a trade association and two from savings associations. The trade association strongly supported the interim rule, noting that the repeal of the percentage requirement will enable savings associations to manage their liquidity risk in a more efficient manner. It also supported the retention of a requirement that savings associations and their service corporations maintain sufficient liquidity to assure safe and sound operation. The trade association observed that it is not necessary to describe in a regulation the types of investments OTS will consider in measuring compliance with this requirement. It did request, however, that OTS make conforming changes to the Thrift Financial Report form and instructions. On February 26, 2001, OTS published the March 2001 Thrift Financial Report changes, which included removal of the entry for regulatory liquidity ratio, on its website.

The two savings associations also praised the elimination of the percentage requirement. However, they requested clarification of whether OTS considers available capacity to borrow from the Federal Home Loan Bank (with same-day access to advances) as a source of liquidity when evaluating whether an institution has ''sufficient liquidity.'' OTS does consider the availability of access to borrowed money to meet liquidity needs in assessing the adequacy of a savings association's management of liquidity. See OTS Thrift Activities Handbook, Section 530, at pages 530.5 and 530.10 (November 1999). OTS also recognizes FHLB advances as a traditional source of such borrowings for savings associations. In addition, OTS acknowledges that the FHLB system has consistently played an important role in assisting the thrift industry to manage its short- and long-term liquidity needs. OTS Thrift Activities Handbook, at page 530.11. However, certain wholesale borrowings, including Federal Home Loan Bank advances, if not properly evaluated and prudently managed, may significantly increase an institution's sensitivity to interest rate and liquidity risks. Accordingly, savings associations should be fully informed of the risks of these borrowings before engaging in such transactions and should review these risks on an ongoing basis. See OTS Regulatory Bulletin 34, Examiner Guidance on Wholesale Borrowings (June 8, 2001).

Findings and Certifications

Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a significant regulatory action for the purposes of Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires OTS to prepare Regulatory Flexibility Analyses if the agency must publish a general notice of proposed rulemaking. 5 U.S.C. 603 and 604. In issuing the interim rule, OTS concluded, for good cause, that it was not necessary to publish a notice of proposed rulemaking. Accordingly, OTS concludes that the RFA does not require a final regulatory flexibility analysis of this rule.

Nevertheless, OTS has considered the likely impact of this rule and finds that the rule will not have a significant impact on a substantial number of small entities or create any additional burden on small entities under the RFA. The final rule imposes no new requirements and makes only burden reducing, clarifying, and technical conforming amendments to current OTS regulations.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMA) applies only when an agency issues a general notice of proposed rulemaking or when it publishes a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. In issuing the interim rule, OTS determined, for good cause, that it was not required to publish a proposed rule. Accordingly, OTS concludes that the UMA does not require OTS to conduct an unfunded mandates analysis of this final rule.

Moreover, OTS finds that this final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Rather, the rule imposes no new requirements and makes only burden reducing, clarifying, and technical conforming amendments to current OTS regulations. Accordingly, OTS has not prepared a budgetary impact statement for this rule or specifically addressed the regulatory alternatives considered.

Effective Date

For the reasons stated in the interim rule, published on March 15, 2001 (66 FR 15016–15017), OTS is making this final rule effective immediately.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 566

Liquidity, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision adopts as final, without change, the interim rule published on March 15, 2001 at 66 FR 15015, amending parts 506, 560, 563, 566, and 584 in Title 12, Chapter V, Code of Federal Regulations.

Dated: July 11, 2001.

Ellen Seidman,

Director.

[FR Doc. 01–17871 Filed 7–17–01; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 552

[No. 2001–52]

RIN 1550–AB46

Conversion From Stock Form Depository Institution to Federal Stock Association

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule amending the Office of Thrift Supervision's (OTS) regulation on conversions from stock form depository institutions to federal stock savings associations. The final rule clarifies that

the resulting federal stock savings association in such transactions succeeds to all the rights, property, and obligations of the converting institution. OTS did not receive any comments in response to either the direct final rule or the related notice of proposed rulemaking.

EFFECTIVE DATES: The direct final rule published on May 8, 2001 (66 FR 23153–155), is effective July 9, 2001.

FOR FURTHER INFORMATION CONTACT: Aaron B. Kahn, (202) 906–6263, Special Counsel, or Kevin A. Corcoran, (202) 906–6962, Assistant Chief Counsel, Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

Dated: July 11, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 01–17872 Filed 7–17–01; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM192, Special Conditions No. 25–181–SC]

Special Conditions: Raytheon Model Hawker 800XP Airplane; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Raytheon Aircraft Company Model Hawker 800XP airplanes modified to incorporate the Collins Proline 21 avionics system. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a four tube active matrix liquid crystal display Electronic Flight Information System (EFIS) with an Engine Indicating System (EIS), autopilot with integral mach trim capability, new air data computers, and new Attitude and Heading Reference System (AHRS) with solid state sensors. The applicable airworthiness standards do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 6, 2001. Comments must be received on or before August 17, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM192, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM192. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM192.'' The postcard will be date stamped and returned to the commenter.

Background

On August 4, 1998, Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085, applied for a supplemental type certificate to modify Raytheon Aircraft Company Model Hawker 800XP airplanes listed on Type Certificate No. A21EA. The Model Hawker 800XP is a twin engine transport airplane. It has an executive interior and is capable of carrying two flight crewmembers and up to fifteen passengers. This model is powered by two aft mounted Allied Signal TFE 731–5BR engines. The modification incorporates the installation of the Rockwell Collins Proline 21 avionics system which includes a four tube active matrix liquid crystal display Electronic Flight Information System (EFIS) with an Engine Indicating System (EIS) that display critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Raytheon must show that the Raytheon Model Hawker 800XP airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A21EA are as follows: the certification basis for the modified Raytheon Model Hawker 800XP airplane includes the British Civil Airworthiness Requirements (CAR) 10, and specific additional requirements of 14 CFR part 25, as listed in the Type Certificate Data Sheet (TCDS) No. A3EU.

If the Administrator finds that the applicable airworthiness regulations

(i.e., part 25) do not contain adequate or appropriate safety standards for the Raytheon Model Hawker 800XP airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Raytheon Model Hawker 800XP airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Raytheon apply for approval for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Raytheon Model Hawker 800XP airplane will incorporate the following novel or unusual design features: the Rockwell Collins Proline 21 avionics system which includes a four tube active matrix liquid crystal display Electronic Flight Information System (EFIS) with an Engine Indicating System (EIS) that display critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Model Hawker 800XP as modified by Raytheon. These special conditions require that new avionic/electronic and electrical systems, such as the AHRS and EFIS that perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

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

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

1. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

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

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

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

Applicability

As discussed above, these special conditions are applicable to Raytheon Model Hawker 800XP airplane modified

by the Raytheon Aircraft Company. Should Raytheon apply at a later date for approval of a design change to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Raytheon Model Hawker 800XP airplane modified by the Raytheon Aircraft Company. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Raytheon Model Hawker 800XP airplanes modified by:

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

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 6, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17961 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

RIN 2700–AC39

Space Shuttle

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule adds regulations concerning Small Self-Contained Payloads (SSCPs). NASA has established four classes of SSCP payloads, and has changed the definitions for Class II and Class III payloads. This rule creates a separate classification, Class IV, for international payload customers. International educational institutions may participate either through cooperative activities with domestic educational institutions as Class I payloads, or independently as Class IV payloads.

This revised rule ensures that NASA will continue to offer domestic educational institutions lower prices, relative to other users, for standard launch services for SSCP's. These domestic educational institutions are required to meet certain criteria and agree to certain provisions established by NASA. In addition, NASA is changing the pricing structure for a defined group of domestic educational institutions. The pricing structure for those domestic educational institutions (Class I) will be based on the payload user classification, payload weight and volume. Class I payloads may qualify for a further reduced standard flight price, depending on services required. Further details of the pricing structure will be available, once approved, on the web site: *http://www.wff.nasa.gov/~sspp/gas/gas.html*

In addition, with this revision, NASA has redefined the flight rotation process to incorporate the new classification, and to provide the domestic educational institutions a higher priority ranking opportunity in the flight scheduling process of manifesting Get Away Special (GAS) payloads.

DATES: Effective Date: This rule is effective September 17, 2001.

Comments Date: Written comments and opinions on this rule will be accepted until the close of business: August 17, 2001, and will be considered before the rule is made final.

ADDRESSES: Address all comments concerning this final rule to Lynda Cywanowicz, Space Operations Division, Office of Space Flight, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Lynda Cywanowicz, Space Operations Division, 202–358–1673.

SUPPLEMENTARY INFORMATION: NASA issued the original SSCP rule in 1980, 45 FR 73022 (Nov. 4, 1980). The rule established conditions of use, reimbursement procedures, and flight scheduling mechanisms for SSCP's flown on NASA's Space Transportation System (STS). The rule was needed to ensure equitable allocation of space in the SSCP program to three groups of users—educational, commercial and U.S. government.

The rule was first revised generally by NASA in 1991, 56 FR 47146 (Sept. 18, 1991). The rule was revised again in 1992, 57 FR 61794 (Dec. 29, 1992) creating 14 CFR 1214.10, ''Special Policy on Use of Small Self-Contained Payloads (SSCP's) by Domestic Educational Institutions.'' The revision provided two different pricing structures; an increased standard flight price for commercial and international customers, while the original price remained for the domestic educational institutions. On April 23, 1999, the National Aeronautics and Space Administration revoked both 14 CFR 1214.9 and 1214.10.

The SSCP program is reissuing the regulation as revised herewith. These changes are being made in furtherance of NASA's commitment to education outreach.

Electronic Access and Filing

You may submit comments and data by sending electronic mail to *Lynda.Cywanowicz@hq.nasa.gov.* Submit comments in Microsoft Word file (xxx.doc), Text (xxx.txt) or Rich text format (xxx.rtf).

List of Subjects in 14 CFR Part 1214

Government employees, Government procurement, Security measures, Space transportation and exploration.

For the reasons stated in the preamble, the National Aeronautics and

Space Administration amends 14 CFR Part 1214 by adding subpart 1214.9 reading as follows:

Subpart 1214.9—Small Self-Contained Payloads (SSCPs)

Sec.

1214.900 What does this subpart cover?
1214.901 What is the relationship of this subpart with subparts 1214.1 and 1214.2?
1214.902 Definitions.
1214.903 What are the requirements concerning Launch Services Agreements (LSA)?
1214.904 What are the conditions of use for a SSCP?
1214.905 What is NASA's reimbursement policy?
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Authority: 42 U.S.C. 2473 and 2475.

§ 1214.900 What does this subpart cover?

This subpart sets forth the rules on Space Shuttle services that are provided by NASA to participants in the Small Self-Contained Payloads (SSCP's) Program. This subpart also includes NASA's policy for the use of SSCP's by domestic educational institutions. NASA's policy on SSCP's is to stimulate and encourage the use of space by a wide range of participants, particularly those associated with education.

§ 1214.901 What is the relationship of this subpart with subparts 1214.1 and 1214.2?

This subpart governs the provision of Space Shuttle services for SSCP's; subparts 1214.1 and 1214.2 are not applicable.

§ 1214.902 Definitions.

(a) *What is a SSCP?* SSCP's, otherwise known as Get Away Specials (GAS), are small (200 pounds or less and 5 cubic feet or less) scientific research and development payloads flown on a space-available basis in a NASA-supplied standard cylindrical container under the provisions of this subpart.

(b) *Who is a SSCP participant?* A SSCP participant is any individual or entity that meets the following criteria:

(1) Submits a letter requesting a SSCP flight opportunity (for an authorized representative of NASA, this is considered a ''Letter of Intent'') and includes a brief description of the proposed payload to the Shuttle Small Payload Projects Office (SSPPO), Goddard Space Flight Center, Wallops Flight Facility, National Aeronautics and Space Administration, Wallops Island, VA 23337.

(2) Any individual, entity or U.S. Government agency (other than NASA), shall also submit an earnest money deposit of $500 to pursue a SSCP flight opportunity.

(3) The party submitting the $500 earnest money deposit need not be the entity providing the payload. The party entering into the Launch Services Agreement (LSA) is responsible for payment of standard and optional service fees agreed upon in the signed LSA.

(4) The party signing the LSA may enter into a joint venture or other arrangement (sponsorship) with one or more parties to fly the payload in one NASA container. All participants involved in the project shall be identified in the signed LSA.

(c) *What are payload classes?* NASA determines the class for each payload based on the type of institution or organization providing or supplying the payload, as defined in the LSA. Classes of payloads are defined as follows:

(1) *Class I payloads* are payloads flown for scientific educational purposes by a recognized domestic educational institution. For a payload to qualify for flight as a Class I, ''domestic educational institution payload'':

(i) The applying institution must be a U.S. public or private nonprofit (Section 501(c)(3) of the Internal Revenue Code (26 U.S.C.)) educational institution, which may include universities, colleges, community colleges, elementary or secondary schools, or university-affiliated education research foundations. Entities other than Section 501(c)(3) domestic education institutions may sponsor a Class I, domestic education payload, providing the educational institution meets the criteria established for domestic educational institutions in this policy.

(ii) The payload must be certified, by an authorized official of the institution, to be part of an educational or research project that is principally for the benefit of students, rather than non-students, such as faculty, research staff or the sponsor. The certification shall include a brief explanation of the educational aspects of the payload project and how it principally benefits students.

(iii) Payload experiments should involve students in all phases of the project, including concept development, initial planning, design, conduct, and analysis of the results of the experiments.

(2) *Class II payloads* are payloads flown for the U.S. Government.

(3) *Class III payloads* are payloads flown for other U.S. commercial and private entities.

(4) *Class IV payloads* are payloads flown for international entities, whether they be educational institutions, government or industry. Class IV payloads are subject to the same existing U.S. laws and regulations as are domestic payloads. Class IV payloads are subject to review and approval by the NASA Office of External Relations. Only payloads whose use is exclusively for peaceful purposes are eligible for flight through the GAS Program.

(d) *What is an earnest money deposit?* An earnest money deposit is a non-refundable $500 down payment required for participation in the SSCP Program.

(e) *Why is the earnest money receipt (EMR) date important?* The earnest money receipt (EMR) date is the date NASA receives the earnest money deposit from a non-NASA participant or a ''Letter of Intent'' from a NASA participant. Upon receipt of the earnest money or ''Letter of Intent'', a payload identification number is assigned. The EMR date determines the payload's position in the flight assignment queue. To retain the EMR date, the terms defined in the Launch Services Agreement (LSA) must be met.

(f) *What is a LSA?* A Launch Services Agreement (LSA) is a binding contract that describes the governing terms and conditions for flight of an SSCP payload, including the price for standard and optional services. For more information on contents of the LSA, refer to § 1214.903.

(g) *What is a PAR?* A Payload Accommodations Requirements (PAR) document is the technical agreement, between NASA's SSCP Program and the parties designated in the LSA, which defines the unique information required for the preparation, flight and disposition of a GAS payload.

(h) *What is a PIP?* A Payload Integration Plan (PIP) defines the technical agreement between NASA's SSCP Program and the Space Shuttle Program Office at Johnson Space Center (JSC) and defines any Shuttle related optional service requirements.

(i) *What is the ''queue''?* (1) The Flight Assignment Queue is the queue of payloads eligible to be manifested on a shuttle flight. To be eligible, the payload must meet the following criteria:

(i) A LSA has been signed within the requirements outlined in § 1214.903.

(ii) The requirements of the signed PAR and PIP have been met.

(iii) NASA has assessed the technical readiness of the payload and a Phase II Safety Data Package equivalent has been submitted, in accordance with the NSTS 1700.7, Safety Policy and Requirements for Payloads Using the STS and the NSTS 13830, Payload Safety Review and Data Submittal Requirement.

(2) Once a payload has met these criteria, it enters the queue with its position based on the EMR date.

(j) *What is the ''Two-in-Twenty'' rule*? The SSCP Program utilizes a flight assignment process in which no entity may receive more than two out of any twenty consecutive payload opportunities, as long as there are other payloads available for assignment.

(k) *What is a cancellation*? When the party signing the LSA fails to meet its obligations under the LSA, with no undue administrative delay on the part of NASA, the payload will be removed from participation in the SSCP Program with no refund of monies paid.

(l) *What are standard services*? Standard services provided to all SSCP's are listed in § 1214.910.

(m) *What are optional services*? Optional services are additional services requested by the SSCP participant and provided, at NASA's option. NASA may also determine the need for a specific optional service for a payload. Optional services require an additional cost to the participant and are identified and agreed upon in the LSA (refer to § 1214.911).

(n) *What is an undue administrative delay on the part of NASA*? An undue administrative delay is a delay caused by NASA's failure to perform its functions under the LSA in a reasonable time, as determined by NASA. Delays caused by the parties' inability to agree to the LSA terms and conditions are specifically excluded from this definition.

(o) *What is a ''Letter of Intent''*? A ''Letter of Intent'' is written by an authorized NASA representative requesting participation in the SSCP Program. For more information on the ''Letter of Intent'', refer to § 1214.904(e).

§ 1214.903 What are the requirements concerning Launch Services Agreements (LSA)?

(a) Once the Earnest Money Deposit is received, the LSA shall designate:

(1) All participants involved in the project;

(2) The class of the payload;

(3) The general nature and purpose of the payload;

(4) The size and weight of the payload;

(5) The price for standard services to be provided;

(6) Any restrictions on the type of Shuttle flight appropriate for flying the payload;

(7) The payment schedule and the terms of cancellation;

(8) The optional services to be provided by NASA and the price of those services; and

(9) The means of compliance with the provisions of § 1214.908 regarding significant impact on public health, safety or welfare.

(b) A separate LSA shall be signed for each payload.

(c) The LSA must be signed within 12 months from the date of the letter forwarding the LSA to the SSCP participants for signature. If the LSA is not signed within the required time, the $500 earnest money deposit will be forfeited and the payload will be cancelled.

§ 1214.904 What are the conditions of use for a SSCP?

(a) The payload must be flown in a NASA-supplied standard container.

(b) The payload shall be used only to conduct experiments of a scientific research and development nature or scientific education purposes.

(c) All participants shall be required to furnish NASA with sufficient information to ensure Shuttle safety. NASA shall reserve the right to inspect and/or test all materials, components, and elements of the payload at any time, including sealed and commercially supplied payload elements.

(d) The party signing the LSA shall be required to furnish NASA with sufficient information to verify peaceful purposes and NASA's and the U.S. Government's continued compliance with law and the Government's obligations.

(e) NASA participants shall submit a ''Letter of Intent'', signed by an authorized NASA representative, to initiate the process of arranging for a SSCP flight. A NASA Center is required to seek sponsorship from a NASA Headquarters Program Office, identify that sponsoring code and obtain their concurrence in the ''Letter of Intent''.

(f) The NASA Administrator reserves the right to determine the acceptability of any SSCP participant and any payload, on a case-by-case basis. The NASA Administrator may reject any payload, which, in his/her opinion, would be contrary to the educational mission of this program or NASA's mission.

(g) To assure humane treatment, the Office of Biological and Physical Research at NASA Headquarters will review all experiments using live animals.

§ 1214.905 What is NASA's reimbursement policy?

(a) *Will I get my earnest money back if I cancel*? No, the earnest money is non-refundable, but is applied to the standard flight price if the LSA is signed within the required time. If the LSA is not signed within the required time, the $500 earnest money will be forfeited and the payload will be cancelled.

(b) *How will I reimburse NASA for services*?

(1) NASA shall be reimbursed an amount, which is the sum of the price for standard services and the price for optional services.

(2) All standard services shall be charged on a fixed-price basis. Prices are based on the payload classification, weight and volume.

(3) NASA shall be reimbursed in accordance with the reimbursement schedule specified in the signed LSA.

(c) When there is no undue administrative delay on the part of NASA, and the progress payments are not reimbursed to NASA within the allocated time provided in the LSA, all monies paid to date will be forfeited and the payload will be cancelled.

§ 1214.906 When will my payload be scheduled to fly?

(a) NASA shall not be obligated to perform any standard or optional services, including flight scheduling and placement of the payload on the STS, if the terms of the signed LSA have not been met.

(b) *How does the flight queue work*? Tentative flight assignments of payloads shall be made on a rotation basis using the rotation sequence of Class I, II, I, III, I, IV, I, II, etc. (refer to § 1214.902(d)). Rotation is maintained in a continuing sequence from mission to mission. Payloads must meet all other mission requirements to be assigned to the available space. If, at the time of a tentative flight assignment, there are no payloads in the current class of the continuing rotation that meet all the mission requirements, payloads of the next class in the rotation sequence shall be considered until a payload meeting the requirements is found available.

(c) *Are there reasons my payload would not be assigned to an available flight*? Payloads shall be assigned on the basis of their positions in the flight assignment queue within each class with the following exceptions:

(1) If the available flight does not meet the payload's requirements as defined in their signed PAR and LSA, the payload shall not be assigned to the flight but

shall retain its position in the flight assignment queue until a suitable flight becomes available.

(2) If the ''Two-in-Twenty'' rule applies to a payload, that payload shall not be assigned to the flight, but shall retain its position in the flight assignment queue (refer to § 1214.902 (k)).

(d) Once a payload has been given a tentative flight assignment, it shall not be removed from a flight as a result of another SSCP participants' subsequent signing of a LSA.

(e) NASA may reschedule a payload tentatively assigned to a flight as a result of other Shuttle operational considerations. Should this be necessary, rescheduling shall be done on a last-on, first-off basis.

(f) Payloads being re-flown pursuant to § 1214.907 and payloads rescheduled by NASA after tentative flight assignment shall have flight assignment priority, in that order, on subsequent flights over all other payloads including those already assigned to other flights.

(g) NASA shall determine the date for payload delivery to the launch site. Payment of launch fees, as defined in the signed LSA, is required before the payload delivery to launch site.

§ 1214.907 Will NASA re-fly my payload if something goes wrong (and it's not my fault)?

(a) NASA will provide a one-time re-flight of a payload at no additional charge for SSCP standard services, if all the following occur:

(1) Standard SSCP systems are not within nominal specifications, at the time of first turn-on of the payload in orbit, through no fault of the SSCP participant (including all its related entities).

(2) The payload's mission objectives are not achieved solely as a direct result of the conditions or events described in paragraph (a)(1) of this section; and

(3) The payload returns safely to Earth or a second (essentially identical) payload is provided for re-flight.

(b) A re-flight shall be provided with a dollar credit towards future optional SSCP services, or the party signing the LSA shall be refunded, for any unused optional SSCP services purchased and paid for on the Shuttle flight which entitles the payload to a re-flight.

(c) The two-in-twenty rule is not applicable to the re-flight of the payloads described in this section.

§ 1214.908 Who gets rights to patents resulting from the payload or to the scientific/research data generated?

(a) NASA will not acquire rights to inventions, patents, or proprietary data privately funded by SSCP participants, or arising out of activities for which NASA has been reimbursed under the policies set forth in this subpart. However, in certain instances in which the NASA Administrator has determined that activities may have a significant impact on the public health, safety, or welfare, NASA may obtain assurances from the participants that the results will be made available to the public on terms and conditions reasonable under the circumstances.

(b) NASA, unless otherwise agreed, will require all scientific or research data to be made publicly available without restriction of disclosure and use no later than one year after the Shuttle mission on which the payload was flown. Possible exceptions are:

(1) Those results comprising an invention for which patent protection has been or will in a reasonable time be sought; or

(2) Data disclosing an invention prior to applying for patent protection thereon.

§ 1214.909 What if my payload is damaged?

The flight price does not include a contingency or premium for damage that may be caused to a payload through the fault of the U.S. Government, its contractors, or other Space Shuttle users. The U.S. Government assumes no risk for damage or loss to the payload. The participants in the SSCP Program assume this risk and are free to purchase insurance protection against damage or loss to their payload. In the event the party signing the LSA permits a third party to use its SSCP flight opportunity, this third party will be required to agree to the terms of the cross-waiver of liability in the launch services agreement.

§ 1214.910 What are the standard services NASA provides for my payload?

The following are standard services provided for SSCP's:

(a) Flight in a NASA flight-qualified standard container.

(b) Use of a NASA shipping container.

(c) One ''on'' and one ''off'' signal provided on each of three NASA-provided inputs to the container.

(d) Choice of one standard NASA container atmosphere (vacuum, breathing air, inert gas, inert gas vented in space).

(e) Limited consultation on space systems provided by NASA at designated NASA centers.

(f) Standard NASA payload safety reviews at a designated NASA center. (Safety shall not be compromised. Unusually complex safety reviews or testing/analysis requires additional funding as an optional service.)

(g) Pre-integration storage of the payload at Kennedy Space Center (KSC).

(h) Limited access to the payload prior to integration.

(i) Installation of the payload in the container and removal of the payload from the container after flight.

(j) Installation of the container in the Shuttle and removal of the container from the Shuttle after flight.

(k) KSC launch.

(l) On-orbit payload operational time consistent with the primary Space Shuttle mission.

(m) Brief post-flight documentation of the Space Shuttle mission profile and payload operational times.

(n) Return of payload to the participant at the launch site.

§ 1214.911 Can I buy optional services for my payload from NASA?

(a) Optional services are available, and the price, terms, and conditions for such services shall be negotiated on a case-by-case basis and agreed upon in the LSA.

(b) Optional services could result in substantial additional charges and increased liability insurance requirements and/or affect NASA's ability to manifest the payload.

(c) NASA may, at its sole discretion, approve or deny the provision of requested optional services.

§ 1214.912 Are there special provisions for SSCP participants who already have a signed LSA governed by regulations in effect before April 23, 1999?

(a) Where there are participants with a signed LSA governed by the provisions of 14 CFR 1214.9 and 1214.10 in effect before April 23, 1999 (and contained in the 14 CFR, Part 1200 to end, edition revised as of January 1, 1999), and there will be new participants with a signed LSA governed by the provisions of this subpart 14 CFR 1214.9, the following provisions apply to the manifesting of payloads:

(1) Participants with a signed LSA may elect to sign a new LSA, and retain their Earnest Money Receipt date as defined in their original signed LSA. Once the new LSA is signed, the provisions of this subpart apply to those participants.

(2) Participants with a signed LSA who choose not to sign a new LSA will retain their Earnest Money Receipt date and their payload classification as defined in their original signed LSA, 14 CFR 1214.9 and 1214.10 in effect before April 23, 1999 and shall apply to their payload's participation in the SSCP program.

(3) Participants who do not have a signed LSA or have not met the terms of their signed LSA will be required to either sign a new LSA or their payload will be cancelled and all monies paid will be forfeited.

(b) The primary differences between the provisions in effect before April 23, 1999 and the provisions in this subpart are the payload classification and rotation sequence for manifesting payloads, as set forth in the following table:

The previous rotation sequence:	If you remain under the old signed LSA, your payload class will be:	If and when you sign a new LSA, your payload class will be:	The new rotation sequence:
Class II, Class I, Class II, Class III, Class II, Class I, etc.	Class I—Domestic Education Class II—Other U.S. and International Class III–U.S. Government	Class I—Domestic Education Class II—U.S. Government Class III—Other U.S. Class IV—International	Class I, Class II, Class I, Class III, Class I, Class IV, Class I, etc.

(c) Payloads will be offered tentative flight opportunities for each mission in the following sequence until the flight manifest is fulfilled:

(1) As defined in the provisions of 14 CFR 1214.9 and 1214.10 in effect before April 23, 1999, payloads with signed LSA's will be tentatively manifested utilizing the class rotation of II, I, II, III until this queue is exhausted;

(2) If the previous queue is exhausted and additional payloads are needed to fulfill the flight manifest, the new class rotation of I, II, I, III, I, IV, as defined in this subpart 1214.9, will then be used to tentatively manifest payloads with signed LSA's until the manifest is fulfilled.

(3) NASA participants are not required to sign a LSA and are considered a government class payload in both rotation sequences as defined in paragraphs (c)(1) and (2) of this section.

Dated: July 9, 2001.

Daniel S. Goldin,

Administrator.

[FR Doc. 01–17786 Filed 7–17–01; 8:45 am]

BILLING CODE 7501–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–01–076]

RIN 2115–AE46

Special Local Regulations for Marine Events; Sturgeon Bay Canal, Sturgeon Bay, Wisconsin

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations for the Sturgeon Bay Venetian Night Parade and Fireworks, an event to be held on the waters of the Sturgeon Bay Canal, Sturgeon Bay, Wisconsin. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Sturgeon Bay Canal, Sturgeon Bay, Wisconsin during the event.

DATES: This rule is effective from 8:20 p.m. to 10 p.m. on August 4, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CDG–09–01–076] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 S. Lincoln Memorial Drive, Milwaukee, Wisconsin 53207 from 7 a.m. to 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy Sickler, Port Operations Chief, Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The phone number is (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application did not allow sufficient time for publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule would be contrary to the public interest by exposing the public to the known dangers associated with fireworks displays and the possible loss of life, injury, and damage to property.

Background and Purpose

On August 4, 2001 the Sturgeon Bay Yacht Club will sponsor a boat parade from 8:20 p.m. to 9:30 p.m., followed by a fireworks display from 9:30 p.m. to 10 p.m., on the waters of the Sturgeon Bay Canal, Sturgeon Bay, Wisconsin. The fireworks will be launched from a barge anchored in the Sturgeon Bay Canal. A fleet of spectator vessels is expected to gather near the event site to view the parade and aerial demonstration. To provide for the safety of spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the parade and fireworks display.

The regulated area for the parade will encompass the waters of Sturgeon Bay bounded by the following coordinates: from the point of origin at 44° 49′51″ N, 087°22′56″ W; southeast to 44°49′31″ N, 087°22′29″ W; northeast to 44°49′32″ N, 087°22′28″ W; southeast to 44°49′27″ N, 087°22′20″ W; northeast to 44°49′33″ N, 087°22′11″ W; northwest to 44°49′43″ N, 087°22′34″ W; northwest to 44°49′56″ N, 087°22′49″ W, and then returning southwest to the point of origin. These coordinates are based on North American Datum of 1983 (NAD 83).

The regulated area for the fireworks display will encompass the waters of Sturgeon Bay bounded by the arc of a circle with a 350-foot radius with its center in approximate position 44°49′34″ N, 087°22′25″ W, offshore of Sturgeon Bay Yacht Club, Sturgeon Bay, Wisconsin (NAD 83). The size of the zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, l979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the

regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Sturgeon Bay Canal, Sturgeon Bay, Wisconsin, during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the vicinity of Sturgeon Bay Canal, Sturgeon Bay, Wisconsin from 8:20 p.m. until 10 p.m. (CST) on August 4, 2001.

This regulated navigation area will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only a few hours on the day of the event and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative. The Patrol Commander for this event may be reached via marine band VHF–FM Channel 16. Before the effective period, we will issue maritime advisories widely available to users of the Sturgeon Bay Canal.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

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

PART 100—MARINE EVENTS

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

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary section, § 100.35–T09–001, is added to read as follows:

§ 100.35–T09–001 Lake Michigan, Sturgeon Bay Canal, Sturgeon Bay, WI.

(a) *Sturgeon Bay Venetian Night Parade*—(1) *Regulated area.* The waters of Sturgeon Bay Canal bounded by the following coordinates: from the point of origin at 44°49′51″ N, 087°22′56″ W; southeast to 44°49′31″ N, 087°22′29″ W; northeast to 44°49′32″ N, 087°22′28″ W; southeast to 44°49′27″ N, 087°22′20″ W; northeast to 44°49′33″ N, 087°22′11″ W; northwest to 44°49′43″ N, 087°22′34″ W; northwest to 44°49′56″ N, 087°22′49″ W, and then southwest to the point of origin. These coordinates are based upon North American Datum of 1983 (NAD 83).

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Milwaukee.

(3) *Special local regulations.* (i) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person of vessel may enter or remain in the regulated area.

(ii) The operator of any vessel in the regulated area shall:

(A) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(B) Proceed as directed by any official patrol, including any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(4) *Effective times and dates.* From 8:20 p.m. (CST), until 9:30 p.m. (CST) on August 4, 2001.

(b) *Sturgeon Bay Venetian Nights Fireworks Display*—(1) *Regulated area.* The waters of Sturgeon Bay Canal bounded by the arc of a circle with a 350-foot radius with its center in approximate position 44°49′34″ N, 087°22′25″ W, offshore of Sturgeon Bay Yacht Club, Sturgeon Bay, Wisconsin. All geographic coordinates are North American Datum of 1983 (NAD 83).

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Milwaukee.

(3) *Special local regulations.* (i) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person of vessel may enter or remain in the regulated area.

(ii) The operator of any vessel in the regulated area shall:

(A) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(B) Proceed as directed by any official patrol, including any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(4) *Effective dates and times.* From 9:30 p.m. until 10 p.m. (CST) on August 4, 2001.

Dated: July 9, 2001.

J.D. Hull,

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

[FR Doc. 01–17950 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami 01–074]

RIN 2115–AA97

Safety Zone; Fort Lauderdale, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Captain of the Port is establishing a temporary safety zone on the Atlantic Intracoastal Waterway under the Southeast 17th Street (State Road A1A) highway bridge in Fort Lauderdale, FL. This safety zone will be in effect for one hour on two different days during the demolition of the bascule piers for the old drawbridge across the waterway. This safety zone is needed to protect all vessels from potential safety hazards associated with the demolition of the bascule piers.

DATES: This regulation is effective from 3:30 p.m. on July 17, 2001 until 12:30 p.m. on July 24, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP Miami 01–074] and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Boudrow, at Coast Guard Marine Safety Office Miami, Florida, telephone: (305) 535–8701.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to public safety interests since immediate action is needed to minimize potential danger associated with the demolition of the bridge.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard Captain of the Port is establishing a temporary safety zone closing the Intracoastal Waterway at the 17th Street Causeway Bridge, mile marker 1065.9, in Fort Lauderdale, FL to all marine traffic. This closure has been requested by the Florida Department of Transportation in order to remove portions of the old draw bridge's bascule piers on either side of the waterway by contractors. The work includes the demolition of the existing bascule piers below the waterline. The Coast Guard has reviewed the planned scope of work and has determined that a safety zone and waterway closure are necessary to protect all vessels from potential safety hazards posed by demolition activities.

The safety zone will be in effect from approximately 3:30 p.m. until 4:30 p.m. on July 17, 2001 and from 11:30 a.m. until 12:30 p.m. on July 24, 2001. The closure of the waterway was scheduled during a period which will minimize the impact to the boating community. The Coast Guard will issue Broadcast Notice to Mariners to advise mariners of the scheduled closure. Boat traffic will be directed to Hillsboro Inlet and the Port of Palm Beach to the north and Port Everglades to the south as alternate routes. The closure will be strictly enforced by the Coast Guard, the Fort Lauderdale Police Marine Patrol and Florida Marine Patrol.

Regulatory Evaluation

This proposal is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation is necessary because the safety zone will

only be in effect for a brief time on two days.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the regulations will only be in effect for two short periods of time on two days. Further, the closure times will be publicized by broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—[AMENDED]

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

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

2. Temporary § 165.T07–074 is added to read as follows:

§ 165.T07–074 Safety Zone; Fort Lauderdale, Florida

(a) *Regulated area.* All waters within 1000 feet on either side of the 17th Street Causeway Bridge, Mile Marker 1065.9, in Fort Lauderdale, Florida.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Dates.* This section is effective from 3:30 p.m. until 4:30 p.m. on July 17, 2001, and from 11:30 a.m. until 12:30 p.m. on July 24, 2001.

Dated: July 6, 2001.

L.J. Bowling,

Captain, U.S. Coast Guard, Captain of the Port, Miami, Florida.

[FR Doc. 01–17949 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN137–1a; FRL–7004–1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to particulate matter (PM) emissions regulations for Cerestar USA, Inc. (Cerestar). Cerestar is located in Lake County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulations on February 16, 2001, as amendments to its State Implementation Plan (SIP). The revisions include the elimination of 18 emission points, the addition of 39 new emission points, and a change in the way the short-term emission limits are expressed (from pounds of particulate matter per ton of product to grains per dry standard cubic feet). One of the revisions also changes the name of the facility listed in the rules from American Maize Products (AMAIZO) to Cerestar USA, Inc. These SIP revisions result in an overall decrease in allowed PM emissions of about 48 tons per year (tpy).

DATES: This rule is effective on September 17, 2001, unless EPA receives relevant adverse written comments by August 17, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

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

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

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

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

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

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I. What Is the EPA Approving?

We are approving revisions to PM emissions regulations for Cerestar, located in Lake County, Indiana. IDEM submitted the revised regulations on February 16, 2001, as amendments to its SIP. Indiana held public hearings on the proposed rule revisions on April 13, 2000, and September 6, 2000.

The revisions include the elimination of 18 emission points, the addition of 39 new emission points, and a change in the way the short-term emission limits are expressed (from pounds of particulate matter per ton of product to grains per dry standard cubic foot). One of the revisions also changes the name of the facility listed in the rules from American Maize Products (AMAIZO) to Cerestar USA, Inc. These SIP revisions result in an overall decrease in allowed PM emissions of about 48 tpy.

II. What Are the Changes From Current Rules?

IDEM has submitted revisions to regulation 326 Indiana Administrative Code (IAC) 6–1–10.1. The current rule contains 72 emissions points. The revisions to the rule include the elimination of 18 emission points and the addition of 39 new emission points, due to plant modernization which has occurred since the adoption of the current rule. These SIP revisions result in an overall decrease in allowed PM emissions of about 48 tpy.

The revisions also change the way the short-term emission limits are expressed, from pounds of particulate matter per ton of product (lb/ton) to grains per dry standard cubic feet (gr/dscf). Because of variability in product moisture content, and therefore weight, gr/dscf is a more accurate way to determine emissions.

III. Analysis of Supporting Materials Provided by IDEM

The general criteria used by the EPA to evaluate such emissions trades, or ''bubbles,'' under the Clean Air Act and applicable regulations are set out in the EPA's December 4, 1986, Emissions Trading Policy Statement (ETPS) (see 51 FR 43814). Emissions trades which result in an overall decrease in allowable emissions require a ''Level II'' modeling analysis under the ETPS to ensure that air quality will be protected. A Level II analysis must include emissions from the sources involved in the trade, and must demonstrate that the air quality impact of the trade does not exceed set significance levels.

However, since Cerestar is located in a PM nonattainment area, IDEM chose to go beyond the required Level II analysis and conduct a ''Level III'' modeling analysis. A Level III analysis is a full dispersion modeling analysis considering all sources affecting the trade's area of impact. For this analysis, IDEM performed a dispersion modeling analysis of PM concentrations attributable to Cerestar and other Lake County sources. IDEM used virtually the same inputs and procedures as the PM attainment plan for Lake County, Indiana that EPA approved in 1995, except that IDEM used ISC3, a more current dispersion model, as well as the revised emission rates for Cerestar. This analysis demonstrated that the revised plan was still adequate to attain and maintain the PM air quality standards in the vicinity.

EPA believes the modeling analysis submitted by IDEM satisfies applicable guidance. EPA approved most aspects of the analysis in 1995, and finds the use of an updated dispersion model and revised emission rates to be necessary and sufficient. EPA concurs with IDEM's conclusion from this analysis that the requested SIP revisions will continue to protect air quality in the area.

IV. What Are the Environmental Effects of This Action?

These SIP revisions will result in a decrease in allowable PM emissions of 48 tpy. In addition, air quality modeling analyses conducted by IDEM show that the requested SIP revisions should continue to protect air quality. Therefore, these SIP revisions should not have an adverse effect on air quality.

V. EPA Rulemaking Action

We are approving, through direct final rulemaking, revisions to PM emissions regulations for Cerestar, located in Lake County, Indiana. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by August 17, 2001.

Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on September 17, 2001.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 17, 2001, unless EPA receives adverse written comments by August 17, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 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 section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Particulate matter, Incorporation by reference, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: June 13, 2001.

Gail Ginsberg,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(141) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(141) On February 16, 2001 Indiana submitted revised particulate matter emissions regulations for Cerestar USA, Inc. The submittal amends 326 IAC 6–1–10.1, and includes the elimination of 18 emission points, the addition of 39 new emission points, and a change in the way the short-term emission limits are expressed (from pounds of particulate matter per ton of product to grains per dry standard cubic feet). The revision also changes the name of the facility listed in the rules from American Maize Products (Amaizo) to Cerestar USA, Inc.

(i) Incorporation by reference.

Emissions limits for Cerestar USA, Inc. in Lake County contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 10.1: Lake County PM_{10} emission requirements. Added at 24 In. Reg. 1308. Effective January 13, 2001.

[FR Doc. 01–17830 Filed 7–17–01; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

[Docket No. 90–23]

Tariffs and Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proceeding Discontinued.

SUMMARY: The Federal Maritime Commission (''Commission'') published a Final and an Interim Rule in this proceeding as a new Part 514 of Title 46 CFR, covering tariffs and service contracts filed into the Commission's electronic system. The Ocean Shipping Reform Act of 1998 became effective May 1, 1999, and eliminated public tariff filing with the Commission. Accordingly, Part 514 of Title 46 CFR was deleted. Therefore, this proceeding can be, and hereby is, discontinued.

DATES: This proceeding is discontinued July 18, 2001.

FOR FURTHER INFORMATION CONTACT: Bruce A. Dombrowski, Executive Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5800.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** on September 9, 1991 (56 FR 46044), proposing a new Part 514 of Title 46 CFR covering tariffs and service contracts filed into the Commission's Automated Tariff Filing and Information (''ATFI'') System. After comments were considered by the Commission, a Final Rule was issued November 25, 1991 (56 FR 61164; December 2, 1991), and an Interim Rule was issued August 4, 1992 (57 FR 36248; August 12, 1992), implementing Part 514 and the ATFI System. These rules also incorporated all existing non-obsolete tariff regulations.

The Ocean Shipping Reform Act of 1998 became effective May 1, 1999, and eliminated public tariff filing with the Commission. ATFI ceased serving as the system for tariff and essential terms filing as of that date. The provisions of 46 CFR Part 514 were removed when the Commission adopted rules implementing the Ocean Shipping Reform Act of 1998 (64 FR 11186, March 8, 1999). Therefore, this proceeding is hereby discontinued.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–17874 Filed 7–17–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1601; MM Docket No. 01–68; RM–10087]

Radio Broadcasting Services; Bordelonville, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants the petition for rule making filed by Bramah Broadcasting proposing the allotment of Channel 280A to Bordelonville, LA, as the community's first local aural transmission service. See 66 FR 16900 (March 28, 2001). Channel 280A is allotted to Bordelonville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 31–06–18 North Latitude and 91–54–26 West Longitude.

DATES: Effective August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–68; adopted June 27, 2001 and released July 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Bordelonville, Channel 280A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17924 Filed 7–17–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1603; MM Docket No. 01–94; RM–10086]

Radio Broadcasting Services; Corinth, Scotia and Hudson Falls, New York

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition for rule making filed by Vox New York, LLC, licensee of Stations WHTR(FM), Corinth, New York, and WFFG–FM, Hudson Falls, New York, proposing the substitution of Channel 229A for Channel 228A at Corinth, New York, the reallotment of Channel 229A from Corinth to Scotia, New York, as the community's first local service, and the reallotment of Channel 296A from Hudson Falls, New York, to Corinth. See 66 FR 22499 (May 4, 2001). Channel 229A is reallotted from Corinth to Scotia at a site 9.9 kilometers (6.2 miles) northwest of the community at coordinates 42–54–27 NL, and 74–00–57 WL. Channel 296A is reallotted from Hudson Falls to Corinth at petitioner's licensed site 5 kilometers (3.1 miles) east of the community at coordinates 43–14–40 NL and 73–46–18 WL.

DATES: Effective August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–94 adopted June 27, 2001 and released July 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 228A at Corinth and adding Channel 296A at Corinth, by removing Channel 296A at Hudson Falls, and by adding Scotia, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17925 Filed 7–17–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 010326079–1170–02; I.D. 010301C]]

RIN 0648–AO96

Atlantic Highly Migratory Species (HMS); 2001 Atlantic Bluefin Tuna Quota Specifications and General Category Effort Controls

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

ACTION: Final initial quota specifications and General category effort controls.

SUMMARY: NMFS announces the final initial quota specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quota and General category effort controls for the 2001 fishing year. The final initial quota specifications and General category effort controls are necessary to implement the 1998 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) as required by the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final initial quota specifications and General category effort controls are effective July 13, 2001, through May 31, 2002.

ADDRESSES: Copies of supporting documents, including the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), are available from the Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Pat Scida at 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the HMS FMP that was adopted and made available to the public in April 1999. The HMS FMP and its implementing regulations require that NMFS issue annual quota specifications and effort controls for the BFT fisheries. The final initial quota specifications allocate the total ICCAT-recommended quota (including the allocation of the unused portion of the dead discard allowance) among the several established fishing categories, carry over any unharvested quota in 2000 from a specific category to the same category for 2001, and are consistent with the BFT rebuilding program as set forth in the 1998 ICCAT recommendation and the HMS FMP. Further background information and rationale for these final initial quota specifications and General category effort controls were provided in the preamble to the proposed initial quota specifications and General category effort controls (66 FR 17520, April 2, 2001) and are not repeated here.

Changes From the Proposed Specifications

Based on consideration of comments received during the comment period, NMFS is reducing the number of restricted fishing days (RFDs) scheduled for the 2001 fishing year. The revised schedule is indicted in the section addressing effort controls. In addition, minor modifications have been made to the 2001 fishing year quotas based on revised landings for the 2000 fishing year.

Fishing Category Quotas

NMFS implements U.S. domestic quota allocations for the 2001 fishing year, beginning June 1, 2001, consistent with the HMS FMP and the 1,387-metric ton (mt) U.S. allocation. The percentage quota shares established in the HMS FMP for fishing years beginning June 1, 1999 are as follows (tonnage in parentheses corresponds to 1,387 mt total quota): General category: 47.1 percent (653.3 mt); Harpoon category: 3.9 percent (54.1 mt); Purse Seine category: 18.6 percent (258.0 mt); Angling category: 19.7 percent (273.2 mt); Longline category: 8.1 percent (112.3 mt); Trap category: 0.1 percent (1.4 mt); and Reserve: 2.5 percent (34.7 mt).

Based on these percentages and on quota adjustments resulting from overharvests or underharvests in the 2000 fishing year, the adjusted quotas for the 2000 fishing year are as follows: 609.3 mt for the Angling category; 666.7 mt for the General category; 55.0 mt for the Harpoon category; 193.2 mt for the Longline category; 3.9 mt for the Trap category; 255.6 mt for the Purse Seine category; and 42.5 mt for the Reserve.

The Angling category quota is subdivided as follows: School BFT--247.8 mt, with 134.3 mt to the northern area (north of 38°47′ N. lat.), 113.5 mt to the southern area (south of 38°47′ N. lat.), and 20.6 mt held in reserve; large school/small medium BFT--330.0 mt, with 171.1 mt to the northern area and 158.9 mt to the southern area; and large medium/giant BFT--10.9 mt, with 4.8 mt to the northern area and 6.1 mt to the southern area. NMFS proposed a rule (65 FR 76601; December 7, 2000) that would adjust the location of the Angling category north-south dividing line to 39° 18′ N. lat. and change the percentage quota allocations in the northern and southern areas. Should a final rule be issued to implement these changes during the 2001 fishing year, that final rule will also revise the 2001 Angling category subquotas contained in this document based on any changes made to the quota allocations for the northern and southern areas.

The Longline category is subdivided as follows: 24.9 mt to longline vessels landing BFT north of 34° N. latitude and 168.3 mt to longline vessels landing BFT south of 34° N. latitude.

General Category Effort Controls

For the 2001 fishing year, NMFS implements General category quota subdivisions as established in the HMS FMP, as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. Given the underharvest of the 2000 fishing year General category quota, these percentages are applied to the adjusted coastwide quota for the General category of 656.7 mt, with the remaining 10.0 mt being reserved for the New York Bight fishery. Therefore, coastwide, 394.0 mt

are available for the period beginning June 1 and ending August 31; 197.0 mt are available for the period beginning September 1 and ending September 30; and 65.7 mt are available for the period beginning October 1 and ending December 31.

The New York Bight set-aside area is the area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27′ W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47′ N. lat. When the coastwide General category fishery has been closed in any quota period, NMFS may publish notification in the **Federal Register** to make available up to 10 mt of the quota set aside for the New York Bight area. A

Attainment of the subquota in any quota period will result in a closure until the beginning of the following quota period. The subquota for the following quota period will be adjusted by any underharvest or overharvest in the previous quota period. Announcements of closures will be filed for publication with the Office of the **Federal Register**, stating the effective date of closure, and will be disseminated by the HMS Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line (978-281-9305 or 888-872-8862) to check the status of the fishery before leaving for a fishing trip.

Persons aboard vessels permitted in the General category are prohibited from fishing (including tag and release fishing) for BFT of all sizes on the following days in 2001: August 11, 12, and 13; September 2, 3, 5, 9, 10, 12, 16, 17, 19, 23, 24, 26, and 30; and October 1 and 3. Persons aboard vessels permitted in the Atlantic HMS Charter/Headboat category are prohibited from fishing for large medium and giant BFT under the General category quota on the indicated RFDs. These RFDs will improve distribution of fishing opportunities without increasing BFT mortality and are consistent with the objectives of the HMS FMP.

Comments and Responses

Quota Carryover Provisions

Comment: Some commenters stated there should be no changes to the current quota carryover provisions. The agency should address any excessive amounts of quota with inseason transfers. Some commenters stated the amount of quota proposed to be carried over in the Angling category due to underharvest of the quota for that category during the 2000 fishing year is very large. NMFS should use the inseason transfer criteria specified in the regulations to make the quota available to other users within the domestic fishery, specifically to the commercial categories, in which each fish landed is reported. Inseason quota transfers should also take place in the beginning of the season, or as early as possible, to avoid late season transfers that can prolonging the fishery late into the season when the weather is usually the worst. Other commenters stated that if a carryover cap was put into place it should be a high percentage of the initial quota allocation for that category. A few commenters stated that capping the amount of tonnage that may be carried over could be problematic as determining an appropriate cap level would be difficult and contentious. Thus, instead categories should be provided a reasonable opportunity to catch their quota. Some comments received stated that if a particular category's quota is not harvested, and this pattern repeats itself for a couple of years, this could have serious ramifications under the current carryover regulations. Some commenters stated that with the amount of quota available in the Angling category, increased mortality on a specific year class could have devastating effects on the overall rebuilding plan. One commenter pointed out that categories are not guaranteed the quota allocated to them, fishermen are provided an ample opportunity to catch that quota, there is no private ownership of the quota, and the agency must do what it believes is good for the fishery as a whole.

Response: For the 2001 fishing year NMFS has decided to continue the current system to address quota transfers, namely: (1) inseason quota transfers in accordance with HMS FMP transfer criteria and (2) end-of-the-year carryover provisions, to ensure all reasonable opportunities are provided for U.S. fishermen to harvest the available quota. NMFS recognizes the concerns regarding the excess build up of quota in any one category due to annual quota carry-overs, such as potential negative biological impacts, precedents for starting new unsustainable fisheries, etc., and NMFS will continue to monitor the fishery and take appropriate inseason action. In addition, NMFS may consider, in consultation with the HMS Advisory Panel, addressing excessive quota carry-overs through rulemaking.

Restricted Fishing Days

Comment: Some commenters stated that NMFS should remove RFDs from the June through August time period sub-quota while keeping the Sunday, Monday, Wednesday schedule for September, as well as the October through December, time period sub-quotas. Some commenters stated that over the past few seasons catch rates have been relatively low for much of the season and that RFDs have impeded fishermen from having a reasonable opportunity to land the quotas previously established for particular time periods. In addition many commenters stated that NMFS should use its ability to institute or ''waive'' RFDs during the season as necessary. Some commenters stated that NMFS should not implement October RFDs, especially beyond the first few days of October. October weather alone should dictate when fishermen make a trip and by not allowing fishermen a reasonable opportunity to catch the quota the agency runs the risk of not complying with ATCA. Some commenters stated that the RFD schedule should remain as it was last year to extend the season as long as possible.

Response: NMFS removes 25 RFDs from the schedule announced in the proposed specifications. The days removed are primarily in the June through August time-period subquota, except for a Japanese market holiday that takes place mid-August. NMFS also recognizes that the weather is unpredictable in the later portion of the season, particularly in the later half of October, and poor weather conditions may limit participation without the need for RFDs after the first week in October. Thus, the RFD schedule does not include RFDs after the first week of October. If it appears that catch rates are extremely high in the early portion of the season, NMFS may establish additional RFDs as deemed necessary to moderate the fishery and assist in attaining Optimum Yield.

2001 Fishing Year Quota Allocations

Comment: Many commenters stated that the Harpoon category should receive an increase in quota. This increase should be of an amount that would put the Harpoon category at approximately 10-12 percent of the General category quota for 2001. NMFS should use quota from either the unused portion of dead discard allowance, or the underharvest from the 2000 fishing year quota, or the quota from the Reserve, to boost the Harpoon quota this

season and then do either a framework action or an amendment to the HMS FMP to increase the Harpoon category quota over the long term.

Response: NMFS is allocating 55.0 mt to the Harpoon category, as proposed, based upon the annual quota allocation percentages and annual carryover provisions established in the HMS FMP. As appropriate, NMFS may use the authority to make inseason transfers from one category to another based on transfer criteria established in the HMS FMP. NMFS will closely monitor the season to determine the status of the Harpoon category and whether inseason transfers are warranted. In addition, NMFS may consider, in consultation with the HMS FMP, whether an amendment to the HMS FMP is appropriate.

Comment: Some commenters stated that the Longline category should not receive a carryover from a previous year because it is an incidental fishery. The unlanded quota from this category should be used to restore the Harpoon and Purse seine categories to their historical levels. Other commenters stated that target catch requirements in the Longline category have been too strict in the past and should be relaxed to allow a reasonable opportunity to harvest the category's quota before transferring that quota to one of the other categories.

Response: NMFS is implementing a Longline category quota of 193.2 mt based on annual carryover procedures established in the HMS FMP. The Longline incidental BFT quota and incidental target catch limits have been the subject of extensive public debate. NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on November 17, 2000 requesting comment on this subject. At the recent HMS Advisory Panel meeting held in April, various options for revising the Longline limits were considered. NMFS intends to examine this issue comprehensively through subsequent rulemaking.

Comment: Some commenters stated that North Carolina (NC) should have its own General and Angling category set aside quotas. By not allowing NC a commercial fishery the agency is violating national standard 4. Other comments received stated historical fisheries must be restored before any new fisheries, such as a commercial handgear fishery in NC, are created.

Response: NMFS continues to believe that allowing new gear types and fisheries for BFT at this time would be inconsistent with rebuilding overfished stocks and preventing overfishing. Fishermen in the state of NC have the opportunity to fish recreationally under the Angling category bag limits and NMFS has the ability to open and close the Angling category to ensure reasonable fishing opportunities in all areas, including NC. Thus NMFS does not believe a set aside of Angling category quota is necessary for NC or any other area.

During FMP development, the issue of opening a new fishery and establishing a set-aside for a NC General category fishery was extensively discussed by the HMS Advisory panel (AP) and the public. However, the HMS AP did not reach consensus on whether or not to allow a new southern fishery. NMFS' position remains that allowing new gear types and fisheries for BFT would not be consistent with rebuilding overfished stocks and preventing overfishing at this time.

Specifications

Comment: Some commenters stated that the minimum size for a commercial BFT should be reduced to 65 inches (165 cm). Historically the Large school/Small medium size class were caught by General category vessels and were sold or retained for personal use. Once that changed, in 1991, there has been no fishery for that size class to speak of, thus the large amounts of unharvested quota. NMFS should reduce the commercial minimum size and alleviate some of this excess quota carryover.

Response: NMFS believes that the 73-inch (185 cm) commercial minimum size should be maintained. The current commercial minimum size limit was implemented in 1992, and was not adjusted in the HMS FMP, as it is consistent with the objectives of the HMS FMP and achieving optimum yield in the fishery. By lowering the commercial minimum size the number of BFT landed could increase, which may affect longterm rebuilding. Currently, all BFT less than 73 inches (185 cm) are allocated to the Angling category, and lowering the commercial minimum size to allow the sale of these fish by vessels in commercial permit categories would be a re-allocation of quota, which would have to be considered in a separate rulemaking.

Comment: Some commenters stated that NMFS should use multiple fish retention limits in the General category to assure that time period sub-quotas are harvested within their allotted time frame. Some commenters stated that multiple fish retention limits should be implemented early in the season, while others stated that they should be implemented in the end of the season. If NMFS were to consider allowing multiple catch in the General category, it should also reconsider allowing buyboats back into the fishery.

Response: NMFS has the authority to increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero to a maximum of three per vessel. NMFS may use this flexibility in the daily limit to provide fishermen a reasonable opportunity to achieve the General category quota. Starting the season with a multiple fish retention limit could work to the fishermen's disadvantage if the season has to be closed early in the fishing year. Starting at one large medium or giant BFT per day should provide the greatest opportunity for a longer season providing maximum fishing opportunities to the greatest number of fishery participants over the greatest geographic area. Buyboats were eliminated with the adoption of the HMS FMP in 1999, due to the lack of use and potential enforcement problems. Given the limited potential for use, there is no compelling reason to authorize buyboats in the BFT fishery at this time.

Comment: Commenters stated that the May 15 deadline to change categories should be changed. If fishermen are going to be held to this arbitrary date, so should the agency be held to a requirement to publish a final rule in a timely manner. The final rule should be available to fishermen before they are forced to make a business decision. Other commenters stated that as the new web-based permitting system fishermen can provide permits in real-time via computer or fax, the May 15 date should be adjusted to the end of May to allow the agency more time to publish a final rule.

Response: NMFS agrees that it should publish final specifications before the beginning of the fishing year. Part of the rationale for the adjustment of the fishing year from a calendar year to one that begins June 1 was to provide adequate time for the development of proposed and final specifications after the annual ICCAT meeting in November. The workload within the HMS Division this spring delayed publication of the proposed specifications. However, as the measures contained in the specifications do not change the status quo as presented in the HMS FMP (except for the addition of RFDs in October), NMFS believes that there was minimal, or no, impact on decisions regarding choice of permit categories. NMFS did, however, extend the deadline for permit category changes until May 31, 2001 due to technical problems with the permitting system.

Comment: NMFS should limit BFT commercial gear to rod and reel only.

Response: NMFS disagrees. Vessels using gear other than rod and reel gear, for example, harpoon and purse seine gear, have a long history of participation in the BFT fishery. Prohibiting the use of these gears in the Atlantic tuna fisheries is inconsistent with the objectives of the FMP. Bycatch concerns, for these gear types, are minimal and, in the case of purse seine gear, the number of vessels in the fishery is limited. Regarding pelagic longline gear, this gear is primarily used to target swordfish and other fish species. Prohibiting this gear in the Atlantic tunas fisheries could result in increased tuna discards, as BFT are occasionally caught incidentally on longline gear when fishing for swordfish and other tunas. In addition, longline gear is restricted in the BFT fisheries with strict target catch requirements for incidental catch retention. All permitted gear types in the commercial and recreational BFT fisheries are regulated and subject to the overall U.S. BFT quota.

Comment: The quota allocation percentage for school size BFT should be increased from its current level of eight percent. Other commenters suggested that this is an ICCAT issue that should be raised with the ICCAT Advisory Committee.

Response: This issue does not fall within the parameters of this rulemaking. This issue is more appropriately addressed by the ICCAT Advisory Committee in making a recommendation for a change in the ICCAT rebuilding program. Inseason Measures for the Recreational Fishery

Comment: Commenters stated that NMFS should create a third fishing area for the Angling category. Other commenters stated that, due to the amount of quota that is available for carryover from the 2000 fishing year, the retention limits should be liberalized to provide an ample opportunity to catch the quota. Commenters also stated that the season should be lengthened by having a number of sub-zones with unique retention limits depending on the time of the year. Finally, commenters stated that a different retention limit should be applied to inspected vessels based upon some ratio of the number of passengers onboard.

Response: NMFS intends to address the specific issue of Angling category catch limits and seasons through its existing regulatory authority for inseason adjustments to enhance fishing opportunities for Angling category participants coastwide. Comments regarding the appropriate distribution will be considered as NMFS makes any necessary inseason adjustments in separate actions.

Classification

These final initial quota specifications and General category effort controls are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 et seq., and ATCA, 16 U.S.C. 971 et seq. The Assistant Administrator for Fisheries, NOAA, has determined that the quota specifications and the General category effort controls are consistent with the HMS FMP, the Magnuson-Stevens Act, ATCA, and the 1998 ICCAT BFT catch recommendation.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when these initial quota specifications and General category effort controls were proposed that, if adopted, they would not have a significant economic impact on a substantial number of small entities. No comments were received that would alter the basis for this certification. Accordingly, neither an Initial or Final Regulatory Flexibility Analysis was prepared.

These final initial quota specifications and General category effort controls have been determined to be not significant for purposes of Executive Order 12866.

These final initial specification are not expected to increase endangered species or marine mammal interaction rates. On June 8, 2001 NMFS issued a Biological Opinion (BO) after concluding formal consultation for the HMS fisheries under Section 7 of the Endangered Species Act. The BO concluded that the pelagic longline fishery is likely to jeopardize the continued existence of threatened or endangered species. Pelagic longline vessels are not permitted to direct fishing on BFT, and are allocated a quota only for incidental take of BFT while conducting a fishery for swordfish and other tunas. Consequently, these BFT specifications will not change fishing practices for longline vessels. NMFS plans on addressing the conclusions of the BO regarding the pelagic longline fishery through separate rulemaking. The BO concluded that the gears used in directed BFT fisheries (handgear and purse seines) may affect, but are not likely to adversely affect, threatened or endangered species. This final rule will not significantly alter current fishing practices and would not likely increase takes of listed species or interfere with the implementation of the reasonable and prudent alternative measures identified in the BO to reduce adverse impacts on protected resources.

The area in which this proposed action is planned has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the Highly Migratory Species Division of the Office of Sustainable fisheries at NMFS. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

These specifications and effort controls are necessary to ensure that the United States' actions are consistent with its international obligations under ICCAT and, because the fishing season is underway, a delay of effectiveness is contrary to the public interest. Additionally, a delay in effectiveness is unnecessary because these specifications and effort controls impose no requirements with which fishermen need time to come into compliance. Therefore, NMFS has determined that there is good cause to waive the 30-day delay in the effective date normally required by 5 U.S.C. 553(d). NMFS will rapidly communicate these final specifications through the FAX network.

Dated: July 13, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–17918 Filed 7–13–01; 4:03 pm]

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Proposed Rules

Federal Register
Vol. 66, No. 138
Wednesday, July 18, 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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 318

[Docket No. 98–127–1]

Rambutan, Longan, and Litchi From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Hawaiian fruits and vegetables regulations to provide alternative treatments for rambutan, longan, and litchi moving interstate from Hawaii. This proposed action would facilitate the interstate movement of rambutan, longan, and litchi from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States. We are also proposing to consolidate and update the existing regulations governing the interstate movement of certain fruits from Hawaii in order to make them easier to understand.

DATES: We will consider all comments that we receive by September 17, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 98–127–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–127–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register,** and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

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

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables from Hawaii. Regulation is necessary to prevent the spread of dangerous plant diseases and pests that exist in Hawaii, including the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*).

The regulations currently require specified fruits to undergo treatment as a condition of movement from Hawaii to other States. In some cases, the treatment schedules are set forth in the regulations, while in others, the regulations require that fruit be treated in accordance with a treatment listed in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at 7 CFR 300.1(a).

In this document, we are proposing to add several treatments to the PPQ Treatment Manual, provide alternative treatments for rambutan, longan, litchi, and several other fruits, remove specific treatment schedules from § 318.13–4b of the regulations, and consolidate several sections of the regulations into a revised § 318.13–4b. The proposed changes are described below, by commodity.

Bell Peppers, Eggplants, Pineapples (Other than Smooth Cayenne), Italian Squash, and Tomatoes

Under the current regulations in § 318.13–4b, bell peppers, eggplants, pineapples (other than smooth cayenne), Italian squash, and tomatoes may be moved interstate from Hawaii if, among other things, they are treated with the vapor heat treatment prescribed in the regulations. This treatment, which requires that fruits be treated with vapor heat at 110 °F for 8.75 hours, differs from the vapor heat treatment specified in the PPQ Treatment Manual for those fruits. The PPQ Treatment Manual specifies the following vapor heat treatment for bell peppers, eggplants, pineapples (other than smooth Cayenne), Italian squash, and tomatoes:

Vapor Heat Treatment for Ceratitis Capitata (Mediterranean Fruit fly), Bactrocera Dorsalis (Oriental Fruit fly), and Bactrocera Cucurbitae (Melon fly)

1. Raise temperature of article by saturated water vapor at 112 °F until approximate center of fruit reaches 112 °F within a time period designated by the PPQ officer.
2. Hold fruit temperature at 112 °F for 8.75 hours, then cool immediately. Pretreatment conditioning is optional and is the responsibility of the shipper.

The above treatment is preferable to the treatment listed in § 318.13–4b(a)(1) because research conducted by the Agricultural Research Service (ARS) has shown that certain pests of bell peppers, eggplants, pineapples (other than smooth cayenne), Italian squash, and tomatoes may not be eliminated by vapor heat treatment at less than 112 °F.

Therefore, we are proposing to remove the treatment in § 318.13–4b(a)(1) for bell peppers, eggplants, pineapples (other than smooth cayenne), Italian squash, and tomatoes and replace it with a requirement that those fruits be treated in accordance with the PPQ Treatment Manual, or any applicable treatment provided in the regulations. (Tomatoes may also be treated with methyl bromide in accordance with § 318.13–4c.)

In conjunction with this change, we would remove § 318.13–4b(e)(2), which explains that eggplants need to be properly conditioned in order to tolerate the required vapor heat treatment. Since the conditioning of eggplants is at the discretion of the shipper and is not required under the regulations, § 318.13–4b(e)(2) would not need to be included in the revised regulations.

Papaya

Under the current regulations in § 318.13–4b, papayas may be moved interstate from Hawaii if, among other things, they are treated with a vapor

heat treatment prescribed in §§ 318.13–4b(a)(1) or (a)(2). Paragraph (a)(1) requires that fruits be treated with vapor heat at 110 °F for 8.75 hours. Paragraph (a)(2) requires that fruits be treated with vapor heat until the approximate center of the fruit reaches 117 °F. This second option is referred to as a ''quick run-up'' treatment.

As is the case with bell peppers and the other fruits discussed above, the treatment in paragraph (a)(1) is no longer in use for papayas. The ''quick run-up'' vapor heat treatment provided in paragraph (a)(2) is the only vapor heat treatment currently being used in Hawaii to treat papayas. Therefore, we are proposing to remove the treatment listed in paragraph (a)(1) as a treatment for papayas, and, since the ''quick run-up'' treatment is not listed in the PPQ Treatment Manual, we would add it to the PPQ Treatment Manual, and remove it from the regulations in § 318.13–4b. The treatment is as follows:

Vapor Heat Treatment for *Ceratitis Capitata* (Mediterranean Fruit fly), *Bactrocera Dorsalis* (Oriental Fruit fly), and *Bactrocera Cucurbitae* (Melon fly)

1. Raise temperature of article by saturated water vapor at 117 °F until approximate center of fruit reaches 117 °F in a minimum time period of 4 hours.

In conjunction with this change, we would amend the regulations in § 318.13–4b to provide that papayas may be moved interstate from Hawaii if treated in accordance with the PPQ Treatment Manual, or any other applicable treatment provided in the regulations. (Papayas may also be treated with irradiation in accordance with § 318.13–4f.)

Further, we would also remove § 318.13–4b(e)(3), which explains that papayas need to be properly conditioned in order to tolerate the required vapor heat treatment. Since the conditioning of papayas is at the discretion of the shipper and is not required under the regulations, § 318.13–4b(e)(3) would not need to be included in the revised regulations.

Avocado and Carambola

Currently, the regulations in §§ 318.13–4d and 318.13–4h provide for the interstate movement of avocados and carambolas, respectively, from Hawaii if the fruits are treated for certain pests in accordance with the PPQ Treatment Manual. In order to streamline the regulations, we propose to remove the regulations in §§ 318.13–4d and 318.13–4h and add avocados and carambolas to the revised § 318.13–4b, which would list certain fruits that are eligible for movement from Hawaii if they are first treated in accordance with the PPQ Treatment Manual. Carambola could also be treated with irradiation in accordance with § 318.13–4.

Litchi

Under the current regulations in § 318.13–4e, litchi may be moved interstate from Hawaii to all States except Florida if, among other things, they are inspected for, and found free of, the litchi fruit moth (*Cryptophlebia* spp.) and are then treated for certain pests in accordance with the PPQ Treatment Manual, which calls for a hot water treatment. Litchi may also be moved interstate from Hawaii to all States except Florida if treated with irradiation in accordance with the regulations in § 318.13–4f. In both cases, the regulations specify that litchi may not be moved into Florida because one pest, the litchi rust mite (*Eriophyes litchi*), would not be easily detected by an inspector. Therefore, the entry of litchi from Hawaii into Florida, where most mainland litchi is grown, is prohibited as a precaution against the possible introduction of the litchi rust mite. Accordingly, the regulations require that cartons in which the litchi are packed be stamped ''Not for importation into or distribution in FL.'' [1]

In order to streamline the regulations, we are proposing to remove the requirements in § 318.13–4e and add litchi to the revised § 318.13–4b, which would list fruits that are eligible for movement from Hawaii if they are first treated in accordance with the PPQ Treatment Manual or in accordance with any applicable treatment provided in the regulations. We would also add requirements to the revised § 318.13–4b to make it clear that litchi and any other fruits moving interstate from Hawaii under the regulations in § 318.13–4b must be inspected and found free of plant pests prior to treatment. Further, we would amend § 318.13–4b to state that litchi would not be eligible for movement into Florida, and cartons in which the litchi are packed would be required to be stamped ''Not for movement into or distribution in FL.''

Based on research and recommendations by ARS, we are also proposing to add a new vapor heat treatment, which is explained below, to the PPQ Treatment Manual for litchi moving interstate from Hawaii. Research conducted by ARS indicates that this treatment would provide probit 9 quarantine security (99.997 percent mortality or no more than 3 individuals surviving from an estimated treatment population of 100,000) against any potential infestations of Mediterranean fruit fly or Oriental fruit fly.

ARS has determined, however, that this new vapor heat treatment, like the existing hot water treatment, may not affect other pests that may be carried by litchi (i.e., the litchi rust mite). Because the litchi rust mite would not be easily detected by an inspector, the movement of vapor heat-treated litchi from Hawaii into Florida would, as is the case with hot water-treated litchi, be prohibited.

Other pests that may be carried by litchi could be easily detected by inspection. Therefore, we would require that prior to treatment, the litchi must be inspected for the presence of scales, mealybugs, thrips, and other plant pests. If the litchi are found free of such pests, the following vapor heat treatment would be applied under the supervision of an inspector of the Animal and Plant Health Inspection Service (APHIS):

1. The internal temperature of the fruits is to be raised to 117 °F (or above) until the fruit seed surface temperature (largest fruits) reaches 117 °F. The total run-up time (all sensors) must take at least 60 minutes.

2. Fruit is to be held at a temperature of 117 °F (or above) at 90 percent relative humidity or above for 20 minutes.

3. Fruit is to be hydrocooled under a cool water spray until probed fruit return to ambient temperature.

4. The inspector must perform a careful visual inspection of the treated fruit to confirm the absence of other live pest species of quarantine significance. If any of the following are found live, the inspector will reject the treatment: *Cryptophlebia illepida* (koa seedworm), *Cryptophlebia ombrodelta* (litchi fruit moth), *Epiphyas postvittana* (light brown apple moth), *Eriophyes litchi* (litchi rust mite).

This treatment would provide an alternative to the existing hot water treatment provided in the PPQ Treatment Manual and the irradiation treatment provided in § 318.13–4f.

Rambutan

Rambutan (*Nephelium lappaceum* L.) fruit is a recorded host of the Mediterranean fruit fly and Oriental fruit fly, among other pests, but is not a recorded host of melon fly. Currently, rambutan is only allowed to move interstate from Hawaii if it is treated with irradiation in accordance with the regulations in § 318.13–4f.

[1] The current regulations uses the term ''importation'' incorrectly. Products moving to the mainland from Hawaii are being ''moved'' in interstate commerce, and are not being ''imported'' into the United States. This proposed rule would amend the regulations to reflect the proper terminology.

Based on research and recommendations by ARS, we are proposing to add two treatments to the PPQ Treatment Manual for rambutan moving interstate from Hawaii. ARS research indicates that these high temperature forced air and vapor heat treatments, which are described below, would provide probit 9 quarantine security against any potential infestations of Mediterranean fruit fly or Oriental fruit fly.

Prior to treatment, the rambutan would have to be inspected for the presence of scales, mealybugs, thrips, and other plant pests. If the rambutan is found free of such pests, the following treatment would be applied using either high temperature forced air or vapor heat, under the supervision of an APHIS inspector:

1. The internal temperature of rambutan is to be raised by high temperature forced air or saturated water vapor to 117 °F (47.2 °C) during a period of 1 hour or longer.
2. Fruits are to be held at or above 117 °F (47.2 °C) or above for 20 minutes. (For vapor heat treatment, fruits must also be held at 90 percent relative humidity during the same 20 minutes).
3. Cooling the fruits is optional.

In conjunction with this change, we would also amend the regulations to say that rambutan may be moved interstate from Hawaii if treated in accordance with the PPQ Treatment Manual, or any applicable treatment provided in the regulations. These treatments would provide alternatives to the existing irradiation treatment for rambutan provided in § 318.13–4f.

Longan

Longan (*Dimocarpus longan* Lour.) fruit is a recorded host of the Mediterranean fruit fly and Oriental fruit fly, among other pests, but is not a recorded host for melon fly. Currently, longan is only allowed to move interstate from Hawaii to all States except Florida if it is treated with irradiation in accordance with the regulations in § 318.13–4f.

Based on research and recommendations by ARS, we are proposing to add a hot water treatment to the PPQ Treatment Manual for longan moving interstate from Hawaii. ARS research indicates that this treatment, which is described below, would provide probit 9 quarantine security against any potential infestations of Mediterranean fruit fly or Oriental fruit fly.

ARS has determined, however, that the hot water treatment may not affect other pests that may be carried by longan (i.e., the litchi rust mite). Because the litchi rust mite would not be easily detected by an inspector, the entry of longan from Hawaii into Florida, where most mainland longan and other hosts of the litchi rust mite are grown, would be prohibited and cartons in which longan from Hawaii are packed would be required to be stamped ''Not for movement into or distribution in FL.'' This prohibition would be consistent with the requirement in § 318.13–4f that irradiated longan may not be moved into Florida due to the litchi rust mite.

Other pests that may be carried by longan could be easily detected by inspection. Therefore, we would require that prior to treatment, the longan must be inspected for the presence of scales, mealybugs, thrips, and other plant pests. If the longan are found free of such pests, the following treatment would be applied, under the supervision of an APHIS inspector:

1. Fruits must be at ambient temperature before treatment begins.
2. Fruits must be submerged at least 4 inches below the surface in a certified hot water immersion treatment tank.
3. Water must circulate constantly, and be kept at 120.2 °F (or above) for 20 minutes. Treatment time begins when the water temperature reaches at least 120.2 °F in all locations throughout the tank. Note: Temperatures exceeding 121.1 °F can cause phytotoxic damage.
4. Hydrocooling for 20 minutes at 75.2°F is recommended, though not required, to prevent injury to the fruit from the hot water immersion treatment.

In conjunction with this change, we would also amend the regulations to provide that longan may be moved interstate from Hawaii to all States except Florida if treated in accordance with the PPQ Treatment Manual, or any other applicable treatment provided in the regulations. This treatment would provide an alternative to the existing irradiation treatment for longan provided in § 318.13–4f.

Miscellaneous

We are also proposing to correct an error in § 318.13–2 of the regulations. Under paragraph (b) of that section, all species of the genus *Allium* may be moved from Hawaii in accordance with the regulations in the subpart. We are proposing to amend the regulations to provide that only Chinese chives (*Allium tuberosum*) and bulb forms of *Allium* spp. are eligible to move from Hawaii in accordance with the regulations. We are proposing this change because some species of the genus *Allium* (including leeks and some other species not typically shipped or otherwise traded in bulb form) are known to host a leaf miner (*Acrolepiopsis sapporensis*) that does not exist in the mainland United States and that may present a risk to mainland agriculture.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In this document, we are proposing to amend the Hawaiian fruits and vegetables regulations to provide for the interstate movement of rambutan, litchi, and longan from Hawaii after the fruit is treated, under certain conditions, for fruit flies. Under our proposal, those fruits would be allowed to move interstate from Hawaii if they are first inspected and then treated for pests using the following types of treatments:

Fruit	Treatments
Rambutan	High temperature forces air or vapor heat.
Litchi	Vapor heat.
Longan	Hot water.

This proposed action would facilitate the interstate movement of rambutan, longan, and litchi from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

The above fruits are already allowed to move interstate from Hawaii if treated with irradiation in accordance with the regulations in § 318.13–4f. Litchi may also be moved interstate from Hawaii if treated with hot water in accordance with the PPQ Treatment Manual; however, there are currently no hot water treatment facilities in use in Hawaii. Longan and litchi are not allowed to be moved into Florida due to the risk of introducing the litchi rust mite into areas in Florida where longan and litchi are commercially grown.

Providing alternative pest treatment methods for rambutan, litchi, and longan fruits from Hawaii is expected to stimulate growth of the industry and provide access to the larger mainland market.

Production of rambutan in Hawaii decreased from 264,300 pounds in 1997 to about 139,200 pounds in 1998. Rambutan farm prices increased from $2.71 per pound to $3.03 per pound during that period. There are approximately 50 farms in Hawaii that produce rambutan, and each of those farms can be considered to be small entities according to Small Business

Administration (SBA) criteria (i.e., a producer with less than $500,000 in annual sales).

In 1998, the United States produced approximately 2.3 million pounds of litchi, with Hawaii producing 157,000 pounds of litchi, valued at $309,000, during that same period. There are approximately 75 farms in Hawaii that produce litchi, and each is a small entity according to SBA criteria.

The United States produces approximately 1.4 million pounds of longan (mostly in Florida) annually, with a market value of approximately $767,000. Hawaii produced approximately 17,000 pounds of longan in 1998. Any producers of longan in Hawaii are likely to be small entities according to SBA criteria. However, given that Hawaii produces small volumes of longan, it is unlikely that a significant amount of longan would be moved interstate from Hawaii if this proposed rule is adopted.

Currently, there are nine treatment firms in Hawaii that perform the treatments required under the regulations. Four firms use the vapor heat treatment method, four use the dry heat or high temperature forced air method, and one uses the irradiation method. There are no hot water treatment facilities in operation in Hawaii.

Vapor heat and high temperature forced air treatments require between 4 and 6 hours of treatment. The cost of treatment ranges from 0.92 to 2.3 cents per pound (approximately $18.40 to $46.00 per ton with capital construction cost of about $0.9 million to $1.2 million), while irradiation requires about 40 minutes of treatment at a cost of approximately 0.93 to 1.58 cents per pound (approximately $18.60 to $31.60 per ton with capital construction cost of about $2.8 million to $3.8 million for a freestanding facility).

A hot water treatment tank fitted with four baskets costs about $75,000 and has a useful life of about 10 years. Using hot water treatment as an alternative would cost, taking into account the opportunity cost of capital, labor cost, and fuel cost, about $13.95 per ton. A hot water treatment tank fitted with four bins has capacity to treat about 8 tons of fruit per hour. Unless there is a large volume of fruit available for treatment, the equipment would likely be underutilized.

Producers would be able to utilize existing facilities in Hawaii to treat fruits under the conditions specified in this proposed rule. The proposed rule would likely result in increased revenue for the existing vapor heat and dry heat facilities in Hawaii. Additionally, growers in Hawaii would benefit from the increased opportunity for selling their products in a larger and more diverse market and from potential decreases in the cost of treating fruits. If producers respond by planting and harvesting more acreage of these fruits, both consumers and firms that provide treatment services are likely to benefit.

All of the treatment methods would be more economical for owners of facilities and sellers of fruits if the treatments are applied to larger shipments. Initial investment associated with the treatments considered here would depend on the number, capacity, and complexity of required facilities. Costs per pound of fruit treated can rise dramatically when capital-intensive facilities are operated at less than design capacity. This would happen when the commodity is not shipped year round, or when production decreases dramatically (as in the case of a freeze), or if trade patterns or the regulatory environment changes substantially. The effect of underutilized capital equipment on per-unit treatment costs tends to be greater the more expensive the initial capital investment. For example, a recent study estimated that operating strawberry irradiators at 25 percent of their annual throughput capacity can increase the cost of irradiating strawberries by 212 percent, from $0.034/lb treated (when plant is operated at 100 percent annual capacity) to $0.106/lb treated (when plant is operated at only 25 percent of capacity).

The economic effects of this proposed rule on mainland growers and prices on the mainland are not expected to be significant. However, mainland consumers of fresh rambutan, litchi, and longan would likely benefit from increased seasonal and regional availability and from the increased variety of fresh fruits, as well as from more stable prices.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No.10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Incorporation by reference, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, we propose to amend 7 CFR parts 300 and 318 as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through [*date*], has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

3. The authority citation for part 318 would be revised to read as follows:

Authority: U.S.C. 7711, 7712, 7714, 7731, 7754, and 7756; 7 CFR 2.22, 2.80, and 371.3.

4. In § 318.13–2, paragraph (b), the entry for Allium spp. would be removed and the following entries would be added in its place:

§ 318.13–2 Regulated articles.

* * * * *

(b) * * *

Allium spp. (bulb only)
Allium tuberosum
* * * * *

5. Section 318.13–4b, would be revised to read as follows:

§ 318.13–4b Administrative instructions; conditions governing the interstate movement from Hawaii of certain fruits for which treatment is required.

(a) *General instructions.* Fruits listed in this section may only be moved interstate from Hawaii in accordance with this section or in accordance with other applicable sections in this subpart.

(b) *Eligible fruits.* The following fruits may be moved interstate from Hawaii if, prior to interstate movement, they are inspected for plant pests by an inspector and are then treated for fruit flies under the supervision of an inspector with a treatment prescribed in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter: Avocados, bell peppers, carambolas, eggplants, Italian squash, litchi, longan, papayas, pineapples (other than smooth cayenne), rambutan, and tomatoes.

(c) *Subsequent handling.* All handling of fruits subsequent to treatment in Hawaii must be carried out under the supervision of an inspector and according to the inspector's instructions.

(d) *Destination restrictions.* Litchi and longan that are moved interstate from Hawaii under this section may not be moved into Florida due to the litchi rust mite (*Eriophyes litchi*). Cartons used to carry such fruits must be stamped: ''Not for movement into or distribution in FL.''

(e) *Costs and charges.* All costs of treatment and any post-treatment safeguards prescribed by an inspector must be borne by the owner of the fruits or the owner's representative. The services of an inspector during regularly assigned hours of duty and at the usual place of duty are furnished by APHIS without charge.

(f) *Department not responsible for damages.* Treatments prescribed in the PPQ Treatment Manual are judged from experimental tests to be safe for use with the fruits listed in paragraph (b) of this section. However, the Department assumes no responsibility for any damage sustained through or in the course of the treatment, or because of safeguards required by an inspector.

§ 318.13–4d [Removed and reserved]

6. Section 318.13–4d would be removed and reserved.

§ 318.13–4e Removed and reserved]

7. Section 318.13–4e would be removed and reserved.

§ 318.13–4h Removed and reserved]

8. Section 318.13–4h would be removed and reserved.

Done in Washington, DC, this 11th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17803 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 211 and 212

[INS No. 2047–00]

RIN 1115–AF65

Entry Requirements for Citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule is designed to remedy two problems that have arisen in connection with section 141(a) of the Compact of Free Association between the United States of America and the Republic of the Marshall Islands and with the Federated States of Micronesia (48 U.S.C. 1910 note), and the Compact of Free Association between the United States of America and Palau (48 U.S.C. 1931, note) (Compacts, Compact countries). That section confers on citizens of the Compact countries certain privileges to enter the United States as *nonimmigrants,* subject, however, to several exceptions set forth in section 141(a)(3)(c) and section 143 of the Compacts.

This rule will clarify the entry requirements for citizens of the Compact countries who have been adopted by citizens or lawful permanent residents of the United States. The purpose of this aspect of the rule is to prevent the abuse of the entry privileges of section 141(a) of the Compacts as a means of circumventing statutory provisions designed to protect adopted children from abuse or exploitation.

In addition, this rule will correct an omission in the codification of section 141(a) of the Compacts in 8 CFR 212.1(d). That Codification inadvertently failed to include the exceptions to entry privileges of citizens of the Compact countries. By incorporating those exceptions in 8 CFR 212.1(d)(2), the rule will bring the Immigration and Naturalization Service (Service) regulations into compliance with the Compacts.

DATES: Written comments must be submitted on or before August 17, 2001.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2047–00 on your correspondence. Comments may also be submitted electronically to the Service at *insregs@usdoj.gov.* When submitting comments electronically please include INS No. 2047–00 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael Biggs, Assistant Director, Residence and Status Services, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Are the Entry Privileges of Citizens of the Compact Countries Under the Compacts, and How Does This Rule Affect Those Privileges?

The Compacts both provide in section 141(a), with certain exceptions discussed, *infra,* for the following privileges for most citizens of the Compact countries who seek to enter into the United States as *nonimmigrants.* Such citizens of the Compact countries may enter into the United States, lawfully engage in occupations, accept employment, and establish residence as *nonimmigrants* in the United States, its territories and possessions, without regard to section 212(a)(5)(A) (labor certification), (7)(A) (immigrant visa) and (B) (nonimmigrant visa) of the Immigration and Nationality Act (Act). (Previously sections 212(a)(14), (20) and (26) of the Act). This rule does not affect the existing Compact entry privileges.

The Service notes that sections 212(a)(7)(A) and (B) of the Act which are waived by section 141(a) of the Compacts contain not only visa requirements, but also a passport requirement. The waiver contained in section 141(a) of the Compacts therefore appears to include a waiver of the need to present a passport upon entry into the United States. However, practical

experience has shown that a passport or similar travel document is the only reliable means by which immigration officials can determine whether an alien is a citizen of a Compact country entitled to the privileges of section 141(a). Therefore, the Service requires that citizens of the Compact countries who seek to enter the United States as *nonimmigrants* under section 141(a) present a passport or similar travel document. This is necessary not in order to comply with the admission requirements of section 212 of the Act, but rather in order to establish entitlement to the privileges of section 141(a) of the Compacts.

What Is the Purpose of This Rule?

While this rule does not modify the substantive Compact rights of citizens of the Compact countries to enter the United States, the rule is designed to clarify the pertinent administrative regulations in two aspects. First, the rule makes it clear that citizens of the Compact countries who have been adopted by citizens or lawful permanent residents of the United States are coming to the United States presumptively to reside as *immigrants*. Therefore, they may not enter the United States as *nonimmigrants* under section 141(a), but must comply with the standard procedures for immigration, including immigrant visas. Procedures governing the immigration visas for adopted children are to be found in a 8 CFR 204.2 and 8 CFR 204.3.

Second, the rule codifies in 8 CFR 212.1(d)(2) the Compact limitations on the privileges of citizens of Compact countries to enter the United States as *nonimmigrants*. These limitations, found in sections 141(a)(3), (c) and 143 of the Compacts, were inadvertently omitted from 8 CFR 212.1(d) when that regulation was first issued.

These exceptions to the privileges of section 141(a) are briefly:

(i) Naturalized citizens of the Compact countries, unless they have been ''actual residents'' of the Compact country that had naturalized them and hold a ''certificate of actual residence,'' as those terms are defined in section 461 of the Compacts (section 141(a)(3));

(ii) Citizens of a Compact country who have taken an affirmative step to retain or acquire the nationality or citizenship of another country (section 143(a) of the Compacts);

(iii) Citizens of a Compact country who are also citizens of another country, unless they renounce that other citizenship under oath (section 143(b) of the Compacts); and

(iv) Citizens of a Compact country who seek to obtain a residence status leading to naturalization (section 141(c) of the Compacts).

Why Is the Clarification Regarding Adopted Children Necessary?

The clarification of the entry status of citizens of the Compact countries adopted by citizens or lawful permanent residents of the United States is necessary because of a practice that has developed in Compact countries. Citizens and lawful permanent residents of the United States have adopted children who are citizens of the Republic of the Marshall Islands and brought them to the United States as *nonimmigrants* under section 141(a) of the Compacts.

This practice constitutes an improper use of the privileges under section 141(a) of the Compacts. Children who enter the United State after having been adopted abroad by citizens or lawful permanent residents of the United Stated do so presumptively in order to establish permanent residence, i.e. to *immigrate*, rather than to become temporary *nonimmigrant* visitors. Moreover, the practice of entering adopted children as *nonimmigrants* also puts those children at risk by bypassing measures designed to protect them, and jeopardizes their ability to become United States citizens.

Most adopted children immigrate pursuant to section 101(b)(1)(F) of the Act. United States citizens who adopt abroad a child as defined in section 101(b)(1)(F) of the Act must file a petition with the Service to classify the child as an immediate relative before obtaining an immigrant visa for the child. Section 101(b)(1)(F) of the Act requires that the Attorney General be satisfied that proper care will be furnished to the child if admitted to the United States. The Service therefore evaluates this petition to determine the ability of the prospective adoptive parents to provide a proper home environment for the child and their suitability as parents. These determinations are based primarily on a home study, which is a requirement of section 204(d) of the Act, and criminal background checks, and are essential to protect the child.

When adoptive parents bring a child into the United States purportedly as *nonimmigrants* under the Compacts they evade, as matter of law, the statutory mandates of section 101(b)(1)(F) and section 204(d) of the Act that alien children adopted abroad by United States citizens shall not be admitted to the United States unless the suitability of the adoptive parents has been determined. By the same token such adoptive parents deprive the child, as a matter of fact, of an important protection from abuse or exploitation.

Moreover, the admission of an adoptive child as a non-immigrant under section 141(a) of the Compacts jeopardizes the child's ability to become a citizen of the United States. Section 320 of the Act, as amended by section 101 of the Child Citizenship Act of October 30, 2000, Public Law 106–395, 114 Stat. 1631, effective February 27, 2001, which provides for the automatic naturalization of certain children born outside the United States, including adopted children, requires that the child reside in the United States, ''pursuant to lawful admission for permanent residence.'' In other words, a child must enter the United States as an *immigrant* in order to be eligible for automatic naturalization under section 320 of the Act.

The Compact countries have indicated that, without the clarification envisaged in the rule, they may no longer permit the adoption of their citizens and lawful permanent residents of the United States. For all these reasons, it is important to make certain that citizens of the Compact Countries who have been adopted by United States citizens are admitted to the United States as immigrants.

What Changes Is the Service Making to the Regulations?

1. Section 211.1(a) (immigrant visas) is revised to clarify that it covers children who are citizens of a Compact country who have been adopted by citizens or lawful permanent residents of the United States. Those children therefore must present an immigrant visa in order to enter the United States. This change is necessary to distinguish these children from citizens of the Compact countries who, under the Compacts, may enter into the United States as *nonimmigrants*.

2. Section 212.1(d) (documentary requirements for nonimmigrants) is revised to incorporative five exceptions to the current text of paragraph (d). Paragraph (d) is re-designated as paragraph (d)(1) and continues to permit citizens of the Compact countries to enter into the United States, lawfully engage in occupations, accept employment, and establish residence in the United States and its territories and possessions as *nonimmigrants*, exempt from the visa and labor certification requirements with the addition of the clause, ''except as otherwise provided in paragraph (d)(2).''

3. A new paragraph (d)(2) spells out five exceptions to the basic principle embodied in paragraph (d)(1). Those citizens of the Compact countries who

come within those exceptions must comply with the standard procedures of the Act in order to enter into the United States.

These changes are necessary to implement the Compact provisions in the Code of Federal Regulations and to distinguish between those citizens of the Compact countries who are coming to the United States as *nonimmigrants* under the Compacts and those who must enter the United States as *immigrants* or under other provisions of the Act.

Thirty-Day Comment Period

The rule provides for a 30-day comment period rather than the 60-day comment period that is usually provided under Executive Order 12866. This will allow the Service to proceed with final rulemaking in a quicker manner so that the agency can expeditiously clarify the documentary requirements for adopted children from Compact countries. Without prompt clarification of the documentary requirements for an adoption of a child from the Compact countries, the Compact countries may no longer permit to the adoption of children by citizens and lawful permanent residents of the United States.

In addition, the expedition of the Service's rulemaking will control the orderly and proper admission of *nonimmigrants* from Compact countries into the United States. Currently, Service regulations are not in compliance with the Compacts, resulting in the potential for improper admissions into the United States. This occurs because the limitations of the Compact, found in sections 141(a)(3), (c) and 143 of the Compacts, were inadvertently omitted from 8 CFR 212.1(d) when that regulation was first issued.

Regulatory Flexibility Act

The Acting Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule primarily affects individuals, who are entering the United States as nonimmigrants under the Compacts, and those who are entering as intending immigrants. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

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

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting and recordkeeping requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

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

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

1. The authority citation for part 211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1227; 8 CFR part 2.

2. In § 211.1, paragraph (a) introductory text is revised to read as follows:

§ 211.1 Visas.

(a) *General.* Except as provided in paragraph (b) of this section, each arriving alien applying for admission (or boarding the vessel or aircraft on which he or she arrives) into the United States for lawful permanent residence, or as a lawful permanent resident returning to an unrelinquished lawful permanent residence in the United States and all children who are citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, or Palau who have been adopted by citizens of the United States or by lawful permanent residents of the United States, must present one of the following:

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1187, 1225, 1226, 1227, 1228, 1252, sections 141, 143, and 461, of the Compacts with the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau, 48 U.S.C. 1901, note, and 1931, note, respectively; 8 CFR part 2.

4. In § 212.1, paragraph (d) is revised to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(d) *Citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau (Compact countries)*—(1) *General.* Except as provided in paragraph (d)(2) of this section, citizens of the Compact countries may enter into the United States, lawfully engage in occupations, accept employment, and establish residence as nonimmigrants in the United States and its territories and possessions without regard to section 212(a)(5)(A) (labor certification), (7)(A) (immigrant visa), and (B) (nonimmigrant visa) of the Act, provided that they possess a passport or similar travel document issued by the Compact country of which they are citizens in order to establish their entitlement to those privileges. This is pursuant to section 141(a), of the Compact between the United States of America and the Marshall Islands and the Federated States of Micronesia, 48 U.S.C. 1901, note, and of section 141(a), of the Compact between the United States of America and Palau, 48 U.S.C. 1931, note (Compacts).

(2) *Exceptions.* The following citizens of the Compact countries are not eligible for the privileges described in paragraph (d)(1) of this section and must follow standard procedures for obtaining immigrant or nonimmigrant visas, as appropriate, for entry into the United States, its territories and possessions:

(i) Children who are citizens of a Compact country who have been adopted by a United States citizen or a lawful permanent resident of the Untied States and are coming to the United States. This exception is based on sections 101(b)(1)(F) and 204(d) of the Act;

(ii) Naturalized citizens of the Compact countries, unless they have been actual residents in their country of naturalization for not less than 5 years after attaining naturalization and hold a certificate of actual residence from that country. This is pursuant to section 141(a)(3) of the Compacts. The terms ''actual resident'' and ''certificate of actual residence'' are defined in section 461 of the Compacts;

(iii) (A) Any citizen of the Republic of the Marshall Islands or of the Federated States of Micronesia who takes or has taken an affirmative step to preserve or acquire a nationality or a citizenship other than that of the Republic of the Marshall Islands or of the Federated States of Micronesia. This is pursuant to section 143(a) of the Compact with the Republic of the Marshall Islands and the Federated States of Micronesia;

(B) Any citizen of Palau who takes or has taken an affirmative step to preserve or acquire a nationality or a citizenship of another country. This is pursuant to section 143(a) of the Compact with Palau;

(iv) (A) Any citizen of the Republic of the Marshall Islands or of the Federated States of Micronesia having the privileges set forth in paragraph (d)(1) of this section who also possesses a nationality or a citizenship of a country other than that of the Republic of the Marshall Islands or the Federated States of Micronesia, and who has not renounced that additional nationality or citizenship under oath within 2 years after the effective date of the Compact (October 21, 1986, for the Republic of the Marshall Islands and November 3, 1986, for the Federated States of Micronesia), or within 6 months after becoming 21 years old, whichever is later. This is pursuant to section 143(b) of the Compact with the Republic of the Marshall Islands and the Federated States of Micronesia;

(B) Any citizen of Palau having the privileges set forth in paragraph (d)(1) of this section who also possesses the nationality or citizenship of another country and who has not renounced that additional nationality or citizenship under oath within 2 years after the effective date of the Compact with Palau (October 1, 1994), or within 6 months after becoming 21 years old, whichever is later. This is pursuant to section 143(b) of the Compact with Palau; and

(v) Citizens of the Compact countries who seek a residence status leading to naturalization. This is pursuant to section 141(c) of the Compacts.

* * * * *

Dated: July 13, 2001.

Kevin D. Rooney,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 01–17957 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–70]

Eric Joseph Epstein; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC or ''Commission'') is denying a petition for rulemaking (PRM–50–70) submitted by Eric Joseph Epstein. The petitioner requested that NRC amend its financial assurance requirements for decommissioning nuclear power reactors to: require uniform reporting and recordkeeping for all ''proportional owners'' of nuclear generating stations (defined by the petitioner as partial owners of nuclear generating stations who are not licensees), modify and strengthen current nuclear decommissioning accounting requirements for proportional owners, and order proportional owners to conduct prudency reviews to determine a balanced formula for decommissioning funding that includes not only ratepayers and taxpayers but shareholders and board members of rural electric cooperatives as well. The NRC is denying the petition because current regulations adequately address the first two requested actions and the NRC does not have the legal authority to require the third requested action.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial to the petitioner are available for public inspection or copying in the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These documents are also available at the NRC's rulemaking website at *http://ruleforum.llnl.gov.*

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1978, e-mail: *bjr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On May 12, 2000 (65 FR 30550), the NRC published a notice of receipt of a petition for rulemaking (PRM) filed by Eric Joseph Epstein. The petitioner requested that the NRC amend its financial assurance requirements for decommissioning nuclear power reactors to: (1) require uniform reporting and recordkeeping for all ''proportional owners'' of nuclear generating stations (defined by the petitioner as partial owners of nuclear generating stations who are not licensees); (2) modify and strengthen current nuclear decommissioning accounting requirements for proportional owners; and (3) order proportional owners to conduct prudency reviews to determine a balanced formula for decommissioning funding that includes not only ratepayers and taxpayers but

shareholders and/or board members of rural electric cooperatives as well. In addition, the petitioner raised several issues that, while related to his three general requests for rulemaking, were not explicitly part of the petitioner's requested remedies. These issues are discussed more fully below.

The petitioner submitted the petition because he believes the funding component for decommissioning provided by proportional owners of nuclear generating stations, including rural electric cooperatives (RECs), is ''fatally flawed'' and likely to contribute to inadequate funding.

The petitioner stated that proportional owners are not required to submit periodic cost projections, conduct site-specific studies, or coordinate with the power reactor licensee. Also, the petitioner stated that proportional owners are not mandated by the NRC to verify, report, or monitor recordkeeping relating to nuclear decommissioning funding mechanisms.

The petitioner believes it is grossly unfair and inequitable to require Federal taxpayers and State ratepayers to provide a financial safety net for the nuclear investments of proportional owners. The petitioner offers the following reasons to support his belief: (1) proportional owners, including RECs, aggressively supported construction, licensing, and operation of nuclear generating stations; (2) minority owners were fully cognizant that no commercial nuclear reactor had been decommissioned, and that a solution to nuclear waste disposal did not exist; (3) neither the utility industry, proportional owners, nor RECs have actively sponsored decommissioning research or sought good faith solutions to the permanent storage and isolation of low-level and high-level radioactive waste; and (4) proportional owners and RECs willfully pursued a financial investment in nuclear energy which they knew was fraught with huge uncertainties.

Public Comments on the Petition

The NRC received nine comments in response to the petition. Eight commenters, all of whom were licensees or groups representing licensees, addressed the three broad topic areas of the petition. The ninth set of comments was received from Thomas LaGuardia of TLG Services, Inc., an industry consultant which provides decommissioning cost estimates. TLG's comments did not respond to the petition itself, but identified 16 statements or groups of statements in the petition that questioned the reliability of TLG's estimation methods and results. TLG addressed those statements.

All eight commenters who addressed the specific requests of the petition recommended that the NRC deny all parts of the petition. Two of the commenters simply endorsed the position of one of the other commenters, the Nuclear Energy Institute (NEI). In general, the commenters provided similar arguments as to why the petition should be denied in its entirety. Further, TLG did not explicitly state that NRC should grant or deny the petition. However, given that TLG questioned many of the statements made by the petitioner to form his case, it appears that TLG finds the petition factually deficient. As described below, the NRC staff's evaluation of the petition agreed with the comments in most respects.

First, the petitioner requested the NRC to require uniform reporting and recordkeeping for all ''proportional owners'' of nuclear generating stations (defined by the petitioner as partial owners of nuclear generating stations who are not licensees). Several commenters noted that all entities with an ownership interest in a commercial nuclear power plant are NRC licensees. These consist of minority owners, and non-operating owners, including rural electric cooperatives. These owners are required to provide the NRC with reasonable decommissioning financial assurance.

The NRC staff has reached a conclusion similar to the commenters. All co-owners are required to be co-licensees, subject to all NRC regulations, including those with respect to decommissioning reporting. *See Public Service Company of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB–459, 7 NRC 179, 198–201 (1978). Thus, this issue is moot, because the remedy sought by the petitioner is already in place.

Second, the petitioner requested the NRC to modify and strengthen its nuclear decommissioning accounting requirements for proportional owners. The commenters noted, as stated above, that proportional owners are licensees and, as such, are required to provide assurance to the NRC of adequate decommissioning funding. Several commenters noted that after receiving the biennial decommissioning funding status reports, the NRC staff issued an assessment of the reports (SECY–99–170, July 1, 1999) which indicated that the licensees were accumulating sufficient funds for decommissioning. Further, the commenters noted the requirements of § 50.75 and § 50.82 provide that licensees are to submit up-to-date assessments of final decommissioning costs at or about 5 years prior to the projected end of operations, and a post shutdown decommissioning activities report (PSDAR) containing a cost estimate for decommissioning within 2 years after permanent cessation of operations.

As indicated in its conclusion on the petitioner's first issue, co-owners are already providing information on the status of their decommissioning funds. Based on the review of these status reports in 1999, the NRC concludes that the NRC's accounting requirements are currently sufficient to provide adequate protection of public health and safety.

Third, the petitioner requested the NRC to require proportional owners to conduct a prudency review to determine a balanced formula for decommissioning funding that includes not only ratepayers and taxpayers but shareholders and board members of rural electric cooperatives as well. All the licensees or groups of licensees who commented noted that NRC does not have the legal authority to require such action. The comments from Allegheny Electric Cooperative and PPL Susquehanna, LLC noted that a licencee's decommissioning funding [7590–01–P] prudency is under the jurisdiction of a State Public Utility Commission, the Federal Energy Regulatory Commission, or ratemaking authority of a municipal utility, a Rural Electric Cooperative, and other electric utility that establishes its own rates. Also, one commenter stated that any attempt by the NRC to impose or enforce these remedies would enmesh it in lengthy and substantial legal challenges.

The NRC concludes that the NRC does not have the authority to require co-owners to conduct prudency reviews. This is a rate-making issue beyond the NRC's jurisdiction.

The petitioner also raised other issues that, while not part of the three requested remedies, prompted responses by commenters. The first is the issue of non-radiological costs, about which the petitioner is concerned because NRC does not require licensees to provide estimates of such costs. Some commenters stated that the NRC has no authority to require licensees to return facilities to a ''greenfield'' condition because it is not a matter of radiological public health and safety. Thus, the commenters stated that the NRC has no programmatic need to obtain such data.

A second ancillary issue raised by the petitioner was that some nuclear power plants may not operate for the full terms of their licenses, resulting in premature shutdown of the plants. Some commenters stated that no licensee of a prematurely shut-down plant has ever

not been able to pay for its plant's decommissioning. Lastly, in response to the petitioner's position that premature shutdowns will occur, some commenters pointed out that a number of plants are in the process of applying for license renewals.

Next, the petitioner stated that proportional owners of power reactors should ''be required to account for the possibility of increased spent fuel storage costs, in the event that a high level waste storage facility is unavailable.'' One commenter, NEI, quotes from a Department of Energy report that indicates that Yucca Mountain remains a viable site for spent fuel storage.[1]

The petitioner also raised two specific issues relating to Allegheny Electric Cooperative and PPL Susquehanna, LLC, namely issues relating to low-level waste disposal and the adequacy of Allegheny's decommissioning funding. Allegheny and Susquehanna submitted comments jointly. With respect to the first issue, they noted that minimum funding requirements for low-level waste disposal are addressed in ''Report on Waste Burial Charges,'' NUREG–1307. With respect to the funding adequacy issue, Allegheny submitted its required report in March 1999 and in response to a request for clarification, resubmitted it in May of that year. After review of the resubmitted report, NRC had no follow-up concerns. In addition, Allegheny is a rural electric cooperative that sets its own rates. Therefore, Allegheny's current funding assurance method meets the NRC's requirements.

Reasons for Denial

In summary, the NRC is denying the petition for the following reasons:

1. With respect to the petitioner's first request to require uniform reporting and recordkeeping for all ''proportional owners'' of nuclear generating stations, the NRC finds this issue moot because the Commission requires all co-owners to be co-licensees. Therefore, under 10 CFR § 50.75, the co-owners are already required to comply with the reporting and recordkeeping requirements. In addition, as discussed below, the NRC has determined that all licensees, including co-owners, complied with section 50.75(f)(1) by submitting initial decommissioning status reports in March 1999. The NRC staff issued an assessment of the reports (SECY–99–170, July 1, 1999) which indicated that '' * * * all power reactor licensees appear to be on track to fund decommissioning by the time that they permanantly shut down their units.'' As a result, the NRC finds no need to act on this portion of the petition and denies it.

2. The petitioner's second request was to have NRC modify and strengthen its nuclear decommissioning accounting requirements for proportional owners. As stated above, proportional owners are licensees and are, therefore, required by 10 CFR 50.75(f) to file a biennial decommissioning funding status report. The NRC staff has determined that licensees are complying with the reporting and recordkeeping requirements. As mentioned, the NRC staff issued a positive assessment of the reports (SECY–99–170, July 1, 1999). In addition, the requirements of § 50.75 and § 50.82 provide for licensees to submit up-to-date assessments of final decommissioning costs at or about 5 years prior to the projected end of operations, and a post shutdown decommissioning activities report (PSDAR) containing a cost estimate for decommissioning within 2 years after permanent cessation of operations. These requirements pertain to all licensees, including proportional owners. As a result, the NRC finds no need to act on this portion of the petition and denies it.

3. The petitioner's third request was for the NRC to require proportional owners to conduct prudency reviews. NRC does not have the legal authority to require such action under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other Federal statute. Therefore, NRC also denies this portion of the petition.

As noted above in the comment section, the petitioner also raised several ancillary comments. The first was the issue of non-radiological costs. Given the NRC has no regulatory requirement that licensees return the facilities to ''greenfield'' condition, the NRC has no programmatic need to obtain such data. The petitioner's second ancillary item was the premature shutdown of nuclear power plants. NRC addressed this concern in earlier rulemaking published on June 19, 1996. See 61 FR 39278 (promulgating 10 CFR 50.82(c)). This rule provides that the NRC would address the status of decommissioning funding and schedule for the accumulating of any shortfall of funds for plants which did not operate for their full terms on a case-by-case basis. The third ancillary comment was to require proportional owners to account for increased spent fuel storage costs should a high level waste storage facility be unavailable. This issue has been addressed by the NRC in 10 CFR 50.54(bb) (originally adopted in the Waste Confidence Rulemaking), in which reactor licensees are required to ''submit written notification to the Commission for its review and preliminary approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor following permanent cessation of operation of the reactor until title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its ultimate disposal in a repository.''

Lastly, the petitioner discussed two issues relating specifically to Allegheny Electric Cooperative and PPL Susquehanna, LLC, viz. low-level waste disposal and the adequacy of Allegheny's decommissioning funding. The NRC addressed the minimum funding for waste disposal in NUREG–1307, Revision 9, which was just published in September 2000. Also, as the NRC has indicated in its review of biennial decommissioning funding status reports, '' * * * all power reactor licensees appear to be on track to fund decommissioning by the time that they permanently shutdown their units.'' Therefore, the NRC has no indication that Allegheny's decommissioning funding is inadequate.

The petitioner has touched on many issues of concern to the public as the electric generation industry restructures itself as a result of rate deregulation. However, the NRC believes that the petitioner's concerns have been addressed in the 1998 decommissioning rulemaking, Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, completed on September 22, 1998 (63 FR 50465), as well as in the NRC's overall regulatory framework. Thus, the petitioner has not provided any new significant information that would cause NRC to grant any portion of the petition. Also, the petitioner has not raised any issues that were not considered in that rulemaking. For the foregoing reasons, the NRC concludes that this petition should be denied.

For reasons cited in this document, the Commission denies the petition.

Dated at Rockville, Maryland, this 13th day of July, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–17951 Filed 7–17–01; 8:45 am]

BILLING CODE 7590–01–P

[1] ''Viability Assessment of a Repository at Yucca Mountain,'' U.S. Department of Energy (DOE–RW–0508), December 1998, page 36.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–58–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace H.P. 137 Mk1, Jetstream Series 200, and Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 98–13–03, which currently requires repetitive inspections of the main landing gear (MLG) hinge fittings, support angles, and attachment bolts on British Aerospace H.P. 137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes. This AD also requires eventual installation of improved design MLG hinge fittings as terminating action for the repetitive inspections of the hinge fittings and attachment bolts. This AD specifies repetitive inspections of the support angles for those airplanes with the approved design MLG hinge fittings installed. However, the applicability of AD 98–13–03 exempts those airplanes with the improved design MLG hinge fittings installed from the actions of the AD. The proposed AD would retain the requirements of AD 98–13–03 and would remove from the applicability the exemption of those airplanes with the improved design MLG hinge fittings installed. The actions specified by the proposed AD are intended to detect, correct, and prevent future fatigue cracking of the MLG, which could result in structural failure of the MLG and consequent loss of airplane control during takeoff, landing, or taxi operations.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before August 30, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–58–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on the Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clear, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–58–AD.'' We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action on the Main Landing Gear (MLG) Hinge Fittings, Support Angles, and Attachment Bolts on British Aerospace H.P. 137 Mk1, Jetstream Series 200, and Jetstream Model 3101 Airplanes to This Point?

On June 8, 1998, FAA issued AD 98–13–03, Amendment 39–10591 (63 FR 33532, June 19, 1998). This AD currently requires the following on the above-referenced airplanes:

—Repetitive inspections of the MLG hinge fitting, support angles, and attachment bolts, and repairing or replacing any part that is cracked; and

—Eventual installation of improved design MLG hinge fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), as terminating action for the repetitive inspections of the hinge fittings and attachment bolts. This AD specifies repetitive inspections of the support angles for those airplanes with the approved design MLG hinge fittings installed. However, the applicability of AD 98–13–03 exempts those airplanes with the improved design MLG hinge fittings installed from the actions of the AD.

Accomplishment of these actions is required in accordance with the following service information:

—British Aerospace Jetstream Mandatory Service Bulletin (MSB) No. 7/5, which includes procedures for inspecting the left and right main landing gear hinge attachment nuts to the auxiliary and aft spars for signs of relative movement between the nuts and hinge fitting on H.P. 137 MK1 and Jetstream series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2 and 4	Original Issue	March 31, 1982.

Pages	Revision level	Date
1 and 3	Revision 1	May 23, 1988.

—British Aerospace MSB No. 7/8, which includes procedures for inspecting the MLG hinge fitting for cracks, and repairing cracked hinge fittings on H.P. 137 MK1 and Jetstream series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8	Revision 2	January 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

—Jetstream Alert Service Bulletin (ASB) 32–A–JA 850127, which includes procedures for inspecting the MLG hinge fitting and support angle for cracks on Jetstream Model 3101 airplanes. This ASB incorporates the following effective pages:

Pages	Revision level	Date
5 through 14	Original Issue	April 17, 1985.
1 through 4	Revision 2	November 11, 1994.

—Jetstream Service Bulletin (SB) 57–JM 5218 which includes procedures for installing improved design MLG hinge fittings, P/N 1379133B1 and 1379133B2 (Modification 5218), on H.P. 137 Mk1, Jetstream series 200, and certain Jetstream Model 3101 airplanes. This SB incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1	September 29, 1987.
25 and 26	Revision 2	August 24, 1988.
10 and 20	Revision 3	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16	Revision 4	October 31, 1990.

The actions of AD 98–13–03 are consistent with the FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections.

The alternative to installing improved design MLG hinge fittings would be to repetitively inspect this area for the life of the airplane.

What Has Happened Since AD 98–13–03 To Initiate This Action?

The applicability of AD 98–13–03 exempts those airplanes with the improved design MLG hinge fittings installed from the actions of the AD. The exemption of those airplanes with the improved design MLG hinge fittings installed should be removed and all affected airplanes should have the support angles repetitively inspected.

The FAA's Determination and Explanation of the Provisions of the Proposed AD. What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the information described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other British Aerospace H.P. 137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes of the same type design;

—The repetitive inspections of the MLG support angles should be accomplished on all affected airplanes, even those with the improved design MLG hinge fittings installed; and

—AD action should be taken in order to detect, correct, and prevent future fatigue cracking of the MLG, which could result in structural failure of the MLG and consequent loss of airplane control during takeoff, landing, or taxi operations.

What Would the Proposed AD Require?

This proposed AD would supersede AD 98–13–03 with a new AD that would:

—Retain the requirements of repetitively inspecting the main landing gear (MLG) hinge fittings, support angles, and attachment bolts and repairing any cracked part;

—Require eventual installation of improved design MLG hinge fittings as terminating action for the repetitive inspections of the hinge fittings and attachment bolts; and

—Require repetitive inspections of the MLG support angles on all affected airplanes, even those with the improved design MLG hinge fittings installed.

Accomplishment of the proposed actions would be required in accordance with the previously-referenced service information.

Cost Impact

How Many Airplanes Would the Proposed AD Impact?

We estimate that the proposed AD affects up to 236 airplanes in the U.S. registry.

What Would Be the Cost Impact of the Proposed AD on Owners/Operators of the Affected Airplanes?

The FAA estimates that the proposed AD would affect 71 airplanes in the U.S. registry. We estimate the following costs to accomplish the proposed actions:

	Labor cost	Parts cost	Per airplane cost	Fleet cost
Initial Inspection	61 workhours × $60 per hour = $3,660.	Not Applicable	$3,660 per airplane	71 airplanes × $3,660 = $259,860.
Hinge Fitting Installation	210 workhours × $60 per hour = $12,600.	British Aerospace will provide at no cost.	12,600 per airplane	71 airplanes × $12,600 = $894,600.
Repetitive Support Angle Inspections.	10 workhours × $60 per hour = $600 per inspection.	Not Applicable	600 per airplane per inspection.	71 airplanes × $600 = $42,600 per inspection.

The cost figures presented above are the same as those presented in AD 98–13–03. The only additional impact the proposed AD would have is the repetitive support angle inspections on those airplanes with improved design hinge installations at the effective date of AD 98–13–03.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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 proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations 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. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–13–03, Amendment 39–10591 (63 FR 33532, June 19, 1998), and by adding a new AD to read as follows:

British Aerospace: Docket No. 2000–CE–58–AD; Supersedes AD 98–13–03, Amendment 39–10591.

(a) *What airplanes are affected by this AD?* This AD affects the following model and serial number airplanes that are certificated in any category:

Model Serial	Nos.
HP137 Mk1	All serial numbers.
Jetstream Series 200	All serial numbers.
Jetstream 3101	601 through 695.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by the AD are intended to detect, correct, and prevent future fatigue cracking of the main landing gear (MLG), which could result in structural failure of the MLG and consequent loss of airplane control during takeoff, landing, or taxi operations.

Note 1: The compliance times of this AD are presented in landings. If you do not keep the total number of landings, then you may multiply the total number of airplane hours time-in-service (TIS) by 0.75.

(d) *What actions must I accomplish to address this problem on the affected airplanes?* To address this problem, accomplish the following:

Action	Compliance	Procedures
(1) For the H.P. 137 Mk1 and Jetstream 200 series airplanes, accomplish the following if part number (P/N) 1379133B1 (or FAA-approved equivalent P/N) and P/N 1379133B2 (or FAA-approved equivalent P/N) MLG hinge fittings are not installed: (i) Inspect the MLG hinge attachment nuts to auxiliary and aft spars on both the left and right MLG for signs of fuel leakage or signs of relative movement between the nuts and hinge fitting. (ii) If any signs of fuel leakage or relative movement between the nuts and hinge fitting are found during any inspection required by paragraph (d)(1)(i) of this AD, resecure the MLG hinge fitting to auxiliary spar. (iii) You may terminate the above inspections when improved design MLG hinge fittings, P/N 1379133B1 and 1379133B2, are installed.	Inspect within the next 50 landings after June 8, 1998 (the effective date of AD 98–13–03) or within 200 landings TIS after the last inspection required by AD 98–13–03, whichever occurs later, and thereafter at intervals not to exceed 200 landings. Resecure the MLG hinge fitting prior to further flight after the applicable inspection.	Use the service information presented in paragraph (e)(1) of this AD.

Action	Compliance	Procedures
(2) For all airplanes regardless of the MLG hinge fitting installed, inspect the MLG hinge support angles for cracks. If any crack(s) is/are found in the support angles, replace the cracked MLG hinge fitting(s) with a P/N 1379133B1 (or FAA-approved equivalent P/N) or P/N 1379133B2 (or FAA-approved equivalent P/N) fitting.	Inspect upon accumulating 4,000 landings on the MLG fitting or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 400 hours TIS. Accomplish any necessary replacement prior to further flight after the inspection where the cracked support angle(s) is/are found.	Inspect in accordance with the service information presented in paragraph (e)(2) or (e)(3) of this AD, as applicable. Replace in accordance with the service information presented in paragraph (e)(4) of this AD.
(3) For all airplanes, install improved design MLG hinge fittings, P/N 1379133B1 (or FAA-approved equivalent P/N) and P/N 1379133B2 (or FAA-approved equivalent P/N). (i) Incorporating both P/N 1379133B1 (or FAA-approved equivalent P/N) and P/N 1379133B2 MLG (or FAA-approved equivalent P/N) hinge fittings terminates the repetitive inspection requirement of paragraphs (d)(1)(i) and (d)(1)(ii) of this AD. (ii) The repetitive inspections of the MLG support angles required by paragraph (d)(2) of this AD are still required.	Upon accumulating 20,000 landings on each MLG hinge fitting or within the next 50 landings after June 8, 1998 (the effective date of AD 98–13–03), whichever occurs later, unless already accomplished.	In accordance with the service information presented in paragraph (e)(4) of this AD.
(4) Do not install, on any affected airplane, MLG hinge fittings that are not P/N 1379133B1 (or FAA-approved equivalent P/N) or P/N 1379133B2 (or FAA-approved equilvalent P/N).	As of the effective date of this AD	Not Applicable.

(e) *What service information applies to this AD?* You must accomplish the actions of this AD in accordance with the following service bulletins:

(1) British Aerospace Jetstream Mandatory Service Bulletin No. 7/5, which applies to the affected H.P. 137 MK1 and Jetstream series 200 airplanes and incorporates the following pages:

Pages	Revision level	Date
2 and 4	Original Issue	March 31, 1982.
1 and 3	Revision 1	May 23, 1988.

(2) British Aerospace Mandatory Service Bulletin No. 7/8, which applies to the affected H.P. 137 MK1 and Jetstream series 200 airplanes and incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8	Revision 2	January 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

(3) Jetstream Alert Service Bulletin 32–A–JA 850127, which applies to the affected Jetstream Model 3101 airplanes and incorporates the following effective pages:

Pages	Revision level	Date
5 through 14	Original Issue	April 17, 1985.
1 through 4	Revision 2	November 11, 1994.

(4) Jetstream Service Bulletin 57–JM 5218, which applies to all of the affected airplanes and incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1	September 29, 1987.
25 and 26	Revision 2	August 24, 1988.
10 and 20	Revision 3	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16	Revision 4	October 31, 1990.

(f) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjustment of the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 98–13–03, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, 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 (f) 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 671715. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(j) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 98–13–03, Amendment 39–10591.

Issued in Kansas City, Missouri, on July 11, 2001.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17866 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN137–1b; FRL–7003–9]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to particulate matter (PM) emissions regulations for Cerestar USA, Inc. (Cerestar). Cerestar is located in Lake County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulations on February 16, 2001, as amendments to its State Implementation Plan (SIP). The revisions include the elimination of 18 emission points, the addition of 39 new emission points, and a change in the way the short term emission limits are expressed (from pounds of particulate matter per ton of product to grains per dry standard cubic foot). The revision also changes the name of the facility listed in the rules from American Maize Products (AMAIZO) to Cerestar USA, Inc. These SIP revisions result in an overall decrease in allowed PM emissions of about 48 tons per year (tpy). An air quality modeling analysis conducted by IDEM shows that this SIP revision will not have an adverse effect on PM air quality.

DATES: EPA must receive written comments on this proposed rule by August 17, 2001.

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

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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

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

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I. What action is EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action is EPA Taking Today?

We are proposing to approve revisions to particulate matter (PM) emissions regulations for Cerestar. Cerestar is located in Lake County, Indiana. IDEM submitted the revised regulations on February 16, 2001, as amendments to its SIP. The revisions include the elimination of 18 emission points, the addition of 39 new emission points, and a change in the way the short term emission limits are expressed (from pounds of particulate matter per ton of product to grains per dry standard cubic feet). The revision also changes the name of the facility listed in the rules from American Maize Products (AMAIZO) to Cerestar USA, Inc. These SIP revisions results in an overall decrease in allowed PM emissions of about 48 tpy.

II. Where Can I Find More Information about This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 13, 2001.

Gail Ginsberg,

Acting Regional Administrator, Region 5.

[FR Doc. 01–17831 Filed 7–17–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7012–7]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Western Pacific Railroad Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 9 announces its intent to delete the Western Pacific Railroad Superfund Site (Site) located in Oroville, California, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found

at Appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of California, through the California EPA Department of Toxic Substances Control (DTSC), have determined that all appropriate response actions under CERCLA, other than maintenance and five-year reviews, have been completed. Because the Site poses no significant threat to human health or the environment, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning the proposed deletion of this Site from the NPL must be submitted on or before August 17, 2001.

ADDRESSES: Written comments should be mailed to: Holly Hadlock, Remedial Project Manager, U.S. EPA, Region 9, SFD–3, 75 Hawthorne Street, San Francisco, CA 94105.

INFORMATION REPOSITORIES: Comprehensive information on this site is available through the Region 9 public docket which is available for viewing at the EPA Region 9 Superfund Records Center, 95 Hawthorne Street, Suite 403S, San Francisco, CA 94105, (415) 536–2000, Monday through Friday 8:00 a.m. to 4:30 p.m. The Deletion Docket is also available for viewing at the Butte County Library, 1820 Mitchell Street, Oroville, CA, 95966, (530) 538–7642, Tuesday and Wednesday 10:00 a.m. to 8:00 p.m., Thursday 2:00 to 6:00 p.m., Friday 10:00 a.m. to 5:00 p.m., and Saturday 12:00 to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Hadlock, Remedial Project Manager, U.S. EPA, Region 9, SFD–7–1, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2244; or Jacqueline Lane, Community Involvement Coordinator, U.S. EPA, Region 9, SFD–3, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2267 or (800) 231–3075.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 9 announces its intent to delete the Western Pacific Site in Oroville, Butte County, California, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of these sites. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial action in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Western Pacific Railroad Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA in consultation with the state, shall consider whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release of hazardous substances poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and restricted exposure, EPA is required, by statute, to conduct a subsequent review of the site at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) EPA Region 9 issued a Record of Decision (ROD) on September 30, 1997, that selected the remedial action activities; (2) All appropriate response actions under CERCLA have been implemented as documented in the Final Close Out Report dated June 26, 2001; (3) DTSC has concurred with the proposed deletion; (4) a notice has been published in the local newspapers and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (5) all relevant documents have been made available in the local Site information repository.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this notice, Sec. 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this site, EPA's Regional Office will accept and evaluate public comments before making a final decision to delete. If comments are received, the Agency will prepare a Responsiveness Summary to address those comments. The Responsiveness Summary will be available for review in the Deletion Docket.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis of Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this site from the NPL.

Site Background and History

The Western Pacific Railroad Site occupies approximately 90 acres at the southern end of the City of Oroville in Butte County, California. The Western Pacific Railroad Company operated a fueling and maintenance yard at the Site from the 1880's until 1970. Activities at the Site included locomotive fueling, routine maintenance, and railcar repair such as welding, painting, fabricating, and machining of railcars.

In 1989 the State of California's Regional Water Quality Control Board

issued an Order requiring the current owner, Union Pacific Railroad (UPRR), to investigate an on-site waste pond and the Site groundwater. In 1989 the waste pond was excavated and backfilled with clean fill and a leaking underground storage tank in the Fueling Area was removed. This leaking tank was the source of a plume of groundwater contaminated with volatile organic chemicals (VOCs). EPA placed the Site on the NPL in 1990 due to concerns about groundwater that was contaminated with VOCs and the potential for these chemicals to reach a nearby public drinking water well. In 1991 UPRR dismantled the remaining fueling and maintenance structures on the Site. Currently UPRR uses the rail line on the property to run trains.

Response Actions

EPA made the decision in 1993 to initiate a time-critical removal to contain the VOC plume and prevent it from reaching the nearby downgradient public drinking water well. In August 1993, EPA issued an Action Memorandum with a streamlined risk evaluation selecting groundwater extraction and treatment to contain the contaminants of concern in the groundwater at the Site. That same month EPA and UPRR signed an Administrative Order on Consent, an agreement in which UPRR agreed to perform the groundwater cleanup required by EPA.

In 1994 UPRR installed a groundwater treatment system to pump and treat the VOC-contaminated groundwater. By July 1997 the level of VOCs dropped below the cleanup levels and in November 1999 the groundwater treatment system was turned off. Post-remedial groundwater sampling confirmed that the VOCs were below state and federal drinking water standards.

After the groundwater cleanup was started, UPRR, under a second Administrative Order on Consent, conducted a Remedial Investigation (RI) for the Site soils. The Remedial Investigation and Risk Assessment Report concluded that polycyclic aromatic hydrocarbons (PAHs) and arsenic were present in elevated levels in the top one foot of soil in one acre of the railyard. Because of the Site history and UPRR's future plans for the Site, the risk assessment evaluated the risks for industrial use only, not residential use. The risk assessment concluded that contamination in the Site soil presented an elevated risk to on-site workers and trespassers through dermal contact with soil contaminated with PAHs and arsenic.

The Feasibility Study (FS) evaluated remedial action alternatives for the contaminated soils in the area identified in the RI and Risk Assessment. The FS then provided a detailed analysis of alternatives: (1) Institutional controls only; (2) limited Fueling Area (1 acre) excavation and off-site disposal with institutional controls; and (3) entire Fueling Area (10 acres) excavation and off-site disposal with institutional controls.

Cleanup Standards

On September 30, 1997, EPA issued a Record of Decision (ROD) which selected the following remedy:

- Limited excavation and off-site disposal of approximately 1 acre of PAH-contaminated soil,
- Institutional control(s) that will limit the future use of the property to industrial use only; and
- Extraction and treatment of contaminated groundwater.

The ROD specified that the residual mean concentration for PAHs, converted and presented as benzo(a) pyrene equivalents (B(a)P), must be reduced to 0.41 mg/kg or less. The ROD also concluded that due to the collocation of PAHs and arsenic in soils, by excavating surface soils with PAHs above cleanup levels, all soils contaminated with arsenic at levels of potential concern would also be addressed.

The selected remedy called for the cleanup of the one acre at the Site with the highest levels of contamination. The contamination levels in the other nine acres in the Fueling Area were below action levels for industrial workers and trespassers. The groundwater cleanup, which had been initiated using EPA's removal authority, was incorporated into the ROD, with state and federal Maximum Contaminant Levels (MCLs) as the cleanup standards.

In 1998 UPRR excavated approximately 1,720 tons of contaminated soil, placed it in railcars, and shipped it for disposal to the ECDC Environmental landfill near Price, Utah. Post-excavation confirmation sampling was conducted twice at the site, in July and in December 1998. This sampling confirmed that the residual mean concentration level for PAHs as expressed as B(a)P equivalents was reduced to 0.41 mg/kg or less. The cumulative cancer risk from PAHs and arsenic in the Fueling Area soil was reduced to an excess cancer risk level of approximately 1×10^{-5} (one in one hundred thousand) for on-site workers, which is the level established in the ROD. Final groundwater sampling was conducted in July 2000, with all contaminants remaining below state and federal MCLs. On March 1, 2001, UPRR filed the Covenant to Restrict Use of Property for the Site with Butte County. This covenant prohibits the property's use for:

(a) A residence;
(b) A hospital for humans;
(c) A public or private school for persons under 21 years of age;
(d) A day care center; and
(e) Any other purpose involving residential occupancy on a 24-hour basis.

Operation and Maintenance

UPRR continues to own the property and run trains on its rail lines. Pursuant to the Administrative Order issued by EPA on June 17, 1998, site operation and maintenance to be performed by UPRR includes maintenance of the perimeter fence, informing EPA of any plans to remove contaminated soils during future construction activities, and informing EPA and DTSC of any transfer of property ownership.

Five-Year Review

CERCLA requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the Site. Since the cleanup of the Western Pacific Railroad Site utilized a restrictive covenant to limit the Site use, five-year reviews will be required at the Site to ensure that the remedy selected for the Site remains protective of human health and the environment. EPA plans to complete the first Five-Year Review prior to September 30, 2002.

Community Involvement

Community relations activities included the publication and distribution of several fact sheets, including the proposed cleanup plan, to local residents. EPA held a public meeting in July 1997 to discuss with the community the previously implemented removal action and the proposed remedial action. EPA received and addressed public comments in the Responsiveness Summary portion of the ROD dated September 30, 1997. A local information repository was established at the Butte County Library in Oroville.

Applicable Deletion Criteria/State Concurrence

All the completion requirements for this site have been met as described in the Final Close Out Report (FCOR) dated June 26, 2001. One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if ''responsible parties or other parties have implemented all appropriate response actions required.'' EPA, with

the concurrence of the State of California through its Department of Toxic Substances Control in a letter dated June 21, 2001, believes that this criterion for deletion has been met. Consequently, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available in the Deletion Docket.

Dated: July 6, 2001.

Jane Diamond,

Acting Regional Administrator, Region 9.

[FR Doc. 01–17832 Filed 7–17–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 520

[Docket No. 00–07]

Public Access Charges to Carrier Automated Tariffs and Tariff Systems Under the Ocean Shipping Reform Act of 1998

AGENCY: Federal Maritime Commission.

ACTION: Proceeding Discontinued.

SUMMARY: The Federal Maritime Commission (''Commission'') published an Advance Notice of Proposed Rulemaking on May 16, 2000, seeking comments on the reasonableness of tariff access charges. The Commission determined not to promulgate regulations governing tariff access charges, but rather issued a Circular Letter on October 6, 2000, to provide guidance to common carriers, conferences and tariff publishers with respect to the issue of reasonable fees. Therefore, this proceeding is discontinued.

DATES: This proceeding is discontinued July 18, 2001.

FOR FURTHER INFORMATION CONTACT: Bruce A. Dombrowski, Executive Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5800.

SUPPLEMENTARY INFORMATION: An Advance Notice of Proposed Rulemaking was issued in this proceeding on May 16, 2000 (65 FR 31130), to address the issue of reasonable fees that may be assessed for accessing tariff systems. Based on comments received and existing circumstances, the Commission determined that promulgation of an actual Proposed Rule on this matter was not necessary. Instead the Commission directed the staff to issue a Circular Letter which provided guidance to common carriers, conferences and tariff publishers as to what costs the Commission believed should not be recovered in establishing tariff access fees. The Circular Letter was issued on October 6, 2000.

In view of the foregoing, this proceeding is hereby discontinued.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–17873 Filed 7–17–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1544; MM Docket No. 01–143, RM–10153]

Radio Broadcasting Services; Noblesville, Indianapolis, and Fishers, Indiana

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by INDY LICO, licensee of Stations WGRL(FM), Noblesville, Indiana, and WGLD(FM), Indianapolis, Indiana proposing the reallotment of Channel 230A from Noblesville, Indiana, to Fishers, Indiana, and the modification of Station WGRL(FM)'s license to reflect the change of community, and the reallotment of Channel 283B from Indianapolis to Noblesville, Indiana, and the modification of Station WGLD(FM)'s license to reflect the change of community. Channel 230A can be reallotted from Noblesville to Fishers at petitioner's licensed site 7.1 kilometers (4.4 miles) north of the community at coordinates 40–00–55 NL, and 85–58–58 WL. Channel 283B can be reallotted from Indianapolis to Noblesville at petitioner's licensed site 26.9 kilometers (16.7 miles) southwest of the community at coordinates 39–50–25 NL and 86–10–34 WL.

DATES: Comments must be filed on or before August 20, 2001, and reply comments on or before September 4, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mark N. Lipp, Shook, Hardy & Bacon, LLP, 600 14th Street, NW., Suite 800, Washington, DC 20005 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–143 adopted June 20, 2001 and released June 29, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 230A at Noblesville and adding Fishers, Channel 230A, by removing Channel 283B at Indianapolis and adding Channel 283B at Noblesville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17926 Filed 7–17–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1594; MM Docket No. 01–148; RM–10141]

Television Broadcasting Services; Campbellsville, Bardstown, Kentucky

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by Louisville Communications, LLC (''petitioner''), requesting the reallotment of Television Channel 34 and Digital Television Channel 19 from Campbellsville to Bardstown, Kentucky as the community's first local transmission service. Petitioner is asked to provide additional information in support of the requested reallotment, specifically, an analysis of the Urbanized Areas involved using the Commission's relevant cases, and also provide adequate public interest reasons to justify removal of the community's sole local television service. TV Channel 34 can be reallotted from Campbellsville to Bardstown in compliance with the Commission's minimum distance separation requirements at the petitioner's licensed site, at coordinates 37–31–51 NL and 85–26–45 WL. DTV Channel 19 can be reallotted from Campbellsville to Bardstown in compliance with the Commission's minimum distance separation requirements at petitioner's requested site 25.6 kilometers (15.9 miles) northeast of the community at coordinates 37–56–54 NL and 84–14–4 WL.

DATES: Comments must be filed on or before August 27, 2001, and reply comments on or before September 11, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mark N. Lipp, Tamara Y. Brown, Shook, Hardy and Bacon, 600 14th Street, NW., Suite 800, Washington, DC 20005 (counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–148 adopted June 27, 2001, and released July 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Kentucky, is amended by removing Campbellsville, Channel 34, and adding Bardstown, Channel 34.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of DTV Allotments under Kentucky, is amended by removing Campbellsville, Channel 19 and adding Bardstown, Channel 19.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–17923 Filed 7–17–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 66, No. 138
Wednesday, July 18, 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.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Chippewa Creek Watershed, Medina County, Ohio

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Rules (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure III–A in the Chippewa Creek Watershed.

FOR FURTHER INFORMATION CONTACT: Kevin Brown; State Conservationist; Natural Resources Conservation Service; 200 North High Street, Room 522, Columbus, Ohio 43215; telephone 614–255–2500.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national effects on the human environment. As a result of these findings, Kevin Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood prevention. The action includes the rehabilitation of one floodwater-retarding dam. The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency; various Federal, state and local agencies; and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Kevin Brown.

No administrative action on implementation of the preferred alternative will be taken until 30 days after the date of this publication in the **Federal Register**.

Kevin Brown,
State Conservationist.

[FR Doc. 01–17900 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rush Creek Watershed, Fairfield County, OH

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Rules (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation project for Floodwater Retarding Structure VII–C in the Rush Creek Watershed.

FOR FURTHER INFORMATION CONTACT: Kevin Brown; State Conservationist; Natural Resources Conservation Service; 200 North High Street, Room 522, Columbus, Ohio 43215; telephone 614–255–2500.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national effects on the human environment. As a result of these findings, Kevin Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood prevention. The action includes removing or relocating two residences and acquiring flowage easements on approximately 425 acres in the breach inundation area of the structure. The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency; various Federal, state and local agencies; and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Kevin Brown. No administrative action on implementation of the preferred alternative will be taken until 30 days after the date of this publication in the **Federal Register**.

Kevin Brown,
State Conservationist.

[FR Doc. 01–17901 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Upper Hocking Watershed, Hunters Run Structure #8, Fairfield County, OH

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Rules (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure #8 in the Upper Hocking Watershed.

FOR FURTHER INFORMATION CONTACT: Kevin Brown; State Conservationist; Natural Resources Conservation Service; 200 North High Street, Room 522, Columbus, Ohio 43215; telephone 614–255–2500.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant

local, regional, or national effects on the human environment. As a result of these findings, Kevin Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The project purpose is flood prevention. The action includes the rehabilitation of one floodwater-retarding dam. The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency; various Federal, state and local agencies; and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Kevin Brown.

No administrative action on implementation of the preferred alternative will be taken until 30 days after the date of this publication in the **Federal Register**.

Kevin Brown,

State Conservationist.

[FR Doc. 01–17899 Filed 7–17–01; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2002 Economic Census Covering Information; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services (Except Public Administration) Sectors.

Form Number(s): Various.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,403,061 hours to be imposed in FY 2003.

Number of Respondents: 1,556,857.

Avg Hours Per Response: 54 minutes.

Needs and Uses: This economic census collection will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of more than 2.5 million establishments classified in the North American Industry Classification System (NAICS). The information sector comprises establishments engaged in the following processes: (a) Producing and distributing information and cultural products, (b) providing the means to transmit or distribute these products as well as data or communications, and (c) processing data. The professional, scientific, and technical services sector comprises establishments engaged in processes where human capital is the major input. These establishments make available the knowledge and skills of their employees, often on an assignment basis, where an individual or team is responsible for the delivery of service to a client. The management of companies and enterprises sector comprises two main types of establishments: (a) Those that hold the securities of (or other equity interest in) companies and enterprises; and (b) those (except government establishments) that administer, oversee, and manage other establishments of the company or enterprise. The administrative and support and waste management and remediation services sector comprises establishments performing routine support activities for the day-to-day operations of other organizations. These essential activities are of the type often undertaken in-house by establishments in many sectors of the economy. The educational services sector comprises establishments providing academic or technical instruction or educational support services such as student exchange programs and curriculum development. The health care and social assistance sector comprises establishments that provide health care and social assistance to individuals. The arts, entertainment, and recreation sector comprises establishments that operate facilities or provide services to meet varied cultural, entertainment, and recreational interests of their patrons. This sector includes (a) establishments that are involved in producing, promoting, or participating in live performances, events, or exhibits intended for public viewing; (b) establishments that preserve and exhibit objects and sites of historical, cultural, or educational interest; and (c) establishments that operate facilities or provide services that enable patrons to participate in recreational activities or pursue amusement, hobby, or leisure time interests. The other services, except public administration sector comprises establishments in one of the following subsectors: repair and maintenance; personal and laundry services; and religious, grantmaking, civic, and professional and other similar organizations. The public administration sector is out of scope to the economic census. The U. S. Census Bureau conducts the quinquennial census of governments and other current programs that measure the activities of government establishments.

The economic census will produce basic statistics by kind of business for number of establishments, receipts/revenue, payroll, and employment. It also will yield a variety of subject statistics, including sources of receipts or revenue, receipts by class of customer, and other industry-specific measures, such as exported services or personnel by occupation. Basic statistics will be summarized for the United States, states, and metropolitan areas, and counties; for places having 2,500 inhabitants or more; and for ZIP code areas. Tabulations of subject statistics also will present data for the United States and, in some cases, for states.

Affected Public: Businesses or other for-profit; Individuals or households; Not-for-profit institutions; State, local or Tribal Governments.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17963 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: NATO International Competitive Bidding (ICB) Bidders List Application.

Agency Form Number: ITA–4023P.

OMB Number: 0625–0055.

Type of Request: Regular Submission.

Estimated Burden: 40 hours.

Estimated Number of Respondents: 40.

Est. Avg. Hours Per Response: 1 hour.

Needs and Uses: Opportunities to bid for contracts under the NATO Security Investment Program (NSIP) are only open to firms of member NATO countries. NSIP procedures for international competitive bidding (AC/4–D/2261) require that each NATO country certify that their respective firms are eligible to bid such contracts. This is done through the issuance of a ''Declaration of Eligibility.'' The U.S. Department of Commerce/ITA is the executive agency responsible for certifying U.S. firms. ITA–4023P is the application form used by USDOC/ITA to collect information needed to ascertain the eligibility of a U.S. firm. ITA reviews the application for completeness and accuracy and determines a company's eligibility based on its financial viability, technical capability, and security clearances with the Department of Defense.

Affected Public: Business or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: July 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17968 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: BISNIS Finance Link.

Agency Form Number: None.

OMB Number: 0625–0231.

Type of Request: Regular Submission.

Estimated Burden: 33 hours.

Estimated Number of Respondents: 200.

Est. Avg. Hours Per Response: 10 minutes.

Needs and Uses: The International Trade Administration's Business Information Service for the Newly Independent States offers business intelligence and counseling to U.S. companies seeking to export or invest in the countries of the former Soviet Union. One of the essential components of BISNIS's services is assisting companies in locating suitable financing for exports. Often, official sources, such as the Export-Import Bank of the United States, cannot handle all requests for a variety of reasons. FinanceLink is an internet-based service to facilitate contact between exporters and financing agencies. Exporters fill out a form giving relevant details about the desired transaction and submit it via Internet to BISNIS; BISNIS will, in turn, distribute the information collected to potential financing agencies. The intention is to provide a service that benefits both exporters and financing agencies.

Affected Public: Business or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: July 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17969 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 010712176–1176–01]

Notice of Receipt of Petition for Exemption from the Requirements of Section 7(a)(2) of the Endangered Species Act

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice.

SUMMARY: The Secretary of Commerce announces the receipt of a petition filed by Pacific Legal Foundation (PLF or Petitioner) requesting that the Klamath 2001 Operations Plan (Plan) be exempted from the requirements of section 7(a)(2) of the Endangered Species Act. Under Department of Commerce regulations implementing the Endangered Species Act, the Secretary is required to give the public prompt notice of the receipt of such a petition. The intended effect of this notice is to give such public notification.

DATES: The Secretary of Commerce or his designee will make a determination as to whether the petition for exemption meets the requirements for an application for such an exemption no later than July 15, 2001. If the Secretary of his designee determines that the petition meets the requirements for an application, the Secretary or his designee will conclude a threshold review no later than July 25, 2001.

ADDRESSES: Copes of the petition for exemption are available for inspection in Room 5876 of the Herbert C. Hoover Building, 14th St. and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief Counsel for Regulation, at (202) 482–4144.

SUPPLEMENTARY INFORMATION: On July 5, 2001, PLF filed a petition for exemption from the requirements of section 7(a)(2) of the Endangered Species Act for the Plan. PLF filed the petition on behalf of the Klamath Irrigation District in Oregon and the Tulelake Irrigation District in California. PLF asserts that the halting of delivery of water for irrigation pursuant to the Plan, aimed at protecting Coho salmon and two species of sucker fish, threatens certain

communities in California and Oregon and threatens other wildlife habitat.

Set forth below is a copy of the petition for exemption, without attachments:

David E. Haddock, Anne M. Hayes, M. Reed Hopper, Pacific Legal Foundation, 10360 Old Placerville Road, Suite 100, Sacramento, California 95827, Telephone: (916) 362–2833, Facsimile: (916) 362–2932, Attorneys for Klamath Irrigation District, and Tulelake Irrigation District.

Introduction

On April 6, 2001, the Untied States Bureau of Reclamation adopted the Klamath Project 2001 Operations Plan pursuant to Biological Opinions issued by the United States Fish and Wildlife Service on April 5, 2001, and the National Marine Fisheries Service on April 6, 2001. These Biological Opinions require that surface elevations of reservoirs in the Klamath Irrigation Project (Klamath Project or Project), and river flow because Iron Gate Dam, must be maintained at such high levels that water will not be made available to irrigators this year.

Until recently the Klamath Project had been operated chiefly for the purpose of making water available to irrigators, who paid for the construction of the project, and contracted with the United States for the delivery of water. In recent years, however, concern about impacts on endangered species has shifted the Project's focus away from irrigation in favor of environmental enhancement. This year, delivery of water for irrigation was halted because of questionable concerns about two species of sucker fish and the Coho salmon. As a result of these actions, other wildlife habitat is threatened, and area communities are being destroyed.

Because delivery water according to Project contracts is likely to have little detrimental impact on endangered species, and operating the Project to withhold water will destroy both wildlife habitat and human communities, applicants Klamath Irrigation District and Tulelake Irrigation District ask the Endangered Species Committee to exempt the operation of the Klamath Project from the water use restrictions imposed under the Endangered Species Act; the Klamath Project should be allowed to operate according to historical practice, as the Bureau of Reclamation proposed in this action.

The applicants for exemption are irrigation districts depend on water supplies from the Klamath Project. Applicants represent water users who hold the beneficial interests in water rights established at the turn of the last century and earlier. For almost 100 years, they and their ancestors have toiled to support their families and build their communities which are dependent on agriculture. They are entitled to Project water delivered through Project facilities pursuant to contracts with the U.S. Bureau of Reclamation (''Reclamation'') and have done all they promised to do under those contracts. The United States has a duty under those contracts and reclamation law to preserve and protect the water supply for irrigation purposes.

The Klamath Project is a federal water project that lies within the Klamath River basin, straddling the border between Oregon and California. It was created pursuant to the Reclamation Act, enacted by Congress in 1902. The 1902 Act provided for federal financing of irrigation works, with the construction cost to be repaid over time by Project water users. Lands were made available to homesteaders who accepted the responsibility to undertake improvements and pay water changes. In May of 1905, the federal government specifically authorized the development of the Klamath Project pursuant to the 1902 Act.

The irrigable lands of the Klamath Project are in South-Central Oregon (62%) and North-Central California (38%). The Project provides full service water to approximately 240,000 acres of cropland. The total drainage area, including the Lost River and the Klamath River watershed above Keno, Oregon, is approximately 5,700 square miles. The Project consists of many dams, reservoirs, canals, tunnels, and pumping plants in both states. Various streams, springs, and other tributaries flow into upper Klamath Lake. Near the City of Klamath Falls, the lake's outlet is Link River, which eventually becomes Lake Ewauna and the Klamath River. After joining with numerous tributaries in California, the Klamath River discharges to the Pacific Ocean, at a point about 220 miles from Klamath Falls.

The Klamath Project delivers water under water rights that were originally obtained under state law. For example, with encouragement from the State of Oregon, the Untied States, acting through the U.S. Bureau of Reclamation, appropriated all the water of the Klamath River and its tributaries for use in the Project. Reclamation also acquired additional preexisting water right by purchase from private parties.

Lands within the Klamath Project have many different legal histories. Some landowners were issued certificates of Project water rights or had their own individual contracts with the government providing for delivery of water through project facilities in the early years of the Project. Many other landowners receive deliveries of Project water from various irrigation districts which, in turn, receive Project water pursuant to contracts with United States. The contracts also define the obligations of water users for repayment of construction costs and for reimbursement of operation charges for any facilities still operated by the Bureau of Reclamation. In many cases, irrigation districts have assumed full responsibility for operation and maintenance of federally constructed Project facilities.

Historically, the Klamath Project operated primarily to conserve and deliver water for irrigation use. However, in 1988, the shortnose sucker and the Lost River sucker, two species that live in Upper Klamath Lake, were designated as ''endangered'' under the Endangered Species Act. Since that time the U.S. Fish and Wildlife Service has scrutinized operation of the Klamath Project to ensure that operation of the Project does not jeopardize the continued existence of these species.

Under section 7(a)(2) of the Endangered Species Act, each federal agency is required to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (for anadromous fish) to ''insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species or threatened species.'' Pursuant to this provision, the Bureau of Reclamation initiated consultation with these agencies as it has developed operating plans for the Project. As a result of section 7 consultation, in 1992 and 1994 the Fish and Wildlife Service issued Biological Opinions that required the Project to maintain minimum reservoir elevations to protect the suckers. These operating elevations were adopted by the Bureau of Reclamation.

In 1995, the Bureau of Reclamation announced that it would develop a plan for the long-term operation of the Project. Rather than adopt a long-term operating plan before the 1996 growing season, as was expected, the Bureau of Reclamation issued a series of interim one year operating plans. These plans contained new standards for maintaining lake levels and stream flow conditions. Under these new standards, the irrigators were eligible to receive only the water left over after new standards for holding and releasing water were satisfied. Although new standards were in force during these years, water deliveries were not reduced

because supply was sufficient. This changed in 2001.

On February 13, 2001, the Bureau of Reclamation released its Final Biological Assessment for proposed operation of the Klamath Project for 2001, and thereby initiated consultation with the Fish and Wildlife Service and the National Marine Fisheries Service under section 7 of the Endangered Species Act. This consultation concluded when the Services issued new Biological Opinions requiring that Reclamation maintain minimum flows and minimum reservoir elevations. On April 6, 2001, the Bureau of Reclamation released the Klamath Project 2001 Operations Plan adopting these standards, and, for the first time in the history of the Project, prohibited all water diversions for the irrigation of tens of thousands of acres of farmland. That prohibition on water diversions has created a crisis. It has subjected approximately 1,400 farms and many more families to potential economic ruin and caused damage to the very ecosystem the government was try to protect.

But this crisis is entirely of the government's making. Beginning almost a century ago, the United States enticed homesteaders to the Klamath area with promises of guaranteed water. In exchange for these homesteaders' agreement to pay the costs of building the very project in question here, the United States entered into binding contracts to provide water for irrigation in perpetuity. Later, the United States enacted the Endangered Species Act which, according to current federal policy, requires government agencies to withhold promised water for species preservation. Government officials oversee the Klamath Project, as they have since its construction.

Government biologists prepared the environmental assessment and the Biological Opinions that were applied to deprive exemption applicants of their water. The water users have done nothing to create or exacerbate the problem. They have merely irrigated their fields with water that the United States promised them. Without water, most fields are unplanted this year. Some perennial crops persist from prior years, but their demise is almost certain because of the lack of water from the Project. Unfortunately, the government has not remedied this situation, and restrictions on water use persist. Therefore applicants seek an exemption from these water use restrictions.

II. Application for Exemption

Under 50 CFR 451.02 (2001), an application for exemption to the Endangered Species Committee must include the following information.

1. Name, mailing address, and phone number, including the name and telephone number of an individual to be contacted regarding the application.

David E. Haddock, Pacific Legal Foundation, 10360 Old Placerville Road, Suite 100, Sacramento, CA 95827, *deh@pacificlegal.org*, Telephone: (916) 362–2833, Facsimile: (916) 362–2932.

2. A comprehensive description of the applicant's proposed action.

The general action at issue here is the Bureau of Reclamation's proposed operation of the Klamath Project in accordance with historical precedents. The Project supplies water to irrigation districts and other individual irrigators pursuant to contracts with the United States and established water rights. A comprehensive description of the proposed action can be found in the April 5, 2001, Biological Opinion for the suckers and bald eagle, attached as Appendix B.

3. A description of the permit or license sought from the federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial.

Exemption applicants are parties to contracts with the Bureau of Reclamation for the delivery of irrigation water from the Klamath Project. Since these contracts give exemption applicants ''the right in perpetuity * * * to receive from the Klamath Project all water needed * * * for beneficial irrigation uses,'' in 1991 Reclamation initiated consultation with the U.S. Fish and Wildlife Service to ensure that fulfilling Reclamation's duties under this and other contracts would not jeopardize the continued existence of two endangered fishes, the Lost River sucker (Deltistes luxatus) and shortnose sucker (Chasmistes brevirostris).[1] As a result of this and additional consultation, Biological Opinions were issued by the U.S. Fish and Wildlife Service in 1992 and 1994 that permitted the continued operation of the Project under reasonable and prudent alternatives designed to avoid jeopardy to suckers. In December, 2000, Reclamation reinitiated consultation with the Fish and Wildlife Service on continuing operations of the Klamath Project.

In its final Biological Assessment dated February 13, 2001, Reclamation stated that it proposed ''continuing operation of the Klamath Project to supply water to Project users and refuges.'' The Biological Opinion issued by the U.S. Fish and Wildlife Service on April 5, 2001, which required reservoir surface elevations so high as to eliminate water deliveries to Project contractors, grew out of this reinitiation of consultation that began in late 2000. Similar restrictions relating to minimum flows below Iron Gate Dam were imposed by the National Marine Fisheries Service in its Biological Opinion relating to the Coho salmon, released April 6, 2001.

On April 6, 2001, the Bureau of Reclamation formally denied Project contractors the water they are entitled to by formally adopting the Klamath Project 2001 Annual Operations Plan. While acknowledging that ''Reclamation has contractual obligations to Project water users to provide water primarily for domestic and irrigation uses,'' the 2001 Operations Plan eliminated water deliveries by adopting the minimum reservoir elevation levels and minimum stream flows required by the Federal agencies' Biological Opinions.

4. A description of all permit(s), license(s), or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before it can proceed with the proposed action.

Exemption applicants are parties to contracts with the United States to receive Klamath Project water for beneficial irrigation uses in perpetuity. The present contracts have been in force for more than 40 years, are in effect now, and will continue to be in effect in future years. No other legal requirements need to be satisfied for exemption applications to receive water promised under the contracts. See water contracts attached at Appendix H and Appendix I.

5. A copy of the permit or license denial.

Exemption applicants were denied their right to receive water from the Klamath Project by operation of the Bureau of Reclamation's Klamath Project 2001 Operations Plan, issued April 6, 2001. The 2001 Operations Plan incorporated requirements of the Fish and Wildlife Service and National Marine Fisheries Service's Biological Opinions to eliminate water deliveries. See attached, Appendix E.

6. A copy of the biological assessment, if one was prepared.

See attached, Appendix A.

7. A copy of the Biological Opinion.

See attached, Appendix B.

8. A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the applicant.

As noted in Item 3 above, consultation was initiated by the Bureau of Reclamation in December, 2000. A Draft Biological Opinion for the suckers and the bald eagle was released by the

Fish and Wildlife Service on March 13, 2001. The Final Biological Opinion was prepared in a scant 23 days, and was released in final form on April 5, 2001, presumably to ensure that exemption applicants would receive no water in time for planting this year.

Consultation with the National Marine Fisheries Service was concluded on April 6, 2001, with the release of the Biological Opinion relating to the Coho salmon. A further description of the consultation process as it concerns the 2001 Operations Plan may be found in the attached April 5, 2001, Biological Opinion for the suckers and bald eagle, Section I, Page 1, entitled ''Consultation History'' (Appendix B), and the April 6, 2001, Biological Opinion for the Coho salmon at Page 1 (Appendix D).

9. A description of each alternative to the proposed action considered by the applicant, and to the extent that such information is available to the applicant, a description of each alternative to the proposed action considered by the federal agency.

As part of the proposed action presented in its Biological Assessment for the suckers, the Bureau of Reclamation incorporated both planned and ongoing provisions of the Fish and Wildlife Service's 1992 and 1994 Biological Opinions, including mitigation measures, Reasonable and Prudent Alternatives, Reasonable and Prudent Measures, and Incidental Take Statement terms and conditions. These measures are described in Reclamation's February 13, 2001, Biological Assessment, Section 13, entitled ''Appendix 1 ESA Consultation Review,'' and in the Fish and Wildlife Service's April 5, 2001, Biological Opinion, Section I.1, entitled ''Consultation History.'' These documents are attached to this application at Appendix A and Appendix B.

In addition to alternative proposed in prior Biological Opinions, the Fish and Wildlife Service has identified what it call ''[a] reasonable and prudent alternative (with 8 elements).'' This so-called alternative is fully described in Section III, Part 2, Page 143, of the April 5, 2001, Biological Opinion, beginning at Item 6.0. Although the alternative is described as having eight elements, the Biological Opinions lists only six: (1) Maintenance of Minimum Surface Elevations in Upper Klamath Lake; (2) Operation Plan for Low Water Year; (3) Adaptive Management through Water Quality Monitoring and Reporting; (4) Entrainment Reduction and Fish Passage at A-Canal and Link River Dam and Monitoring and Restoration of Sucker Habitats from Keno to Link River; (5) Management of UKL Water Quality Refuge Areas and Emergent Vegetation Habitats; and (6) Maintain Minimum Lake Levels in Clear Lake, Gerber Reservoir, and the Tule Lake Sump. The Biological Opinion for the Coho Salmon also presents a so-called Reasonable and Prudent Alternative that requires stream flows at higher than historical levels. See Appendix B.

10. A statement describing why the applicants' proposed action cannot be altered or modified to avoid violating section 7(a)(2) of the Act

As an initial matter, serious questions about the scientific conclusions of the Biological Opinions persist. As discussed below, it is doubtful that operating the Project according to historical practice would have any detrimental impact on the survival of the species. Consequently, it is not clear, despite the conclusions of the Fish and Wildlife Service and the National Marine Fisheries Service, that the proposed action would in fact violate section 7(a)(2).

Contracts with the United States entitle exemption applicants to receive irrigation water from the Klamath Project. However, the alternatives described in the Biological Opinions, which were adopted by the Bureau of Reclamation in its 2001 Operations Plan, set reservoir elevations and stream flows so high that they effectively prohibit water from being made available to exemption applicants in low water years, such as this year. Federal officials claim no water can be diverted for irrigation purposes without violating section 7(a)(2) of the Endangered Species Act.

11. A description of resources committed to the proposed action by the permit or license applicant subsequent to the initiation of consultation.

Klamath Project water has been used continuously for almost 100 years. Applicants, and others like them, commit significant resources each year, including this year, in anticipation of receiving water from the Klamath Project. To prepare for the growing season, exemption applicants must plow fields, purchase seed, pay rent on leased farmland, and hire labor. Some of this preparation has followed the initiation of consultation by the Bureau of Reclamation. Exemption applicants committed these resources because every year prior to 2001 the United States has honored its contractual obligation to make water available through the Project. Exemption applicants expected that the United States would honor its contractual duty in 2001 as well. But because the United States has failed to make water available, resources committed to preparing for the 2001 growing season have been wasted. As a result, literally hundreds of farms are facing the possibility of economic ruin.

12. A complete statement of the nature and the extent of the benefits of the proposed action.

Ordinary water use provided by the Klamath Project offers substantial environmental, economic and social benefits. For example, water from the Klamath Project supports one of the most important staging areas for migratory waterfowl on the Pacific Flyway. Over 430 documented species of wildlife, including the largest wintering concentration of bald eagles in the lower 48 states, depend in part upon water diversions from the Project, diversions that are no longer allowed. Through direct releases and agricultural runoff, the Klamath Project supplies water for the lower Klamath and Tulelake national wildlife refuges. Water used for agriculture also serves environmental values by providing food and habitat for waterfowl and other wildlife.

In addition, the Klamath Basin produces $100 million in hay, grains, and vegetables each year. The agricultural industry supported by the Klamath Project includes 1,400 farms totaling more than 210,000 acres. Klamath farms produce livestock, barley, oats, wheat, potatoes, sugar beets, and forage. Approximately 110,000 acres serve as forage, including forage for migrating waterfowl and other wildlife; 57,000 acres are planted in cereal crops; 16,000 acres in vegetables; 7,000 acres are planted in cereal crops; 16,000 acres in vegetables; 7,000 acres in miscellaneous field crops; 298 acres in seed crops; and 227 acres in nursery crops.

The Klamath investment in agriculture produces an additional $250 million in economic activity in the various agriculturally dependent communities throughout the region. Livestock herds, that are being liquidated as a result of the lack of water this year, are worth another $100 million in replacement costs.

This traditional use of the Klamath Project for irrigation and other purposes guards against the catastrophic destruction of the Klamath Basin and the families and farms in the region, including disastrous effects on the economy and environment. Klamath farming communities and a rural way of life are dependent on regular water diversions from the Klamath Project.

Without water, farms cannot operate, and farm workers will be unemployed. Without farmers to buy seed, supplies,

and equipment, the infrastructure of small businesses that support agriculture will collapse. In turn, restaurants, grocery stores, and other small community businesses will lose their customer base. Property values will plummet, loans will be in default, and county tax revenues will spiral downward.

The farmers and communities in the Klamath Basin have committed their livelihoods, their way of life, and the welfare of their families to cultivation of the region's agriculture, based on the water promised to them by the government through he Klamath Project.

Some individual farmers stand to lose nearly half a million dollars in potential income, based on resources that were long ago committed to farming the land. The predicament of David Cacka is typical of what is happening in the basin. Cacka runs a farming operation. He owns 80 acres of land and leases an additional 420 acres, some of which is owned by his father, some of which is owned by an elderly widow, and some of which is owned by other retired individuals. Each of Mr. Cacka's landlords depends for their livelihood on the rent he pays them. Cacka raises potatoes, grain, and alfalfa. He has one full-time employee and up to nine seasonal employees in his farming operation. Operating expenses for the farming business run as high as $400,000 per year, all of which is spent in the economy of the Klamath Basin. See Declaration of David Cacka in Support of Plaintiffs' Motion for Preliminary Injunction, Kandra v. United States, No. 01–6124–TC, 2001 U.S. Dist. LEXIS 6932 (D. Or. Apr. 30, 2001), attached at Appendix J.

Because of the loss of water due to the application of the Endangered Species Act to the Klamath Project, Cacka has had to leave idle farmland that has been in continuous production for 91 years. He will not have any employees, and will not be able to support the local businesses or contribute to the local economy. He and the other farmers in the Klamath Basin who depend upon water from the Klamath Project are facing economic hardship, if not outright ruin. Id.

Because the region developed and grew based on a century-old water rights agreement with the United States government, virtually the entire community has its resources committed to receiving its allocation of water from the Klamath Project, including schools, fire departments, libraries, parks, churches, community service organizations, and businesses, as well as county and city governments.

13. A complete discussion of why the benefits of the proposed action clearly outweigh the benefits of each considered alternative course of action.

The Biological Opinions, and the 2001 Operations Plan that was adopted pursuant to them, did not consider any alternative that would actually allow the exemption applicants to receive water. If such alternatives had been considered, they would have shown how recognizing exemption applicants' contractual right to receive water from the Project would have led to few impacts on imperiled species and would have served several other important interests. Because serious impacts on the suckers and coho would be unlikely, the benefits of making water available from the Klamath Project according to the terms of the contracts and according to historical practice, would clearly outweigh the benefits of eliminating water deliveries.

If operation of the Klamath Project according to historical practices would actually threaten to extirpate the species, requiring higher reservoir elevations would certainly provide an important benefit to be weighted. But there are legitimate reasons to doubt the validity of the Biological Opinions' conclusions. For example, fisheries biologist David Vogel, who has made significant contributions tot he understanding of the suckers at issue here, and was a principal contributor of information for the 1992 Biological Assessment on Long-Term Operations of the Klamath Project, has raised grave questions about the reliability of the Fish and Wildlife Service's scientific conclusions. Vogel testified before Congress recently about the scientific problems with the conclusions in the Biological Opinion for the two species of sucker fish.

As a scientist who has also provided comments on scientific analyses related to the Klamath Project, Vogel claims that in recent times it is ''virtually impossible to comment and certainly impossible for the agencies to consider the comments objectively and meaningfully'' because the time for submitting comments is too short. In this case, for example, the time between the issuance of the Draft Biological Opinion on March 13, 2001, and the issuance of the Final Biological Opinion on April 5, 2001, was only 6 days. The ''overriding sense'' Vogel has from this process is that ''the goal is to dismiss what we have to offer.''

More important, though, is that this flawed process leads to flawed results. Vogel raises serious questions abut the status of the suckers as endangered, and the value of higher Upper Klamath Lake elevations for their continued survival. For example, Vogel argues that within three years after the sucker listing it ''became apparent that the assumptions concerning the status of the shortnose suckers and Lost River suckers in the Lost River/Clear Lake watershed were in error.'' Consequently, Vogel concludes, ''[t]he species were either inappropriately listed as endangered because of incorrect or incomplete information or the species have rebounded to such a great extent that the fish no longer warrant the 'endangered' status.'' Moreover, Vogel argues that ''artificially maintaining higher-than-historical lake elevations,'' as the Fish and Wildlife Service has required here, ''is likely to be detrimental, not beneficial, for sucker populations.'' Accordingly to Vogel, the facts show that in past low water years, increased fish kills simply have not occurred at low reservoir elevations. See attached, Appendix F, for a complete transcript of the ''Testimony of David A. Vogel Before the House Committee on Resources Oversight Field Hearing on Water Management and Endangered Species Issues in the Klamath Basin, June 16, 2001.''

Vogel's concerns are merely examples of the scientific problems inherent in the Biological Opinions. Others abound. For example, there is no evidence that historical stream flows below Iron Gate Dam will have any detrimental effect on Coho salmon. With more study, and a truly objective scientific approach, it might be possible to arrive at a better understanding of the needs of these fish. Yet, at this point, the conclusions of the Biological Opinions are too questionable to accept in their fullness. But this is not all.

As discussed below, the 2001 Operations Plan threatens serious impacts to other critical wildlife resources, such as two federal wildlife refuges, and a major stopover for migratory waterfowl. Moreover, federal action, like this, that impairs the habitat of migratory birds and other species may violate international conventions. For example, the Convention on Biological Diversity, signed in 1992 by more than 160 nations, including the United States, obligates the United States to ''[r]egulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use.'' See Appendix G. The United States must also ''[p]romote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings.'' Id. By

depriving federal wildlife refuges and other wildlife resources of necessary water, the United States violates its commitments to the international community.

Also, the Fifth Amendment to the United States Constitution concludes: ''[N]or shall private property be taken for public use, without just compensation.'' The purpose of that clause—as the oft-quoted language from *Armstrong* v. *United States,* 364 U.S. 40, 49 (1960), explains—is ''to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'' It is well established that a right to use water is a compensable property right. See *United States* v. *State Water Resources Control Board,* 227 Cal. Rptr. 168. (Dist. Ct. App. 1986) (explaining that ''once rights to use water acquired, they become vested property rights. As such they cannot be infringed by others or taken by governmental action without due process and just compensation.''). This is so even when the right to use water is derived from contract. See *Tulare Lake Basin Water Storage District* v. *United States,* 49 Fed. Cl. 313 (2001) (finding liability under the Takings Clause of the Fifth Amendment where the United States interfered with contractual rights to receive and use water). By depriving exemption applications of the water to which they are contractually entitled, the United States not only violates the terms of applicable contracts, but it also takes exemption applicant's private property in violation of the Fifth Amendment.

The United States important public benefits when it keeps its commitments and follows fundamental principles; it engenders trust among its citizens. The benefits of the United States fulfilling its contractual obligations and following the U.S. Constitution, in this case by making water available, thereby protection struggling communities of people and wildlife, are incalculable. These public benefits outweigh the questionable benefits that will occur as a result of depriving exemption applicants of the water to which they are entitled.

14. A complete discussion of why none of the considered alternatives are reasonable and prudent.

Federal law requires that once a determination has been made that a proposed action will jeopardize the continued existence of the species, the consulting agency must propose ''Reasonable and Prudent Alternatives'' to the proposed action. The regulations define ''reasonable and prudent alternatives'' as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid the likehood of jeorpardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

50 CFR 402.02 (2001).

The greatest problem with so-called reasonable and prudent alternatives required by the Fish and Wildlife Service and the National Marine Fisheries Service is that they violate the first requirement, that alternatives be ''consistent with the purpose of the underlying action.'' The purpose of the Klamath Project is, and has always been deliver irrigation water to Project contractors, who have contracted for delivery of the water, and have paid substantial sums to the United States in exchange for the right to receive it. Alternatives that look only to environmental protection, like those offered in the Biological Opinions, are not ''consistent with the purpose of the underlying action.'' To the contrary, the alternative involved here are flatly inconsistent with the established irrigation purposes of the Klamath Project because they make the availability of water for irrigation secondary to other values.

Also, the requirements of the Biological Opinions may actually harm environmental values. The sucker Biological Opinion mandates Upper Klamath Lake surface elevations substantially higher than they have historically been, even in above-average water years. The difference between a full reservoir in wet years and the average low point in critically dry years is only about six feet. Yet the Biological Opinion sets a minimum Upper Klamath Lake elevation almost three feet higher that historic averages in critically dry years. As discussed more fully in Items 13 and 15, lower lake elevations are not likely to jeopardize the continued existence of the sucker fish. In fact, the unprecedented high elevation will hurt both wildlife and the environment by reducing foraging habitat for migratory birds and valuable wetlands. The higher elevation requirement will also result in increased sediment runoff and injure other protected species like the bald eagle.

Because the alternatives proposed are not consistent with the purposes of Klamath Project, and are not necessary for the ultimate protection of the fish, they do not fall within the definition of ''reasonable and prudent alternatives'' as provided in the regulations.

15. A complete statement explaining why the proposed action is in the public interest.

The public interest includes many things in addition to protecting imperiled wildlife. The public requires food and shelter, along with other aesthetic, educational, historical, recreational, and scientific values. In the Klamlath region, as in most of the Western United States these public interest values cannot be achieved without water. Water is necessary for all life, not just the life of endangered suckers. The proposed action would help satisfy these many public interests by providing this essential ingredient.

State law, which governs the use of water, finds specifically that the public interest includes other concerns beyond environmental protection. For example, ''in acting upon applications to appropriate water,'' the California State Water Resources Control Board is required to consider the relative benefit to be derived from (1) all beneficial uses of the water concerned including, but not limited to, use for domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife, recreational, mining and power purposes, and any uses specified to be protected in any relevant water quality control plan.

Cal. Water Code section 1257. In-stream uses, such as higher flows for fish protection, are not favored over other uses in determining what would be serve the public interest. They are simply one factor to be considered. California courts, for example, have specifically rejected the notion that California is prohibited from favoring water uses such as irrigation, even where harm may result to fish and wildlife resources. The California Supreme Court explained:

As a matter of current and historical necessity, the Legislature, acting directly or through an authorized agency such as the Water Board, has the power to grant usufructuary licenses that will permit an appropriator to take water from flowing streams and use that water in a distant part of the state, even though this taking does not promote, and may unavoidably harm, the trust uses at the source stream. The population and economy of this state depend upon the appropriation of vast quantities of water for uses unrelated to in-stream trust values. California's Constitution, its statues, decisions, and commentators all emphasize the need to make efficient use of California's limited water resources: all recognize, at least

implicitly, that efficient use requires diverting water from in-stream uses. Now that the economy and population centers of this state have developed in reliance upon appropriate water, it would be disingenuous to hold that such appropriations are and have always been improper to the extent that they harm public trust uses. * * *

National Audubon Society v. *Superior Court of Alpine County,* 638 P.2d 709, 727–28 (Cal. 1983) (emphasis added; citations and footnote omitted). In short, according to statute, California must be able to balance competing water uses according to its own ideas about the public interest. Similar rules apply to Oregon water rights.

The States of California and Oregon permitted the United States to appropriate water for the Klamath Project with the understanding that such water would be distributed for irrigation. Thus, in this case, state water agencies have already exercised their authority to safeguard the public interest, have considered the water needs of fish and wildlife resources, and have nevertheless authorized the use of water for irrigation.

Beyond this, cutting off water to the basin will have injurious consequences to a wide array of wildlife in the region. The Klamath Basin is one of the most important staging areas for migratory waterfowl on the Pacific Flyway. Each year nearly three-quarters of all Pacific Flyway waterfowl stop in the Klamath Basin, including peak fall concentrations of over 2 million ducks, geese, and swans, and the largest wintering concentration of bald eagles in the lower 48 states. The wetlands and other resources upon which these birds depend require a regular supply of water from the Klamath Project. Some of the necessary water is delivered directly from the Project to federal wildlife refuges. Other important resources are supplied by agricultural runoff. But these sources have been cut off. As the region's 185 miles of canal ecosystem and 516 miles of drainage canal ecosystem are destroyed by government-imposed water prohibitions, the environment will suffer.

If Klamath Project water is not delivered as it has been in prior years, it will become extremely difficult to maintain the facilities used to divert and deliver water, along with the facilities used for draining runoff. This will reduce the availability of wildlife forage and valuable wetlands, not to mention increase the risks to public safety and property in the future due to hazards such as flooding. Irrigated land in the Tulelake area also supports large numbers and diversity of birds and other wildlife, including migratory waterfowl, raptors, deer, and antelope. These species feed on grain, alfalfa, and other crops grown in area farms. Irrigated farmland provides valuable wildlife habitat. Without irrigation water from the Project, once-productive farmland will not longer provide these important habitat values.

16. A complete explanation of why the action is of regional or national significance.

Agricultural production is one of America's greatest strengths. Americans spend a smaller percentage of income on food than residents of other nations. Forty-six percent of the world's soybeans are grown in the United States, 41% of corn. One-forth of the world's beef and nearly one-fifth of the world's grain, milk, and eggs are produced in the United States. About 17% of raw U.S. agricultural products are exported yearly, including 83 million metric tons of cereal grains, 1.6 billion pounds of poultry, and 1.4 million metric tons of fresh vegetables. Much of this abundance is produced using water from federal water projects such as the Klamath Project.

The Klamath Basin produces $100 million in hay, grains, and vegetables, with more than 1,400 farms totaling approximately 210,000 acres being supplied by the Klamath Project. Klamath farms produce livestock, barley, oats, wheat, potatoes, sugar beets, and forage. For example, 110,000 acres serve as forage, 57,000 acres are planted in cereal crops, 16,000 acres in vegetables, 7,000 acres in miscellaneous field crops, 298 acres in seed crops, and 227 acres in nursery crops.

The Klamath investment in agriculture produces an additional $250 million in economic activity in the various agriculturally dependent communities throughout the region. Livestock herds, that are being liquidated a result of the lack of water this year, are worth another $100 million in replacement costs.

The failure of the Klamath Project to deliver water to Project contractors threatens catastrophic destruction in the region. Without water, farms cannot operate, and farm workers will be unemployed, Without farmers to buy seed, supplies, and equipment, the infrastructure of small community businesses will lose their customer base. Property values will plummet, loans will be in default, and county tax revenues will spiral downward.

The farmers and communities in the Klamath Basin have committed their livelihoods, their way of life, and the welfare of their families to cultivation of the region's agriculture, based on the water promised to them by the government through the Klamath Project.

As noted above, some individual farmers, like David Cacka, stand to lose nearly half a million dollars in potential income, based on resources that were long ago committed to farming the land. This predicament is typical of what is happening in the basin.

Because the region developed and grew based on a century-old water rights agreement with the United States government, virtually the entire community has its resources committed to receiving its allocation of water from the Klamath Project. Directly or indirectly, availability of water from the Klamath Project is necessary for area schools, fire departments, libraries, parks, churches, community service organizations, and businesses, as well as county and city government.

Not only the region, but the nation as a whole, has an interest in preserving the Klamath Basin and averting disaster. The impact on the environment from lack of irrigation water is of tremendous regional and national significance. As a result of the Biological Opinions, displaced bald eagles will go elsewhere and battle for survival. Some likely will starve or die of exposure or disease. Others will have a harder time breeding successfully next spring.

The effects will be felt in employment, too, which has far-reaching consequences for the region and beyond. Steve Kandra, a third-generation farmer from Merrill in Klamath County has already had to lay off his work force: ''I have been forced to lay off all of my employees, half of whom are Hispanic. Half of the students in our local public schools are Hispanic, most with parents who have jobs associated with agriculture. The Hispanic community would be a group severely impacted by the lack of irrigation water.'' See Declaration of Steven L. Kandra in Support of Plaintiffs' Motion for Preliminary Injunction, *Kandra* v. *United States* No. 01–6124–TC, 2001 U.S. Dist. LEXIS 6932 (D. Or. Apr. 30, 2001), attached at Appendix K. The failure to make water available will result in defaulted loans and lost farms. According to David Solem, manager of the Klamath Irrigation District, all of these types of impacts (social, cultural) are likely to occur, including impacts to ethnic communities and other local cultural attributes, loss of food, foraging and habitat for migratory waterfowl and other birds and wildlife that makes heavy use of farmland, soil erosion, air quality, impacts from soil erosion, infestations, future chemical

applications to control weeds and pests, and loss of fish and wildlife habitat in irrigation canals and drains.

See Declaration of David A. Solem in Support of Plaintiffs' Motion for Preliminary Injunction, *Kandra* v. *United States,* No. 01–6124–TC, 2001 U.S. Dist. LEXIS 6932 (D. Or. Apr. 30, 2001), attached at Appendix L.

According to Rick Woodley, Director of Klamath County Soil and Water Conservation District, denial of water will adversely affect the soil in the region, which will have dramatic regional significance.

Without normal crop production or establishment of cover crops on the bare soil, as it continues to dry, the entire Klamath Basin will see the full effect of life without water on the farmland. The loss of topsoil can never be recovered. The sedimentation (pollution) on the lakes, rivers, and streams of this basin, when rain does come, will have adverse effects to the very species this decision was designed to ''protect.''

Letter from Rick Woodley, Apr. 18, 2001, attached at Appendix M.

17. A complete discussion of mitigation and enhancement measures proposed to be undertaken if an exemption is granted.

The Bureau of Reclamation's February 13, 2001, Biological Assessment for the suckers incorporated planned and ongoing provisions from the 1992 and 1994 Biological Opinions that do not require unprecedented reservoir elevations. These measures are fully discussed in the Biological Assessment in Section 2.6, entitled ''1992 and 1994 Biological Opinion Provisions,'' and in Section 13.0, entitled ''Appendix 1 ESA Consultation Review.'' They encompass a wide range of substantial and effective mitigation and enhancement measures, including sucker toxicity studies, taxonomy projects, spawning enhancement, marsh restoration, watershed improvement, and many other measures. These measures may continue without prohibiting essential water diversions for irrigation and wildlife in the Klamath Basin.

III Conclusion

Delivering water according to Project contracts is likely to have little detrimental impact on endangered species. Yet operating the Project to withhold water, as the Fish and Wildlife Service and the National Marine Fisheries Service have required, will destroy both wildlife habitat and human communities. Exemption applicants therefore ask the Endangered Species Committee to exempt the operation of the Klamath Project from the onerous water user restrictions imposed under the Endangered Species Act. The Committee should allow the Klamath Project to operate according to historical practice, as the Bureau of Reclamation proposed.

July 2, 2001.

Respectfully submitted,

David E. Haddock, Anne M. Hayes, M. Reed Hopper,

By _____

David E. Haddock, Attorneys for Klamath Irrigation District and Tulelake Irrigation District.

1. On June 11, 1991, the United States Department of the Interior Agreement on Compliance with the Endangered Species Act entered into. The U.S. Fish and Wildlife Service considered the agreement to be a request for formal consultation pursuant to section 7 of the Endangered Species Act.

[End of Petition]

Section 451.02 of the Title 50, CFR requires the Secretary of Commerce or his designee to initially determine whether a petitioner is eligible to apply for an exemption, whether a petition is timely, and whether the petition presents all required information. If the Secretary or his designee determines that a petitioner is eligible to apply for an exemption and that the petition is timely and presents all required information, § 451.02(f)(3) of Title 50, CFR requires the Secretary or his designee to conduct a threshold review and make determinations in accordance with the requirements of § 452.03 of Title 50, CFR.

Michael A. Levitt

Assistant General Counsel for Legislation and Regulations.

[FR Doc. 01–17922 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Recruitment of Private-Sector Members

SUMMARY: The President's Export Council Subcommittee on Export Administration (PECSEA) advises the U.S. Government on matters and issues pertinent to implementation of the provisions of the Export Administration Act and the Export Administration Regulations, as amended, and related statutes and regulations. These issues relate to U.S. export controls as mandated by law for national security, foreign policy, non-proliferation, and short supply reasons. The PECSEA draws on the expertise of its members to provide advice and make recommendations on ways to minimize the possible adverse impact export controls may have on U.S. industry. The PECSEA provides the Government with direct input from representatives of the broad range of industries that are directly affected by export controls.

The PECSEA is composed of high-level industry and Government members representing diverse points of view on the concerns of the business community. PECSEA industry representatives are selected from firms producing a broad range of goods, software, and technologies presently controlled for national security, foreign policy, non-proliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

PECSEA members are appointed by the Secretary of Commerce and serve at the Secretary's discretion. The membership reflects the Department's commitment to attaining balance and diversity. PECSEA members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to relevant classified information needed in formulating recommendations to the President and the U.S. Government. The PECSEA meets 4 to 6 times per year. Members of the Subcommittee will not be compensated for their services. The PECSEA is seeking private-sector members with senior export control expertise and direct experience in one or more of the following industries: Machine tools, semiconductors, commercial communication satellites, high performance computers, telecommunications, aircraft, pharmaceuticals, and chemicals. Please send a short biographical sketch on the individual who wishes to become a candidate. The material may be faxed to the number below.

Deadline: This request will be open on or before August 2, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583. Materials may be faxed to (202) 482–3195, to the attention of Ms. Carpenter.

Dated: July 11, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 01–17870 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Six Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately 4 times per year. Members of the Committees will not be compensated for their services. The six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics—semiconductor section), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: the Export Administration Regulations (EAR) and procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Categories 3 (electronics—instrumentation section) and 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine technology), and 9 (propulsion systems, space vehicles, and related equipment).

To respond to this recruitment notice, please send a copy of your resume. Please use the fax number or e-mail address below.

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583. Resumes may be faxed to her at (202) 482–3195 or e-mailed to her at LCarpent@bxa.doc.gov.

Dated: July 11, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 01–17869 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Open Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on August 14, 2001, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Report on consideration to certify foreign availability assessment study presented by International Safety Instruments Association.
4. Discussion on SITAC proposal for change to Wassenaar Arrangement Dual-Use Control List.
5. Discussion of draft changes to Commerce Control List

Category 6 (sensors and lasers).

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS:3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

For more information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: July 12, 2001.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 01–17868 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe From Mexico: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results in the antidumping duty administrative review of circular welded non-alloy steel pipe from Mexico.

EFFECTIVE DATE: July 18, 2001.

FOR FURTHER INFORMATION CONTACT: John Drury or Helen Kramer, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–0405, respectively.

Scope of the Review

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing

used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil or gas pipelines is also not included in this order.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Amendment of Final Results

On April 30, 2001, the Department of Commerce (the Department) published the final results of its antidumping duty administrative review on circular welded non-alloy steel pipe from Mexico (66 FR 21311). This review covered one manufacturer/exporter of the subject merchandise, Tuberia Nacional S.A. de C.V. (''TUNA''). The period of review (''POR'') is November 1, 1998 through October 31, 1999.

On April 24, 2001, we received a submission from Allied Tube and Conduit Corporation and Wheatland Tube Company (collectively, ''Petitioners'') alleging a clerical error in the final results of this antidumping duty administrative review. On April 23, we received a submission from TUNA alleging two clerical errors. Petitioners filed rebuttal comments on April 30, 2001. The clerical error allegation and rebuttal comments were filed in a timely fashion.

Comment 1: Petitioners state that the Department committed a coding error and inadvertently omitted some of the physical code characteristics in its model match instructions. By leaving some of the codes for various physical characteristics out of the model match hierarchy, petitioners believe that some sales observations reported by TUNA were not used for matching purposes. Petitioners urge that the Department place the proper physical code characteristics in the model match program.

Department's Position: After a review of petitioners' allegation, we agree with petitioners and have corrected our model match program. *See* Analysis Memorandum dated June XX, 2001 for the corrections.

Comment 2: Respondent TUNA claims that the Department made a clerical error in the calculation of the level of trade adjustment. Rather than increasing the prices for sales made at a different level of trade, TUNA asserts that the Department should have reduced these prices. TUNA states that the error is based on a misreading of the Pattern of Price Difference program run by the Department. TUNA urges that the Department change the programming language to correct this error.

Department's Position: We agree with respondent and have corrected the programming language in the margin calculation program. *See* Analysis Memorandum for the programming changes.

Comment 3: Respondent TUNA states that the Department made a clerical error with regard to matching sales and level of trade. According to TUNA, the Department matched sales in the United States to home market sales in an incorrect sequence. TUNA states that the Department's methodology first matched identical sales at the same level of trade, and then matched similar sales at the same level of trade. Only if matches were not found at the same level of trade did the methodology look for identical matches at the next level of trade. TUNA argues that the Department should match identical sales regardless of the level of trade before moving to similar matches.

Petitioners note that the question of segregation by level of trade prior to matching is a policy decision involving the Department's interpretation of the statute and regulations. Therefore, petitioners argue, the issue is not an ''error in addition, subtraction, or other arithmetic function'' under 19 CFR 351.224(f) and cannot be permitted as a clerical error change. With regard to the policy decision itself, petitioners state that while the Department is generally required to seek identical matches prior to using similar matches under 19 U.S.C. 1677(16), the Department does segregate sales before making comparisons. Petitioners cite to the Department's segregation of sales based on date of sale, and that the Department matches sales made within a contemporaneous month.

Department's Position: We agree with respondent that we made a clerical error in implementing our level of trade methodology; however, we disagree with respondent regarding the extent and nature of the error. In the Department's preliminary determination, we determined that EP sales in the United States all occurred at one level of trade. CEP sales, however, were determined to have occurred at a distinct level of trade. Consequently, we matched EP sales to identical or similar home market sales to the extent possible at the same level of trade. For CEP sales, we matched these to home market sales without distinguishing between home market levels of trade and granted a CEP offset. *See* Analysis Memorandum for the Preliminary Determination, November 29, 2000.

In the final determination, we determined that both EP and CEP sales in the United States were at the same level of trade. We also determined that there were two levels of trade in the home market, one of which was the same as the level of trade for both EP and CEP sales in the United States. Consequently, with regard to matching sales, we stated that ''For sales to the United States, the Department attempted to match these sales to all home market sales which were assigned a level of trade of ''1,'' and granted a level of trade adjustment if any U.S. sales matched to the second level of trade. We derived the level of trade adjustment by running a pattern of price comparison for sales in the home market.'' *See* Analysis Memorandum for the Final Determination, April 11, 2001 (page 4).

Our examination of the margin calculation program for the final determination indicates that the program did not follow the policy outlined in the Department's final determination analysis memorandum. While the Department correctly matched EP sales in the United States to identical or similar home market sales to the extent possible at the same level of trade, it continued the matching practice used in the preliminary determination and matched CEP sales in the United States to home market sales without distinguishing between the two home market levels of trade. The program should have accounted for CEP matches at different levels of trade, as stated in the final determination analysis memorandum.

19 CFR 351.224(f) states that a ministerial error is ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' The failure of

the margin calculation program to carry out the Department's stated policy adopted in the final determination analysis memorandum is clearly an unintentional error. Therefore, we have corrected the margin calculation program so that both EP and CEP sales in the United States are compared to identical or similar home market sales to the extent possible at the same level of trade. *See* Analysis Memorandum for details of the programming changes.

Amended Final Results

As a result of our review and the correction of the ministerial errors described above, we have determined that the following margin exists:

CIRCULAR WELDED NON-ALLOY STEEL PIPE

Producer/Manufacturer/Exporter	Weighted-average margin (in percent)
Tuberia Nacional	2.92

The Department shall determine, and the U.S. Customs Service (''Customs'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR. The Department's decision applies to all entries of subject merchandise produced and exported by TUNA, entered, or withdrawn from warehouse, for consumption on or after November 1, 1998 and on or before October 31, 1999.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of circular welded non-alloy steel pipe entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for TUNA will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the ''all others'' rate, which is 36.62 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 10, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17973 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071101B]

Proposed Information Collection; Comment Request; Prohibited Species Donation Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 17, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, F/AKR2, P.O. BOX 21668, Juneau, AK 99802–1668 (phone 907–586–7008).

SUPPLEMENTARY INFORMATION:

I. Abstract

Certain incidental catch of fish cannot be retained by fishing vessels due to management controls, and such prohibited species are usually discarded. Under a NOAA program these fish may be donated to certain tax-exempt groups for distribution to needy individuals. Documentation is necessary to ensure that donations go to authorized parties for legitimate purposes.

II. Method of Collection

The information is submitted to respond to requirements set forth in a regulation. There are also documentation and labeling requirements.

III. Data

OMB Number: 0648–0316.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions, business and other for-profit organizations.

Estimated Number of Respondents: 79.

Estimated Time Per Response: 40 hours for an application, 40 hours for documentation by a distributor, 6 minutes for labeling and product tracking of a shipment by a vessel or processor, and 15 minutes to provide documentation on a vessel or processor.

Estimated Total Annual Burden Hours: 152.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17852 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071101E]

Gulf of Mexico 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 Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Mackerel Stock Assessment Panel (MSAP).

DATES: This meeting will begin at 1:30 p.m. on Wednesday, August 1, 2001, and will conclude by 5 p.m. on Thursday, August 2, 2001.

ADDRESSES: The meeting will be held at the NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The MSAP will convene to review a stock assessment for cobia, *Rachycentron canadum*, in the Gulf and Atlantic area. The MSAP will consider available information from these analyses to determine the condition of the stocks and possible levels of acceptable biological catch (ABC) for the 2002–03 fishing year. The MSAP may also review estimates/proxies for maximum sustainable yield (MSY) and optimum yield (OY), as well as definitions of the overfishing and overfished condition. Finally, the MSAP will review management targets and rebuilding schedules, if needed.

Although non-emergency issues not contained in the agenda may come before the MSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal MSAP action during this meeting. MSAP action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the MSAP agenda can be obtained by calling (813) 228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by July 25, 2001.

Dated: July 13 , 2001.

Richard W. Surdi,

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

[FR Doc. 01–17939 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070901D]

Permits; Foreign Fishing

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

ACTION: Notice of receipt of foreign fishing application.

SUMMARY: NMFS publishes for public review and comment a summary of an application submitted by the Government of the Russian Federation requesting authorization to conduct fishing operations in the U.S. Exclusive Economic Zone (EEZ) in 2001 under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910; and/or to the Regional Fishery Management Councils listed below:

Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01905, Phone (978) 465–0492, Fax (978) 465–3116;

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19904, Phone (302) 674–2331, Fax (302) 674–4136.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: In accordance with a Memorandum of Understanding with the Secretary of State, NMFS publishes, for public review and comment, summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to fish in the U.S. EEZ under provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*).

This document concerns the receipt of an application from the Government of the Russian Federation requesting authorization to conduct joint venture (JV) operations in 2001 in the Northwest Atlantic Ocean for Atlantic herring and Atlantic mackerel. The large stern trawler/processor PATROKL is identified as the Russian vessel that would receive Atlantic herring and Atlantic mackerel from U.S. vessels in JV operations. The application also requests that the Government of the Russian Federation be allocated 3,000 metric tons (mt) of Atlantic herring and 2,000 mt of Atlantic mackerel for harvest by the named vessel in 2001.

Dated: July 12, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–17938 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meetings of the Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System (NCCS). The purpose of these meetings is to conduct a comprehensive and independent review of the NCCS positive measures to

assure authorized use of nuclear weapons when directed by the President while assuring against unauthorized or inadvertent use. This meeting will be closed to the public.

DATES: August 7–9, 2001.

ADDRESSES: National Security Agency, 9800 Savage Road, Fort Meade, MD 20755.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041, (703) 681–8681.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–17876 Filed 7–17–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Programmatic Environmental Impact Statement for Ford Island Development, Pearl Harbor, HI

AGENCY: Department of the Navy, DOD.

ACTION: Announcement of public hearings.

SUMMARY: The Department of the Navy (Navy) has prepared and filed with the United States Environmental Protection Agency (EPA) a Draft Programmatic Environmental Impact Statement (PEIS) for Ford Island Development, Pearl Harbor, Hawaii. Two public hearings will be held to receive oral and written comments on the Draft PEIS in accordance with the National Environmental Policy Act of 1969 (NEPA), as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and request input as part of the Section 106 process of the National Historic Preservation Act of 1966, as implemented by the Advisory Council on Historic Preservation regulations (36 CFR Part 800). Federal, state, and local agencies and interested individuals are invited to be present or represented at the hearing.

DATES AND ADDRESSES: The first public hearing will be held on Wednesday, August 1, 2001, at 7 p.m. in the Aliamanu Intermediate School Cafeteria, 3271 Salt Lake Boulevard, Honolulu, HI. The second public hearing will be held on Thursday, August 2, 2001, at 7:00 p.m. in the Washington Middle School Cafeteria, 1633 South King Street, Honolulu, HI.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Uehara (Code PLN231), Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, STE 100, Pearl Harbor, HI 96860–3134, telephone (808) 471–9338, fax (808) 474–5909, E-Mail .

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of NEPA, the Navy has prepared and filed with the EPA a Draft PEIS for development of Ford Island at Pearl Harbor, HI.

A Notice of Intent for this PEIS was published in the **Federal Register** on April 14, 2000 (65 FR 20141).

Two public scoping meetings were held in Honolulu, HI, on May 2, 2000, and on May 4, 2000.

The proposed action is to consolidate selected operations at Pearl Harbor by locating and relocating certain activities onto Ford Island. This proposed action will use special legislation (10 U.S.C. 2814) that permits the Navy to sell or lease underutilized Navy properties on Oahu and to use the proceeds (in cash or in kind) for construction and facilities maintenance on Ford Island. Other work will be accomplished through conventional means such as the Military Construction Program, Non-Appropriated Funds, and Family Housing Public-Private Venture. Under consideration are new construction and, as appropriate, adaptive reuse of existing structures on Ford Island, for up to 420 new family housing units, up to 250,000 square feet of administrative space, bachelor enlisted quarters for up to 1,000 personnel, and a consolidated training complex, as well as infrastructure improvements. Up to 75 acres on Ford Island are proposed for private sector opportunities through a lease agreement. Four other Navy-owned parcels are proposed for sale or lease in return for revenues or in-kind consideration: Navy property at the Waikele Branch of Naval Magazine Pearl Harbor; family housing and related property at the former Naval Air Station Barbers Point; family housing and related property at Iroquois Point/Puuloa Housing; and Halawa Landing property on Pearl Harbor main side.

The proposed action will make positive use of the available lands and historic buildings on Ford Island in order to achieve greater operational efficiency and provide improved housing and quality of life for sailors and their families. Specific objectives are to provide additional high-quality family housing and community support services in close proximity to the Pearl Harbor Naval Complex where sailors work, thereby reducing commuting distances and improving the quality of their lives, and reducing maintenance costs and congestion at Pearl Harbor main side by relocating certain activities to Ford Island and replacing obsolete facilities. Use of some portions of Ford Island is constrained by existing facilities, historic resources, and operational requirements.

Alternatives for different levels of intensity of land use on Ford Island are considered in the Draft PEIS: High Intensity; Medium Intensity; Low Intensity; and No Action. Each development alternative represents a different designed balance between Navy and private development activities on Ford Island, and each alternative, except the No Action Alternative, includes the sale or lease of Navy properties to support Ford Island development. The High Intensity alternative assumes a level of development on Ford Island that meets all Navy facilities requirements, combined with private development that maximizes mixed-use development. The Medium Intensity Alternative also meets Navy facilities requirements on Ford Island with private development representing a reasonably sized mixed-use development. The Low Intensity Alternative limits the development on Ford Island to Navy requirements only. The Draft PEIS also considers the No Action Alternative, which assumes no further development of Ford Island, no private development, and no sale or long-term lease of Navy properties.

No decision on the proposed action will be made until the NEPA process is completed. The decision will be announced when the Secretary of the Navy releases the Record of Decision.

The Draft PEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups. The Draft PEIS is available for public review at the following public libraries:

—Hawaii State Library, 478 South King Street, Honolulu, HI
—Salt Lake/Moanalua Public Library, 3225 Salt Lake Boulevard, Honolulu, HI
—Aiea Public Library, 99–143 Moanalua Road, Aiea, HI
—Pearl City Public Library, 1138 Waimano Home Road, Pearl City, HI
—Waipahu Public Library, 94–275 Mokuola Street, Waipahu, HI
—Ewa Beach Public Library, 91–950 North Road, Ewa Beach, HI

The Navy will conduct two public hearings to receive oral and written comments concerning the Draft PEIS. The public hearings will begin with a brief presentation followed by a request for comments on the Draft PEIS. Federal, state, and local agencies, and interested parties are invited to be

present or represented at the hearings. Those who intend to speak will be asked to submit a speaker card (available at the door). Oral comments will be transcribed by a stenographer. To assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record in the study, with equal weight given to each. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to Naval Facilities Engineering Command, Pacific Division, 258 Makalapa Drive, STE 100, Pearl Harbor, Hawaii 96860–3134 (Attn: Mr. Stanley Uehara, Code PLN231). Written comments should be postmarked by August 27, 2001.

Dated: July 11, 2001.

T. J. Welsh,

Lieutenant Commander, Office of the Judge Advocate General, Federal Register Liaison Officer.

[FR Doc. 01–17905 Filed 7–17–01; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, July 25, 2001. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 9:30 a.m. Topics of discussion will include a report on the Watershed Advisory Council meeting of July 24, 2001; status of the Current Comprehensive Plan; status of PCB Point Source Discharge Monitoring; and summaries of the Toxics Advisory Committee meetings of June 28 and July 18, 2001. The conference also will include presentations on Sustainable Wastewater Management Within the Tri-State Middle Delaware Region and Cooperative Inter-Agency Development of a Delaware River Water Trail.

The subjects of the public hearing to be held during the 1:00 p.m. business meeting include, in addition to the dockets listed below, a resolution confirming the appointment of Acting General Counsel to the Commission.

The dockets scheduled for public hearing are as follows:

1. *North Wales Water Authority D–90–6 CP (Revision).* An application for the revision of a ground water withdrawal project to reallocate the existing 210 million gallons (mg)/30 days to 195 mg/30 days for the applicant's public water distribution system from Wells Nos. 1, 4B, 8, 9, 10, 11, 14, 17, 21, 22, 25, 31 and 34 in the Stockton, Lockatong and Brunswick Formations. The project is located in North Wales Borough, Upper Gwynedd, Lower Gwynedd, Whitpain, Upper Dublin and Montgomery Townships in Montgomery County; and New Britain Township in Bucks County, all in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Walnutport Authority D–90–87 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 8 mg/30 days of water to the applicant's public water distribution system from existing Wells Nos. 1 through 5 in the Martinsburg Formation. No increase in maximum allocation is proposed. The project is located in Walnutport Borough and Lehigh Township, Northampton County, Pennsylvania.

3. *Yardley Country Club D–2000–32.* An application for approval of a ground water withdrawal project to supply up to 15 mg/30 days of water to the applicant's golf course irrigation system from new Well No. 1 in the Stockton Formation and to limit the withdrawal from all sources to 15 mg/30 days. The project is located in Yardley Borough, Bucks County, Pennsylvania.

4. *Kimberton Golf Club D–2001–4.* An application for approval of a ground water withdrawal project to supply up to 4.2 mg/30 days of water to the applicant's golf course irrigation system from newly redeveloped Well No. PW–1. The project well is located in the Stockton Formation in East Vincent Township, Chester County in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Heritage Building Group D–2001–8.* An application for approval of a ground water withdrawal project to supply up to 6.5 mg/30 days of water to irrigate the applicant's Heritage Hills Golf Club from new Wells Nos. TW–1 and TW–2. The project is located in the Brunswick Formation in Limerick and Lower Pottsgrove Townships, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

6. *New Jersey Department of Corrections D–2001–22 CP.* An application to rerate the Bayside State Prison sewage treatment plant (STP) from 0.55 million gallons per day (mgd) to 0.61 mgd and continue to provide advanced secondary treatment. The STP serves only the correctional facilities and will continue to discharge through the existing outfall to Riggins Ditch, a tributary of Delaware Bay. The project is located just west of Delsea Drive (State Route 47) in Maurice River Township, Cumberland County, New Jersey.

7. *S.W.E.C, LLC D–2001–28.* An application to provide a non-utility electric power generator with an average of 8.5 mgd of water diverted via the USX Fairless Works intake on the Delaware River. USX's current surface water allocation is sufficient for supply of the project water demand. The proposed natural gas-fired combustion turbines and steam turbine generators are designed to produce 1,190 megawatts (MW) of electric power for the Pennsylvania-Jersey-Maryland (PJM) grid. The project will be constructed on a 45 acre site within the USX Industrial Park off Bordentown Road in Falls Township, Bucks County, Pennsylvania. Following average consumptive losses of 6.15 mgd to evaporation and drift, approximately 2.35 mgd of wastewater will be routed to the USX wastewater treatment facility prior to discharge to the Delaware River in Delaware River Basin Commission Water Quality Zone 2.

8. *Joyfor Joint Venture D–2001–32.* An application to construct a 0.05 mgd tertiary level STP to serve a proposed adjacent shopping center and hotel located approximately 6,000 feet northeast of the intersection of State Route 3 and Providence Road in Newtown Township, Delaware County, Pennsylvania. Treated effluent will be discharged to an unnamed tributary of Crum Creek, locally known as Reese's Run.

9. *Village of Delhi D–2001–33 CP.* An application to upgrade and expand a 0.515 mgd secondary level STP to provide tertiary treatment of 0.815 mgd. The plant is located just south of State Route 10, about 1 mile west of State Route 28 in the Town of Delhi, Delaware County, New York. The project will continue to serve the residents of Delhi Village and will be rerated after the upgrade to receive and process the pretreated waste from two small industries, which will discontinue their own existing discharge. The STP effluent will continue to be discharged via the existing outfall to the West Branch Delaware River, about 22 river miles upstream from the Cannonsville Reservoir in Delaware River Basin Commission Water Quality Zone W1.

In addition to the public hearing, the Commission will address the following at its 1:00 p.m. business meeting: minutes of the June 6, 2001 business meeting; announcements; report on hydrologic conditions; reports by the Executive Director and Acting General Counsel; public dialogue; and resolutions (1) authorizing the continued procurement of services for the Commission's Estuary Model Peer Review Team; (2) authorizing the Executive Director to issue an RFP for sample collection and analysis to support the development of TMDLs for PCBs, chlorinated pesticides and metals in the Delaware Estuary; (3) approving an investment policy for the Commission; and (4) authorizing the Executive Director to contract with two asset management firms.

Documents relating to the dockets and other items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary, Pamela M. Bush, directly at 609–883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the Commission may accommodate your needs.

July 10, 2001.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 01–17958 Filed 7–17–01; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 17, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 12, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Bilingual Education and Minority Language Affairs

Type of Review: New.

Title: Descriptive Study of Services to Limited English Proficient (LEP) Students.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 30,564; Burden Hours: 13,554.

Abstract: The study will provide data on the number and characteristics of LEP students, including LEP students with disabilities, and the instructional services they receive in public schools across the U.S. The findings will be used by federal, state, and local policy makers to inform decision-making concerning programs for LEP students and LEP students with disabilities. Data will be collected from public school district administrators and school staff.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17898 Filed 7–17–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No: 84.349A]

Early Childhood Educator Professional Development Program Grants

AGENCY: Department of Education.

ACTION: Notice of special final competition procedures for fiscal year (FY) 2001 Early Childhood Educator Professional Development Program grants.

SUMMARY: On April 24, 2001, the Secretary published in the **Federal Register** (66 FR 20640–20644) a notice inviting applications for new awards and final procedures and requirements for a FY 2001 competition for Early Childhood Educator Professional Development Program grants. The application deadline under that notice was June 25, 2001, which was extended to July 2, 2001 for applicants in certain areas of Louisiana, Texas, and Florida that the President declared as disaster areas due to Tropical Storm Allison (June 26, 2001; 66 FR 33953–33954).

The notice inviting applications contained an absolute priority, competitive and invitational preferences, and selection criteria that apply to this competition. In addition, the notice indicated that 34 CFR part 75 of the Education Department General Administrative Regulations (EDGAR) applies to these grants, which includes

provisions in § 75.217 governing the Secretary's selection of applications for new awards.

Due to the unexpected receipt of over two hundred grant applications, the limited estimated number (10) of possible grant awards, and the importance of identifying the highest-quality early childhood educator professional development programs for replication from this large applicant pool, the Secretary announces special final competition procedures that will govern this competition and FY 2001 awards of these grants.

Competition Procedures. Except as stated below, the Secretary will follow the procedures in part 75 for selecting applications for new grants, including the procedures in § 75.217.

As indicated in § 75.217(a), the Secretary will select applications for new grants on the basis of the authorizing statute, the absolute priority, and the competitive preferences and selection criteria previously published in the **Federal Register** in the notice inviting applications. In selecting applications, the Secretary will use a two-tier process of review by experts who include persons who are not employees of the Federal Government.

In the first tier of review, panels of experts will evaluate eligible applications against the selection criteria published in the notice inviting applications. Depending upon the quality of the applications and their relative merit, the Secretary plans to select between approximately 30–50 of the highest-quality eligible applications that meet the absolute priority, based upon the points awarded under the selection criteria and competitive preferences during the first-tier review. Those applications then will qualify for a second-tier review.

In the second tier of review, a smaller number of panels comprised of experts who have specialized research-based knowledge about early childhood education, early literacy, and language development will review the applications that qualify for this tier of review. These specialized expert panels will evaluate the applications against the selection criteria published in the notice inviting applications. This second-tier review will be independent of the first-tier review. The Secretary will prepare a rank order of the applications in the second-tier review, based solely on the evaluation of their quality according to the selection criteria and their qualification for additional points under each of the competitive preferences.

The Secretary then will use the criteria in § 75.217(d) to determine the order in which the second group of applications will be selected for grants.

Waiver of Proposed Rulemaking: It is the Secretary's general practice, in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new program such as this one. In addition, section 553(b)(A) of the APA provides that procedural rules, such as those in this notice, are not subject to rulemaking. Because of the unanticipated need for special competition procedures and to ensure timely awards of these grant funds, the Secretary has decided to forego public comment with respect to these procedures in accordance with section 437(d)(1) of GEPA and section 553(b)(A) of the APA. These procedures will be applicable only to the FY 2001 competition.

FOR FURTHER INFORMATION CONTACT: Doris F. Sligh, Compensatory Education Programs, Office of Elementary and Secondary Education, 400 Maryland Avenue SW, Washington, DC 20202–6132. Telephone: (202) 260–0999, or via Internet: *Doris.Sligh@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. If you are an individual with a disability, you may obtain a copy of this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 6622 and Public Law No. 106–554.

Dated: July 12, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–17914 Filed 7–17–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[Docket Nos. EA–244 and EA–245]

Application to Export Electric Energy; IDACORP Energy, L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: Idaho Power Company (IPC) and IDACORP Energy L.P. (IELP) jointly applied to transfer the authority to export electric energy from the United States to Canada and to Mexico, pursuant to section 202(e) of the Federal Power Act, from IPC to IELP.

DATES: Comments, protests or requests to intervene must be submitted on or before August 17, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 19, 2000, in Docket EA–222, and on March 30, 2001, in Docket EA–233, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized IPC to export electric energy from the U.S. to Canada and to Mexico, respectively, using a collection of international transmission facilities appropriate for third-party transmission of electric energy.

IDACORP, Inc. is a holding company of both IPC and IELP. The proposed request to transfer export authority is occasioned by a corporate reorganization of IDACORP, Inc., in which IPC will perform only public utility functions of owning and operating generating and transmission facilities while IELP will perform only power marketing functions. Since IPC

will no longer be performing power marketing functions, the subject applications request the transfer of the authority to export electric energy from IPC to IELP.

IELP will purchase the electric energy to be exported to Mexico and to Canada from electric utilities, Federal power marketing agencies, cogeneration and small power production facilities, and exempt wholesale generators within the United States.

In FE Docket EA–244, IELP proposes to arrange for the delivery of electric energy to Mexico over the international transmission facilities owned by San Diego Gas & Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico.

In FE Docket EA–245, IELP proposes to arrange for the delivery of electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by IELP, as more fully described in the applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the IELP application to transfer IPC's authority to export electric energy to Mexico should be clearly marked with Docket EA–244. Comments on the IELP application to transfer IPC's authority to export electric energy to Canada should be clearly marked with Docket EA–245. Additional copies are to be filed directly with Ms. Michelle I. K. Catherine, Manager, Contracts Administration, IDACORP Energy, L.P., Cottonwood Plaza, 350 North Mitchell Street, Boise, ID 83704 AND Mr. Jeffrey S. Burk, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity Regulation'' and then ''Pending Procedures'' from the options menus.

Issued in Washington, DC on July 12, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–17916 Filed 7–17–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, August 1, 2001, 9:00 a.m. to 6:00 p.m.; Thursday, August 2, 2001, 9:00 a.m. to 5:30 p.m.

ADDRESS: Princeton Plasma Physics Laboratory, Room LSB–318, James Forrestal Campus U.S. Route #1 North at Sayre Drive, Princeton, New Jersey 08543.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: The major purpose of this meeting is for the full committee to complete its work on the Theory Program review charge and the Burning Plasma Science charge. The committee will also receive briefings on the various elements of the Compact Stellarator program, and the ITER Canada proposal to host the International Thermonuclear Experimental Reactor (ITER).

Tentative Agenda

Wednesday, August 1, 2001

- DOE/Office of Fusion Energy Sciences (OFES) Perspective
- Report from the Theory Review Panel
- Office of Management and Budget Views on the National Research Council fusion report and on the National Energy Policy
- Presentations on the Compact Stellarator Program
- Tour of Princeton Plasma Physics Laboratory (PPPL) Facilities

Thursday, August 2, 2001

- Presentation from ITER Canada-Proposal to build the ITER Facility in Ontario
- Report from the Burning Plasma Science Panel
- Public Comments

Public Participation: The meeting is open to the public. 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 Albert L. Opdenaker at 301–903–8584 (fax) or albert.opdenaker@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on July 12, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–17915 Filed 7–17–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–025]

ANR Pipeline Company; Notice of Negotiated Rate Filing

July 10, 2001.

Take notice that on July 2, 2001, ANR Pipeline Company (ANR) tendered for filing and approval one Service Agreement between ANR and CoEnergy Trading Company pursuant to ANR's Rate Schedule FTS–1. ANR states that the Agreement contains a negotiated rate arrangement to be effective July 1, 2001. ANR requests that the Commission accept and approve the Agreement to be effective July 1, 2001.

ANR states that copies of the filing has been mailed to each of ANR's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17893 Filed 7–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–026]

ANR Pipeline Company; Notice of Negotiated Rate Filing

July 10, 2001.

Take notice that on July 2, 2001, ANR Pipeline Company (ANR) tendered for filing and approval three Service Agreements between ANR and Baltimore Gas and Electric Company pursuant to ANR's Rate Schedules FTS–1, FTS–2 and FSS. ANR states that the agreements contain a negotiated rate arrangement to be effective July 1, 2001. ANR requests that the Commission accept and approve the Agreements to be effective July 1, 2001.

ANR states that copies of the filing have been mailed to each of ANR's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17894 Filed 7–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–482–000]

Dominion Transmission, Inc.; Notice of Status Report and Request for Waiver

July 12, 2001.

Take notice that on July 9, 2001, Dominion Transmission Inc. (DTI) tendered for filing the First Revised Volume 2 tariff and First Revised Sheets Nos. 2–8 in DTI's Third Revised Volume 1 to reflect the corporate name change effective April 11, 2000.

DTI states that copies of this filing are being sent by first-class mail, postage prepaid, by DTI to DTI's customers listed in Original Volumes 2 and 2A. A copy of this letter and the Table of Contents changes to Third Revised Volume No. 1 are being sent to DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17892 Filed 7–17–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–397–000]

National Fuel Gas Supply Corporation; Notice of Application

July 12, 2001.

Take notice that on July 3, 2001, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an abbreviated application in Docket No. CP01–397–000 pursuant to Section 7(c) of the Natural Gas Act, as amended, and Part 157 of the Commission's Rules and Regulations, requesting a certificate of public convenience and necessity to drill a new horizontal injection/withdrawal well at its Lawtons Storage Field. The well will be located in the Town of Collins, Erie County, New York. The application is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

National Fuel proposes to drill one new horizontal injection/withdrawal well, to be designated Well 7404, at its Lawtons Storage Field. The intent of this work is to replace the deliverability that has been lost due to an ongoing caving problem that bridges off the flow of gas. Well 7404 will be drilled vertically to approximately 1,925 feet, and then will be deviated to enter the storage formation horizontally at a true vertical depth (TVD) of approximately 2,420 feet. The well will be confined totally within the existing certificated storage boundary of the Lawtons Storage Field. National Fuel states that it would need to construct approximately 110 feet of 6-inch diameter well line to connect Well 7404 to the existing 6-inch diameter storage backbone line.

National Fuel states the horizontal well will enable more efficient use of the southern section of the Lawtons Storage Field, known as the Quaker Pool, and should adequately replace the flow rate lost at the wells with exposed shale. National Fuel estimates that the proposed project would cost $490,000.

Any questions regarding the application be directed to David W. Reitz, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203, at (716) 857–7949, or at *reitzd@natfuel.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 2, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–17891 Filed 7–17–01; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2542–000, et al.]

Xcel Energy Services Inc., et al.; Electric Rate and Corporate Regulation Filings

July 12, 2001.

Take notice that the following filings have been made with the Commission:

1. Xcel Energy Services Inc.

[Docket No. ER01–2542–000]

Take notice that on July 9, 2001, Xcel Energy Services Inc., on behalf of Public Service Company of Colorado (PSCo), submitted for filing an interconnection agreement between PSCo and Enron North America, as agent for Fountain Valley Power, L.L.C.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. CalPeak Power-Border LLC

[Docket No. EG01–254–000]

Take notice that on July 9, 2001, CalPeak Power-Border LLC (Border) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment date: August 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.

3. CalPeak Power-Vaca Dixon LLC

[Docket No. EG01–255–000]

Take notice that on July 9, 2001, CalPeak Power-Vaca Dixon LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: August 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.

4. CalPeak Power-El Cajon LLC

[Docket No. EG01–256–000]

Take notice that on July 9, 2001, CalPeak Power—El Cajon LLC (El Cajon) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: August 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 accuracy of the application.

5. CalPeak Power-Mission LLC

[Docket No. EG01–257–000]

Take notice that on July 9, 2001, CalPeak Power-Mission LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: August 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.

6. CalPeak Power-Enterprise LLC

[Docket No. EG01–258–000]

Take notice that on July 9, 2001, CalPeak Power-Enterprise LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: August 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.

7. CalPeak Power-Panoche LLC

[Docket No. EG01–259–000]

Take notice that on July 9, 2001, CalPeak Power-Panoche LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: August 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.

8. CalPeak Power-Midway LLC

[Docket No. EG01–260–000]

Take notice that on July 9, 2001, CalPeak Power-Midway LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: August 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.

9. Central Maine Power Company

[Docket No. ER01–1851–001]

Please take notice that on July 6, 2001, Central Maine Power Company (CMP) tendered for filing the First Amendment to the Interconnection Agreement by and between CMP and Northeast Empire Limited Partnership #1, designated as CMP—FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 129, and conformed to the requirements of Order 614.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. New York Independent System Operator, Inc.

[Docket No. ER01–1942–001]

Take notice that on July 9, 2001, the New York Independent System Operator, Inc. (NYISO) submitted its compliance filing in the above-captioned proceeding. The NYISO has served a copy of this filing upon all parties that are included on the Commission's official service list in this proceeding.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Company

[Docket No. ER01–2538–000]

Take notice that on July 9, 2001, Arizona Public Service Company (APS) tendered for filing a revised Exhibits for Citizens Utilities Company (Citizens) applicable under the APS–FERC Rate Schedule No. 225.

Copies of this filing have been served on Citizens and the Arizona Corporation Commission.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Michigan Electric Transmission Co.

[Docket No. ER01–2539–000]

Take notice that on July 9, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing an executed transmission service agreement with Sebewaing Light & Water Department (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The agreement has an effective date of June 8, 2001.

Copies of the filed agreement were served upon the Michigan Public Service Commission, ITC, and the Customer.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Public Service Corporation

[Docket No. ER01–2540–000]

Take notice that on July 9, 2001, Wisconsin Public Service Corporation (WPSC) filed a notice of termination for its W–3 Partial Requirements Load Pattern Tariff, FERC Electric Tariff, Original Volume No. 3 (the W–3 Tariff). WPSC no longer has any customers under the W–3 Tariff. WPSC requests that the notice of termination become effective on September 7, 2001, sixty days after the date of this filing. WPSC

has served this filing on the Public Service Commission of Wisconsin.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Northern Indiana Public Service Company

[Docket No. ER01–2541–000]

Take notice that on July 9, 2001, Northern Indiana Public Service Company (Northern Indiana) filed a generation interconnection agreement (Interconnection Agreement) with Whiting Clean Energy, Inc. (Whiting). Whiting owns and will operate a 550 MW gas-fired generation facility located in Whiting, Indiana, which is located within northern Indiana's Controlled Area. Northern Indiana has requested an effective date of July 9, 2001.

Copies of this filing have been sent to Whiting, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: July 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

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, N.E., Washington, D.C. 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 this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17940 Filed 7–17–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7012–4]

Office of Air and Radiation-Immediate Office Environmental Internship Assistance Completion: Solicitation Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document solicits grant proposals from educational institutions and non-profit organizations to support the Office of Air and Radiation Immediate Office's Environmental Internship Program and explains the process for submitting such a proposal.

DATES: All applications should be received by September 30, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Zarow, USEPA, Office of Air and Radiation, Immediate Office, Ariel Rios Building; 1200 Pennsylvania Avenue, NW.; Washington, DC 20004, mail code 6101A. Telephone (202) 564–7431; Fax (202) 501–1004; or e-mail: zarow.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

Contents by Section

I. Background/Purpose
II. Funding Issues
III. Eligibility
IV. Deadlines/Dates
V. Program Design
VI. Criteria/Scope
VII. Proposals/Application Format
VIII. How to Apply
IX. Where and When to Submit
X. Additional Considerations
XI. Pre-application Assistance

I. Background/Purpose

This document solicits grant proposals from educational institutions and non-profit organizations to support the Office of Air and Radiation's Immediate Office's Environmental Internship Program (hereinafter referred to as ''program'') that will provide undergraduate students with internships in various environmental positions. This intern program will provide students with work experience, orientation, mentoring, career development, and resume writing to reflect their environmental training positions. This program will enable students to prepare to become future leaders in the environmental field and to recognize and appropriately manage complex environmental problems. It will also provide students with an environmental consciousness to encourage them to pursue environmental careers and become environmentally conscious citizens.

II. Funding Issues

Subject to the availability of funds, EPA anticipates approximately $600,000 over a three year period, to be available for this program, including all direct and indirect costs. EPA expects to award one cooperative agreement for the full amount. Proposals may request funding with a total project cost of up to $200,000 per year with a duration of up to three years. This cooperative agreement is authorized under CAA section 103(b)(3) and no matching funds are required from the recipient. The Catalogue of Federal Domestic Assistance (FDA) is 66.606.

III. Eligibility

Organizations being targeted for this assistance agreement include educational institutions and not-for-profit organizations. CAA section 103 prohibits for-profit organizations from receiving grants from EPA. EPA reserves the right to reject all applications and make no awards.

IV. Deadlines/Dates

In order to efficiently manage the selection process, the Office of Air and Radiation requests that an ''Intent to Apply'' be submitted by August 13. These should be submitted to Linda Zarow; mail code 6101A; Room Number 5443K Ariel Rios North Building; Environmental Protection Agency; 1200 Pennsylvania Ave., NW.; Washington, D.C. 20460. (Please provide project title or subject and e-mail address.) E-mail address: Zarow.linda@epa.gov; Fax # 202/501–1004.

An ''Intent to Apply'' simply states, in the form of e-mail, letter, or fax, that your organization intends to submit a proposal to be received by the September 30, 2001 deadline for receipt of pre-proposals. Please provide your project title or subject and a return e-mail address. Submitting an ''Intent to Apply'' does not commit an organization to submit a pre-proposal. Only those submitting an ''Intent to Apply'' may submit a pre-proposal. To allow for efficient management of the competitive process, OAR is requesting organizations to submit an Intent to Apply no later than August 13, 2001.

V. Program Design

EPA anticipates student stipends should not exceed $4,500 per semester with a minimum of seven students per semester. Applicants should describe the following in detail:

- *Recruitment:* Describe your process for recruiting from a diverse population of students. Include a list of colleges/universities to be targeted for recruitment activities and describe how

your organization will ensure qualified students have access to internship materials.

• *Housing:* It is anticipated most interns will be from cities other than Washington, D.C. and, therefore, will require assistance in obtaining housing accessible to public transportation. Describe the type of housing assistance you will provide for interns.

• *Stipends:* Describe your process for tracking and payment of student stipends.

• *Tracking:* Describe your process for measuring the success of this program in encouraging students to pursue environmental careers.

• *Student Evaluation and Application Processing:* Describe your process for accepting, reviewing and evaluating student applications. At a minimum, the application process must evaluate potential interns on the basis of their computer skills, academic record, awards, and writing skills. Special consideration should be given to applicants that have scholarships or fellowships and work experience.

• *Internship Training Program:* Describe your protocol and procedures for managing an environmental internship program. At a minimum, the protocol and procedures should address college accreditation for students, supplemental training for interns and evaluation of student performance.

• *Student eligibility requirements for internships:* Students must be enrolled full-time in a four year accredited college or university. Full time students enrolled in a four year college or university must have achieved at least second semester sophomore standing, or have completed 45 credit hours of academic study. Students must have a grade point average of 2.8 or higher to meet eligibility for internships at EPA.

VI. Criteria/Scope

Review and Selection Process: Pre-proposals submitted to EPA headquarters will be evaluated using the criteria defined below. Pre-proposals will be reviewed in two phases—the screening phase and the evaluation phase. During the screening phase, proposals will be reviewed to be determined whether they meet the basic requirements of this solicitation. Only those pre-proposals that meet all of these basic requirements will enter the full evaluation phase of the review process. During the evaluation phase, proposals will be evaluated based upon the quality of their work plans, and how well their proposed programs meet the criterion outlined below. Reviewers conducting the screening and evaluation phases of the review process will include EPA officials and external environmental educators approved by EPA. At the conclusion of the evaluation phase, the reviewers will score work plans, on a one hundred point scale, based upon the system below:

Criterion	Maximum points per criterion
Effectiveness of overall work plan and recruitment time line, and reasonableness of costs contained in budget detail	30
Ability to recruit from a diverse population of students and schools	20
Ability to assist students in locating housing arrangements accessible to public transportation	20
Adequacy of student accreditation program and supplemental training	20
Ability to evaluate intern performance	10
Total Points Possible	100

VII. Proposals/Application Format

The pre-proposal should conform to the following outline:

1. Title
2. Applicant (Organization) and contact name, phone number, fax and e-mail address
3. Summary of funds requested by budget categories contained in SF–424
4. Project period: beginning and ending dates (for planning purposes, applicants should assume funds will be available in May 2002 to begin recruiting students for placement during Fall 2002)
5. Project work plan (including a description of all tasks, dates of completion, products and deliverables, and detailed budget and narrative)
6. Evaluation plan
7. Recruitment plan
8. Internship training program
9. Tracking plan
10. Report Schedule: Acknowledgment of quarterly report requirement (schedule established by EPA) and planned final report submission date
11. Budget (Please provide for the following categories):
    —Personnel
    —Fringe Benefits
    —Contractual Costs
    —Travel
    —Equipment
    —Supplies
    —Other
    —Total Direct Costs
    —Total Cost

VIII. How To Apply

Intents to Apply: Intents to Apply may take the form of an e-mail, letter or fax and should be sent to: Linda Zarow, Ariel Rios Building, 1200 Pennsylvania Ave. Rm. 5433, Washington DC 20004; mail code 6101A, fax (202) 501–1004.; email: zarow.linda@epa.gov. Please include organization name, contact, and phone number.

Pre-Proposals: A hard copy original and 6 copies of the pre-proposal should be submitted to Linda Zarow at the address stated above. The pre-proposal must be postmarked before midnight September 30, 2001. Courier or personally delivered applications must be brought to Room 5443K Ariel Rios North Building, 1200 Pennsylvania Avenue, NW., Washington DC 20004.

Submission of an Intent to Apply or a pre-proposal does not guarantee funding.

IX. Pre-Application Assistance

To ensure that every interested party has equal opportunity to gain any needed additional administrative information useful to the application process, OAR will schedule a conference call for those who have submitted an intent to apply. EPA will notify applicants submitting an Intent to Apply of the date, time and call in number for this pre-application discussion. Questions and answers from this conference call will be summarized and available by contacting Linda Zarow by e-mail (zarow.linda@epa.gov). Federal rules protecting applicants' equal access to information prohibit any other contact that would result in information given to some but not all applicants. Therefore, as much as it desires to encourage all interested applicants, EPA can give no other assistance prior to final submission of applications. Requests for information outside the context of this conference call cannot be answered. The content of the call is entirely dependent upon questions asked.

Dated: July 10, 2001.

Linda Zarow,

Program Analyst, Office of Air and Radiation.

[FR Doc. 01–17909 Filed 7–17–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

July 12, 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 August 17, 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 Bobby Brown, Federal Communications Commission, Room 1–A739, 445 12th Street, SW, DC 20554 or via the Internet to *babrown@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Bobby Brown at 202–418–0539 or via the Internet at *babrown@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0211.

Title: Section 73.1943 Political File.

Form No.: Not applicable.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 16,597.

Estimated Time Per Response: 0.25 hour per request (each station is estimated to have 25 political broadcasts per year).

Frequency of Response: On occasion.

Total Annual Burden: 104,744 hours.

Total Annual Cost: 0.

Needs and Uses: Section 73.1943 requires licensees of broadcast stations to keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such request. The data is used by the public to assess money expended and time allotted to a political candidate and to ensure that equal access was afforded to other qualified candidates.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–17927 Filed 7–17–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 01–08]

The Impact of the Government Paperwork Elimination Act and the Electronic Signatures in Global and National Commerce Act

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Maritime Commission (''FMC'' or ''Commission'') is issuing this Inquiry to solicit information and comments concerning the impact of the Government Paperwork Elimination Act and the Electronic Signatures in Global and National Commerce Act on all sectors of the U.S. ocean shipping industry. These comments will assist the Commission as it analyzes the use and acceptance of documents in electronic form, as well as other means of engaging in electronic transactions. The Commission plans to provide individuals or entities with the option to submit information or transact business with the Commission electronically, where practicable, and to maintain records electronically when practicable.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications, August 17, 2001.

ADDRESS COMMENTS TO: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Florence A. Carr, Deputy Executive Director, Office of the Executive Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5800, E-mail: *florence@fmc.gov.*

SUPPLEMENTARY INFORMATION: The Commission is seeking information and comments from interested parties regarding the impact of the Government Paperwork Elimination Act (''GPEA''), Public Law 105–277, and the Electronic Signatures in Global and National Commerce Act (''E–SIGN''), Public Law. 106–229, on all sectors of the U.S. ocean shipping industry.

GPEA provides that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. GPEA requires agencies, by October 21, 2003, to provide for (1) the option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) the use and acceptance of electronic signatures, when practicable. GPEA defines ''electronic signature'' as a method of signing an electronic message that (a) identifies and authenticates a particular person as the source of the electronic message; and (b) indicates such person's approval of the information contained in the electronic message. GPEA encourages Federal Government use of a range of electronic signature alternatives.

E–SIGN eliminates legal barriers to the use of electronic technology to form and sign contracts, collect and store documents, and send and receive notices and disclosures. E–SIGN provides that a contract, signature, or record may not be denied legal effect, validity or enforceability solely because it is in electronic form, and that a contract relating to such a transaction may not be denied legal effect, validity or enforceability solely because an electronic signature or electronic record was used in its formation, provided that, among other things, the parties agree to use or accept electronic records and or electronic signatures. Provisions in Federal and state statutes and agency regulations requiring the use of paper records and ink signatures in commercial, consumer, and business transactions have been superseded by E–SIGN as of October 1, 2000.

E–SIGN also preserves consumer protections for electronic commerce such as exist for paper-based transactions. The Act applies broadly to

federal and state statutes and regulations governing private sector (including business-to-business and business-to-consumer) activities. The Act generally covers legal requirements that information be disclosed in private transactions. It also requires that agencies generally allow private parties to retain records electronically. The Government may establish appropriate performance standards for accuracy, integrity, and accessibility of records retained electronically, to ensure that compliance with laws can be determined, taxpayers can be protected, and the agency mission's can be accomplished.

In order for the FMC to develop and implement procedures for the use and acceptance of documents in electronic form where practicable, as well as other means of engaging in electronic transactions, the agency must assess such factors as costs, benefits, risks, available technologies, confidentiality and security measures.

Therefore, the Commission is seeking public comment to assist in its assessment. The Attachment contains several questions which we ask respondents to answer. If you or your organization are required to complete and submit any of the following forms/ information collections to the FMC pursuant to 46 CFR Part 500 *et seq.*, the Commission would be especially interested in your responses to the questions in the Attachment.

- Form FMC–1 Organization Information
- Form FMC–18 Application for a License as an Ocean Transportation Intermediary
- Form FMC–48 Ocean Transportation Intermediary Bond
- Form FMC–67 Ocean Transportation Intermediary Insurance Form
- Form FMC–68 Ocean Transportation Intermediary Guaranty Form
- Form FMC–69 Ocean Transportation Intermediary Group Bond Form
- Form FMC–83 Service Contracts User Registration Form
- Form FMC–131 Application for Certificate of Financial Responsibility
- Form FMC–132A Passenger Vessel Surety Bond
- Form FMC–132B Passenger Vessel Surety Bond
- Form FMC–133 FMC Guaranty in Respect of Liability for Nonperformance Section 3 of the Act Pub. L. 89–777
- Form FMC–133B FMC Guaranty in Respect of Liability for Death or Injury Section 2 of the Act Pub. L. 89–777
- Form FMC–150 Information for Class A/B Agreements and Instructions
- Form FMC–152A Monitoring Reports for Class A Agreements
- Form FMC–152B Monitoring Reports for Class B Agreements
- Form FMC–152C Monitoring Reports for Class C Agreements
- Form FMC–151 Information for Class C Agreements and Instructions

The Commission encourages prospective commenters to address all relevant questions; however, there is no requirement that all questions be answered. Commenters are free to answer only those questions which they so choose.

In addition to availability in hard copy or by e-mail copy from the Commission's Secretary, the Notice of Inquiry (''NOI'') questions will be made available on the Commission's website at *http://www.fmc.gov* in a downloadable text file. Comments may be submitted in hard copy or as an attachment to an e-mail. These e-mail attachments must be submitted in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications. For further information contact the Secretary at *Secretary@fmc.gov* or (202) 523–5725.

Now therefore, it is Ordered that Notice of this Inquiry be published in the **Federal Register**.

By the Commission.

Bryant L. VanBrakle,

Secretary.

Attachment—NOI Questions

Commenters should provide their organization's name and address, their category of organization (e.g., Vessel Operating Common Carrier, Shipper, Shippers' Association, Ocean Transportation Intermediaries), and a telephone number for the commenting official.

1. Please identify (by FMC form number) the forms/information collections which you or your organization are required to submit to the FMC. For each form identified please rate the sensitivity of the data and the transaction as either high, medium or low, using the following definitions for each.

High sensitivity—the data/transaction is of critical concern, may contain proprietary information, or consists of data files that require safeguarding.

Medium sensitivity—the data/transaction is an important concern but not necessarily paramount in the organization's priorities. This includes data whose release or distribution outside of the organization or the Commission must be controlled and protected against acts as malicious destruction, unauthorized alteration or disclosure.

Low sensitivity—some minimum level of security is required, but not the same level as the previous two categories, e.g., data files which have value to an originator only in their raw form, or data requiring safeguarding by the Privacy Act but which contain information that is nearly all in the public domain.

2. Are you or is your organization now using or planning to use any form of electronic signature technology as part of your business activities? If yes, briefly describe the context in which it is used or planned to be used and indicate how frequently it may be used.

3. Are you or is anyone in your organization familiar with Public Key Infrastructure (''PKI'') and Automated Certificates of Electronic Signature? If yes, indicate whether you are using or planning to use PKI electronic signature certificates.

4. What benefits, if any, do you or your organization anticipate if the Commission establishes an electronic option for the forms/information collections you identified in question 1?

5. What additional risks to the data or the transaction, if any, do you or your organization anticipate should the Commission establish an electronic reporting option for the forms/ information collections you identified in question 1?

6. With respect to the forms/information collections you identified in response to question 1, what obstacles or barriers do you or your organization expect may impede the Commission's successful establishment of electronic options?

7. With respect to the forms/information collections you or your organization are required to provide to the FMC, which of the issues listed below pose the most concern for you should that same form/information collection be provided on an electronic platform (meaning you can access the form, complete it, sign it, and transmit the completed/signed document back to the FMC electronically)? Briefly explain.

a. *Confidentiality*—Ensuring that information can be read only by authorized entities, including possible encryption of information for privacy/confidentiality or security purposes.

b. *Integrity*—Ensuring that data is unchanged from its source and has not been accidentally or maliciously altered. This includes but is not limited to:

1. *Authentication*—Ensuring that transmissions and messages, and their originators, are authentic, and that a recipient is eligible to receive specific categories of information. This includes possibly having a third party verify that the content of a message has not been changed in transit, and that it is what it purports to be.

2. *Nonrepudiation*—Ensuring strong and substantial evidence is available to the sender of data that the data has been delivered (with the cooperation of the recipient), and to the recipient evidence of the senders's identity, sufficient to prevent either from successfully denying having sent or received the data. This includes the ability of a third party to verify the integrity and origin of the data. Technical nonrepudiation binds a user to a transaction in a fashion that provides important forensic evidence in the event of a later problem.

c. *Availability*—Ensuring that the information technology resources (system or data) are available on a timely basis to meet

mission/business requirements or to avoid substantial losses. Availability also includes ensuring that resources are used only for intended purposes.

8. Any other comments?

[FR Doc. 01–17875 Filed 7–17–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 23, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 13, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–18004 Filed 7–13–01; 4:07 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01145]

Expansion of the Prevention of Mother to Child Transmission Program, Isoniazid Preventive Therapy Program, and Information, Education, and Communication Activities in the Republic of Botswana; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement with the Republic of Botswana Ministry of Health(MOH) for the expansion of the prevention of mother to child transmission program (PMTCT), the national rollout of the Isoniazid Preventive Therapy (IPT) program, and the development and expansion of the Information, Education, and Communication (IEC) campaign targeting HIV/AIDS and HIV/AIDS-related conditions in Botswana.

The purpose of this cooperative agreement is to improve and expand the Prevention of Mother to Child Transmission program activities in Botswana, rollout the National IPT program, and provide technical assistance to improve HIV laboratory diagnostic and monitoring capability, which will be accomplished through cooperation between CDC and the MOH of Botswana.

These collaborative activities could profoundly impact the scope and intensity of the implementation of the National AIDS Policy. Cooperative efforts could lead to greater access to counseling and testing services in all areas of the country, expansion of the IPT program throughout the nation, and significant improvements in HIV/AIDS education and promotion activities, and strengthened aspects of the public health infrastructure.

The U.S. Government seeks to reduce the impact of HIV/AIDS and related conditions in specific countries within sub-Saharan Africa, Asia, and the Americas through its Leadership and Investment in Fighting an Epidemic (LIFE) initiative. Through this program, CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active. Botswana is one of these targeted countries.

To carry out its activities in these countries, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic. CDC's program of technical assistance to Botswana focuses on several areas including scaling up promising prevention and care strategies, such as PMTCT and IPT, supporting behavior change communication projects, such as IEC activities, and other capacity building efforts.

Botswana is experiencing one of the world's most severe AIDS crises that looms as a disaster of unprecedented proportions. The global burden of HIV/AIDS in Botswana is the highest in sub-Saharan Africa, where 83 percent of the world's AIDS deaths have occurred, and where four-fifths of all HIV-positive women live. Despite a relative stabilization of infection rates in some countries in West Africa, the HIV/AIDS epidemic continues to grow at an alarming rate in Southern Africa. Like many countries in this region, Botswana has been disproportionately affected by the AIDS pandemic. Over 20 percent of the population are believed to be HIV positive and the Botswana National Aids Co-ordinating Agency's 2000 Sentinel Surveillance reports 38.5 percent HIV infection in participating pregnant women. Botswana estimates that as many as 25 babies a day are born with HIV. AIDS-related conditions are responsible for 10 percent of annual deaths, with women and adolescents particularly at risk. TB is by far the single leading cause of death among adults with AIDS in Botswana. Based on Sentinel surveys in 1999, an estimated 19 percent of the total population and 29 percent of the economically productive age group (15–49 years old) are living with HIV infection. The rate of TB infection in Botswana (537/100,000 in 1999) is one of the highest in the world.

Botswana has taken many positive steps to address the AIDS epidemic. The President has recognized HIV/AIDS as ''the greatest challenge Botswana has faced'' and has warned Botswana that HIV/AIDS ''threatens the country with annihilation.'' The Botswana government pays for up to 80 percent of all HIV/AIDS activities in the country. This full-scale national response has

generated many examples of creative programming and international collaborations. The government of Botswana will be among the first African countries to launch a TB prevention program using Isoniazid Preventive Therapy (IPT) for HIV infected individuals. A Pilot program of IPT was implemented in October 2000 and planning for nation-wide implementation is underway. In 1999 the MOH launched a pilot project for PMTCT in Gaborone and Francistown which has also been approved for full scale implementation. Both programs face manpower needs and require large scale training efforts for health care workers.

The Botswana MOH and CDC collaboration was established in 1995 and is known as the ''The BOTUSA Project'' and is a successful example of MOH and international collaboration. BOTUSA is a strong supporter of the IPT program and is providing technical assistance, training for health care workers, supplying educational materials, and supporting program monitoring and evaluation. BOTUSA's collaboration includes support for the national PMTCT program through the provision of technical assistance, counseling space, equipment, and materials for prenatal clinics throughout the country.

However, despite the support of the government to fight the epidemic and the collaboration with international partners, the prevalence of HIV infection appears to have increased substantially in Botswana from 1997 to 2000 and the epidemic cannot yet be characterized as having stabilized. The capacity of the government to expand their pilot projects for prevention and extend the reach of their activities to the entire nation will have a substantial impact on the epidemic.

B. Eligible Applicants

Assistance will be provided only to the MOH of Botswana. No other applications are solicited.

The MOH is the only appropriate and qualified organization to fulfill the requirements set forth in this announcement because:

1. The MOH is uniquely positioned, in terms of constitutional authority, mandate and ability to oversee and safeguard public health, and to collect and analyze information and disseminate surveillance and health system performance reports related to the prevalence and incidence of HIV/AIDS, HIV/AIDS-related conditions and other health issues.

2. The MOH has in place the central, district, and community-based structures required to immediately engage in the activities listed in this announcement.

3. The MOH is directly responsible for the implementation, monitoring and evaluation of population-based HIV/AIDS prevention and care policies and services.

C. Availability of Funds

Approximately $500,000 is available in FY 2001, to fund this agreement. It is expected that the awards will begin on or about September 1, 2001 and will be made for a 12-month budget period within a project period of 5 years. Annual funding estimates may change.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Funds received will not be used for the direct purchase of drugs to treat active TB disease. No funds appropriated under this announcement shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services) for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exception:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Strengthen and support the PMTCT program in-country.

(1) Increase coverage and improve impact of promotion and education activities required to implement the PMTCT program in all health districts by the end of 2001 through the provision of an additional IEC Officer to be assigned to the PMTCT Programme.

(2) Upgrade capacity for monitoring and evaluation of the program and assure that uptake and awareness of the program is increasing through the provision of additional monitoring and evaluation staff to the PMTCT Programme

b. Funding to be administered by the Ministry of Health includes the provision of short term contracts for technical and support staff needed to enhance current pilot programs in IPT and PMTCT to a nation wide level and provide technical support to set up high quality laboratory monitoring and testing for HIV diagnosis and treatment. (For example, recipient may wish to engage time-limited contractors or consultants who would not become permanent staff unless positions were created and filled by the official Government of Botswana Department of Manpower.

c. Expand the IPT pilot program for HIV positive individuals to provide nationwide access.

d. Provide training to all relevant health workers nationwide on the technical aspects of program implementation. This will be

accomplished by the engaging of a National Training Coordinator and additional trainers to be placed in the Botswana National Tuberculosis Programme (BNTP) in the Epidemiology Unit.

e. Provide technical and support staff needed to expand current pilot programs in IPT and PMTCT to a nation wide level and provide technical support to set up high quality laboratory monitoring and testing for HIV diagnosis and treatment. For example, recipients may wish to engage contractors to conduct these activities.

f. Improve the laboratory capacity to provide monitoring and diagnostic testing for HIV positive individuals on anti-retroviral treatment and improve ability to determine eligibility and most effective timing of treatment and care options. The cooperative agreement may be accomplished through the limited renovation (within CDC policy guidelines and prior written approval) of buildings and property which will be provided by the Ministry of Health in Francistown, Serowe, and Maun which are the three largest population centers outside of Gaborone, the capital.

2. CDC Activities

a. Collaborate with MOH on designing and implementing the activities listed above, including but not limited to the provision of technical assistance to develop and implement program activities, quality assurance, data management, statistical analysis, and presentation of program methods and findings.

b. Provide guidance in the renovation of laboratory space in Francistown, Serowe, and Maun, technical assistance in the design and layout of the laboratory space, and provision of portable buildings through a support agreement to increase laboratory space in rural areas as needed.

c. Provide technical assistance in setting up and running a virology laboratory for diagnostic and monitoring purposes, type of equipment and laboratory tests for best quality of service, and quality assurance.

d. Collaborate with MOH and other relevant partners and agencies in the development activities; directly assist with voluntary counseling and testing services.

e. Monitor project and budget performance.

E. Application Content

Please use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections of this document to develop your application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and with unreduced font. Pages should be numbered, and a complete index to the application and any appendices must be included.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm. On or before August 15, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

G. Evaluation Criteria

Your application will be evaluated against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Problem (20 points)

Extent to which the applicant demonstrates a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement. This specifically includes description of the public health importance of the planned activities to be undertaken and realistic presentation of proposed objectives and projects.

2. Technical Approach (25 points)

The extent to which the applicant's proposal includes an overall design strategy, including measurable time lines, the extent to which the proposal addresses regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives.

3. Ability To Carry Out the Project (20 points)

The extent to which the applicant documents demonstrated capability to achieve the purpose of the project.

4. Personnel (20 points)

The extent to which professional personnel involved in this project are qualified, including evidence of experience in working with HIV/AIDS, opportunistic infections, and HIV/STD surveillance.

5. Plans for Administration and Management of Projects (15 points)

Adequacy of plans for administering the projects.

6. Budget (not scored)

The extent to which itemized budget for conducting the project, along with justification, is reasonable and consistent with stated objectives and planned program activities.

7. Protection of Human Subjects (not scored)

The extent to which the application adequately addresses the requirements of 45 CFR 46 for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Written quarterly progress reports;

2. Financial status report, no more than 45 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. Annual audit of these CDC funds (program-specific audit) by a U.S. based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required, pre or post award, with the potential awardee in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the program contact and the Grants Management Specialist, identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement. Some of the more complex requirements have some additional information provided below:

AR–1 Human Subjects Requirements

AR–6 Patient Care

AR–14 Accounting System Requirements

AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, (42 U.S.C. section 242l), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2782 e-mail: dpr7@cdc.gov.

For program technical assistance, contact: Ethleen S. Lloyd, Global AIDS Program (GAP), C/o U.S. Embassy Gaborone, 2170 Gaborone Place, Washington D.C. 20521, Telephone: 267–301–696, Fax: 267–373–117.

Dated: July 12, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 01–17910 Filed 7–17–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01173]

Notice of Availability of Funds; Expansion of Mother to Child HIV/AIDS Prevention Activities in the Republic of Kenya

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY)2001 funds for a cooperative agreement program for the expansion of HIV/AIDS Prevention Activities in the Republic of Kenya.

The purpose of the program is to promote the delivery of integrated and comprehensive services to prevent mother to child transmission (PMCT) of HIV infection, including counseling and testing of antenatal patients, the use of effective anti-retroviral drugs, appropriate feeding recommendations, and other maternal health services.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies and international organizations with a minimum of 2 years experience in providing integrated and comprehensive services to women at high risk of HIV infection or whom are HIV infected for the purpose of preventing mother to child transmission of HIV infection.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code 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

Approximately $500,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to three (3)years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be utilized only for the purposes and for the activities described and approved in the final award.

Antiretroviral Drugs

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under this cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Needle Exchange: No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under ''Recipient Activities'', and CDC will be responsible for the activities listed under ''CDC Activities''.

1. Recipient Activities

a. Identify appropriate health institutions and develop mechanisms for funding service activities.

(1) Work with the National AIDS/STD Control Program (NASCOP) and the Centers for Disease Control and Prevention—Kenya (CDC) to develop a plan for expansion of PMCT services so that model services are provided in at least one district in each province. This will include appropriate assessments of capacity, feasibility, and acceptability of PMCT in potential target districts;

(2) Assist Ministry of Health (MOH) staff in facilities and District or Provincial Health Offices in these selected districts in wishing to provide PMCT as part of their AIDS activities in preparing plans for training health workers, organizing manpower and services, and establishing plans for monitoring and evaluation of comprehensive PMCT services;

(3) Solicit proposals from local non governmental organizations (NGO) health facilities who wish to provide PMCT services as part of their AIDS prevention and/or care efforts, including church and faith-based health facilities, and other private facilities and provide funding through contracts to these organizations;

(4) Provide on-going technical assistance to such groups;

(5) Minimally upgrade facilities so that confidential counseling can take place within existing antenatal clinics and maternity units

b. Train Health Workers in PMCT

(1) Develop a training plan for selecting and training health workers at selected facilities in the specific skills and competencies required to deliver comprehensive PMCT services.

(2) Conduct or provide a contract to another organization which will conduct training in PMCT consistent with the Kenya national guidelines.

c. Provide Nevirapine, HIV, RPR test kits and other supplies needed to conduct on-site, confirmed, rapid HIV testing for purposes of providing PMCT.

(1) Procure HIV test kits and other supplies as needed for PMCT. Selection of test kits will be made on the basis of CDC recommendations and will be test kits approved for use in Kenya.

(2) Develop a system for the distribution and re-stocking of HIV test kits and consumables.

(3) Develop a system for additional testing of samples with discordant results, and for quality assurance testing.

d. Provide on-going support, monitoring, supervision, and evaluation of these sites

(1) Ensure that all PMCT sites are operating in accordance with the Kenya National PMCT guidelines and with all applicable local and international standards.

(2) Ensure that all funds disbursed for PMCT activities are properly used and accounted for, and train staff at PMCT sites receiving funds in proper accounting procedures according to federal regulations;

(3) Develop systems for routine monitoring and supervision of PMCT services, including a system for computerized record keeping in all districts, and provide central level analysis and reporting.

e. Public Information Campaign Regarding PMCT

(1) Develop and implement an marketing campaign designed to increase public awareness of the benefits of PMCT and the specific services offered at PMCT sites;

(2) Develop and implement a public awareness campaign and design services to encourage expectant parents to seek couple counseling regarding HIV status, including primary prevention for negative couples, specific counseling for discordant couples with ongoing counseling support and transmission prevention education, and appropriate information and referral for care for HIV infected couples;

(3) Ensure that all sites are appropriately advertised so that pregnant women and their families in the community know where they may receive PMCT services.

2. CDC Activities

a. CDC will collaborate with the recipient on designing and implementing the activities listed above, including but not limited to providing technical assistance to develop and implement program activities, quality assurances, data management, statistical analysis and presentations of program methods and findings.

b. Monitor project and budget performance and

c. Approve the selection of key personnel to be involved in the activities preformed under this cooperative agreement.

d. Rapid HIV Test kits may be provided in limited amounts for the purpose of this activity.

E. Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and 12 point font. Pages should be numbered and indexed. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428) Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm

On or before August 17, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated postmark or obtain a legibly dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late: Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Problem (15 percent)

The extent to which the applicant's proposal demonstrates a clear and concise understanding of the AIDS epidemic in Kenya and the role of PMCT as a prevention intervention and as an entry point to care for the family.

2. Technical and Programmatic Approach (30 percent)

The extent to which the applicant's proposal demonstrates an understanding of how to develop, promote, implement, monitor, and evaluate PMCT services offered in a variety of health facilities. This includes experience in providing counseling and testing of antenatal patients, the use of effective antiretroviral drugs, making appropriate feeding recommendations and providing other maternal health services.

3. Ability to Carry Out the Project (20 percent)

The extent to which the applicant documents demonstrated capability to achieve the purpose of the project, including grants management of U.S. donor funds. Experience should include working in developing African countries, familiarity with the resources and customs of the Republic of Kenya.

4. Personnel (20 percent)

The extent to which professional personnel involved in this project are qualified, including evidence of experience in working with HIV/AIDS in mothers and children in clinical settings, HIV counseling and testing, working with families and communities, with government and non-government health facilities, and specific knowledge or experience with PMCT.

5. Plans for Administration and Management of the Project (15 percent)

Adequacy of plans for administering the project.

6. Budget (Not scored, but evaluated)

The extent to which the itemized budget for conducting the project is reasonable and well justified. The applicant should include an analysis of the estimated cost per client served in the budget.

7. Protection of Human Subjects (not scored)

The extent to which the application adequately addresses the requirements of 45 CFR 46 for the protection of human subjects. (Not scored; however,

an application can be disapproved if the research risks is so inadequate and protection against risks is so inadequate as to make the entire application unacceptable.)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Semiannual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period;
3. Final financial and performance reports, no more than 90 days after the end of the project period and;
4. Obtain annual program specific audit by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with the International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment, pre or post award, may be required with the potential grantee, in order to review their business management and fiscal capabilities in handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–4 HIV/AIDS Confidentiality Provisions
AR–6 Patient Care
AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, (42 U.S.C. 2421), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements.''

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 Program Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Dorimar Rosado, Grants Management Specialist Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention 2920 Brandywine Road, Room 3000 MS–15 Atlanta, GA 30341–4146 Telephone number: (770) 488–2782 email address: dpr7@cdc.gov.

For program technical assistance, contact: Lawrence H. Marum, M.D., FAAP, MPH CDC LIFE Initiative, PO Box 30137, Nairobi Office: National AIDS/STD Control Programme (NASCOP) Phone: +254–72–721–781 or +254–2–729–549 Fax: +254–2–714–745 Email: Lmarum@nairobi.mimcom.net P.O. Box 30137 Nairobi, Kenya US Mail: Unit 64112 APO, AE 09831–4112

Dated: July 12, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

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BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01138]

Epidemiologic HIV/AIDS Research in African-American and Hispanic Men Who Have Sex With Men; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program to support research on the sociocultural, structural, psychological, and behavioral factors that promote HIV infection in African-American and Hispanic men who have sex with men (MSM).

The purpose of the research is to increase understanding of the manner in which these factors relate to the prevalence of HIV infection and incidence of recent infection in these populations. Additionally, under this program, it is expected that the investigators will use the data collected to begin to develop culturally-tailored intervention strategies, although the actual conduct of those interventions will not be part of this cooperative agreement. This announcement addresses goals of CDC's HIV prevention strategic plan through 2005.

Research Study

The program will support four sites to work collaboratively with each other and with CDC investigators in conducting a cross-sectional study that includes HIV testing and counseling. Two sites will be devoted to the recruitment and assessment of African-American MSM, and two sites will be devoted to the recruitment and assessment of Hispanic MSM. Applicants should indicate clearly whether their application pertains to Hispanics or African-Americans. At each site, it is expected that grantees will enroll a minimum of 500 MSM, including gay identified MSM, non-gay-identified MSM, and MSM who inject drugs.

Applicants should develop (1) sampling and recruitment strategies that ensure that the study includes a demographically diverse group of MSM, (2) culturally-sensitive measures of antecedent and outcome variables, including both quantitative and qualitative assessments, (3) a core set of measures that will facilitate ethnic and cultural comparisons, and (4) stringent safeguards for protecting confidentiality of participants.

In conducting the research, it is also expected that grantees will establish a partnership with at least one community-based organization (CBO) to consult on all aspects of conducting the study and to help link participants to prevention and medical services.

We invite applicants to develop protocols and assessment instruments that will increase understanding of a broad array of sociocultural, structural, psychological, and behavioral factors as they relate to HIV infection risk in African-American and Hispanic MSM. These factors may include, but are not limited to:

Cultural attitudes and values
Social and economic discrimination
Social and sexual networks
Acculturation and immigration
Family relations
Community involvement
Experience with and influence of correctional systems
Homophobia
Self-esteem
Resiliency
Religious Beliefs
Beliefs about HIV disease and its treatment
HIV testing history and perceived and actual barriers to testing
Bisexual practices

Drug use
Fluidity of risk behavior

Assessment of the prevalence of HIV infection and incidence of early infection is also a central component of the research. Understanding the risk factors associated with recent HIV seroconversion will inform the design of behavioral interventions. Grantees should be prepared to perform HIV testing of participants using both standard serologic assays and the detuned assay and provide culturally-tailored pre- and post-test counseling and referral to medical care, prevention services, and to other services (social, mental health, drug treatment) as needed. After sites are funded, but before research activities begin, grantees and CDC investigators will work collaboratively to refine the protocols so that they fit together as a whole and address the research issues in a scientifically rigorous manner.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Samoa, Guam, the Federated States of Mircronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

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

Approximately $800,000 is expected to be available in FY 2001 to fund up to four awards. It is expected that the average award will be approximately $200,000 in the first year and will begin on September 30, 2001. The award will be made for a 12-month budget period, within a project period of up to four years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, satisfactory participant accrual, and the availability of funds. Increased funding may be available in years two and three after protocols are established and research has started.

Funding Preference

Funding decisions will attempt to achieve regional diversity of the two African-American MSM sites and the two Hispanic MSM sites (e.g., Northeast, South, Central, West). Funding decisions will also take into consideration geographical locations that afford ample numbers of MSM from which to sample and locations that provide the investigators with the opportunity to consult with CBOs in conducting the study.

D. Program Requirements

In conducting activities to achieve the purpose of these programs, the recipient will be responsible for the activities listed under Recipient Activities, and CDC will be responsible for conducting activities listed under CDC Activities:

1. Recipient Activities

Collaborate with other CDC-sponsored researchers, including developing and using common data collection instruments, specimen collection protocols, and data management procedures, as determined in post-award grantee planning conferences. Recipients will be required to pool data for analysis and publication. Recipients are also required to work collaboratively as a study group to:

a. Attend meeting(s) at CDC to develop collaborative research protocol.

b. Develop the research study protocols and standardized data collection forms across sites.

c. Identify, recruit, obtain informed consent from, and enroll an adequate number of study participants as determined by the study protocols and the program requirements.

d. Follow study participants as determined by the study protocols.

e. Establish procedures to maintain the rights and confidentiality of all study participants.

f. Perform laboratory tests (when appropriate) and data analysis as determined in the study protocols.

g. Collaborate and share data and specimens (when appropriate) with other collaborators to answer specific research questions.

h. Conduct data analysis with all collaborators.

i. Present and publish research findings.

j. Participate in biweekly conference calls with all collaborators.

k. Attend biannual meetings with other funded grantees.

2. CDC Activities

a. Provide technical assistance as needed in the design and conduct of the research.

b. Facilitate and assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Assist as needed in designing a data management system.

d. Assist as needed in performance of selected laboratory tests.

e. Work collaboratively with investigators to help facilitate research activities across sites involved in the same research project.

f. Assist in the analysis of research information and the presentation and publication of research findings.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop your application. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Follow the directions for completing the application that are found in the Public Health Service (PHS) 398 kit.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

On or before August 30, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement. Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. 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 1. or 2. Above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Applications will be ranked on a scale of 100 maximum points. Applications will be reviewed and evaluated based on the evidence submitted and the applicant's abilities to meet the following criteria:

1. Familiarity with and Access to Study Population (25 points)

a. Extent of the applicant's knowledge of issues faced by study population and experience in working with the population.

b. Existence of linkages to facilitate recruitment from and referral to programs providing services for the study population and letters of support.

c. Feasibility of plans to involve the study population, their advocates, or service providers in the development of research activities and to inform them of research results.

d. Evidence that plans for recruitment and outreach for study participants will include establishing partnerships with communities.

2. Description and Justification of a Research Plan (40 points)

a. Quality of the review of the scientific literature pertinent to the proposed study, including the theoretical basis for the investigation and relevance of research questions.

b. The originality of the research, including the extent to which it addresses important gaps in knowledge and has strong relevance for guiding behavioral interventions.

c. Applicant's understanding of the research objectives as evidenced by the quality of the proposed research plan and specific study design.

d. Feasibility of plan to sample, recruit, and enroll study participants in a culturally and linguistically appropriate manner. This includes plans for achieving a demographically diverse sample within the African-American or Hispanic MSM populations (including gay identified MSM, non-gay-identified MSM, and MSM who inject drugs), conducting multi-venue sampling, and demonstration of statistical power to address research questions.

e. Feasibility of plan for collecting both quantitative and qualitative research data.

f. Comprehensiveness of the plan to protect the rights and confidentiality of all participants.

g. Feasibility of plan for conducting HIV counseling and testing in a culturally-sensitive manner.

h. Feasibility of plan for collecting, testing, storing, and shipping blood specimens.

i. Thoroughness of statistical analysis plans, including data cleaning, management, and substantive analyses.

j. Extent to which study proposal demonstrates assurance of compliance with multisite research requirements (e.g., common protocol, data collection, and computer and data management systems).

k. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of ethnic and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

3. Demonstration of Staff's Capability to Conduct Research (20 points)

a. Applicant's ability to carry out the proposed research as demonstrated by the training, experience, and expertise of the principal investigator and the proposed research team and organizational setting, including demonstration of ability to collect, manage, and analyze accurate data in a timely manner.

b. Evidence of plan for establishing a partnership with at least one CBO to consult on all aspects of conducting the study and to link participants with prevention and medical services as needed.

c. Demonstration of epidemiologic, behavioral, clinical, laboratory, administrative, and management expertise needed to conduct the proposed research.

d. Demonstration that principal investigator and staff have experience working with the targeted population of study participants.

e. Demonstration that investigative team includes a staff member with expertise in qualitative data analysis.

4. Staffing, Facilities, and Time-Line (15 points)

a. Availability of qualified personnel with realistic and sufficient percentage-time commitments; clarity of the described duties and responsibilities of project personnel including clear lines of authority and supervisory capacity over the behavioral, epidemiologic, administrative, clinical, laboratory, data management, and statistical aspects of the research.

b. Adequacy of the facilities, equipment, data processing and analysis capacity, and systems for management of data security and participant confidentiality.

c. Adequacy of base staff to keep pace with anticipated workload.

d. Adequacy of time-line for conducting the research.

5. Other (not scored)

a. Budget: The extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

b. Human Subjects: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? __Yes __No Comments:

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Annual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.
4. Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Send all reports to the Grants Management Specialist identified in section J (''Where to Obtain Additional Information'') of this document.

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–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2)of the Public Health Service Act, (42 U.S.C. 241(a) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.943.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click ''Funding'' then ''Grants and Cooperative Agreements.''

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.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Ann Cole, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement #01138, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Rd., Room 3000, Mailstop E–15, Atlanta, GA 30341, Telephone: (770) 488–2731, Email address: *zlr5@cdc.gov*.

For program technical assistance, contact: Jeff Efird, MPA, Deputy Chief, Epidemiology Branch, Division of HIV/AIDS Prevention Surveillance & Epidemiology, National Center for HIV, STD, TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–45, Atlanta, Georgia 30333, Telephone: (404) 639–6130, Email address: *jle1@cdc.gov.*

Dated: July 12, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–17912 Filed 7–17–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–215]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Note: For this submission, CMS is requesting public comments on the information requirements in the Final Rule published October 11, 2000 for ''Additional DMEPOS Supplier Standards'' only. CMS made an error in the last PRA submission whereas the ''Surety Bond'' requirements were referenced. Please be advised that all Surety Bond requirements have been removed and are not to be commented on at this time.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Information Collection Requirements Referenced in 42 CFR 424.57: Additional DMEPOS Supplier Standards; *Form No.:* CMS–R–215 (OMB# 0938–0717); *Use:* The respondents for these information collection requirements are suppliers of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). CMS requires, upon request, documentation that the DMEPOS supplier has both advised beneficiaries that they may either rent or purchase inexpensive or routinely purchased equipment and discussed the purchase option for capped rental equipment. This criteria is necessary to determine if the supplier has met the supplier standards; *Frequency:* Annually, On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 65,400; *Total Annual Responses:* 35,000; *Total Annual Hours:* 280,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–R–215, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 10, 2001.

Julie Brown,

Acting, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 01–17877 Filed 7–17–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1674]

Agency Information Collection Activities; Announcement of OMB Approval; Specific Requirements on Content and Format of Labeling; Geriatric Use Subsection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Specific Requirements on Content and Format of Labeling; Geriatric Use Subsection'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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: In the **Federal Register** of January 5, 2001 (66 FR 1142), 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 0910–0370. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov.ohrms/dockets.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17975 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1503]

Agency Information Collection Activities; Announcement of OMB Approval; Orphan Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled Orphan Drugs has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 1, 2001 (66 FR 21769), 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 0910–0167. The approval expires on July 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17978 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0178]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Premarket Notification 510(k) Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 17, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

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 compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Notification 510(k) Submissions (21 CFR Part 807) (OMB Control No. 0910–0120)—Extension

Section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) requires a person who intends to market a medical device to submit a premarket notification submission to FDA at least 90 days before proposing to begin the introduction, or delivery for introduction into interstate commerce, for commercial distribution of a device intended for human use. The definition of ''person'' has been expanded to include hospitals who reuse or remanufacture single-use medical devices. The estimated submissions below include those submitted by hospitals remanufacturing single-use medical devices.

Section 510(k) of the act allows for exemptions to the 510(k) submissions (i.e., a premarket notification submission would not be required if FDA determines that premarket notification is not necessary for the protection of the public health, and they are specifically exempted through the regulatory process). Under 21 CFR 807.85, ''Exemption from premarket notification,'' a device is exempt from premarket notification if the device intended for introduction into commercial distribution is not generally available in finished form for purchase and is not offered through labeling and advertising by the manufacturer, importer, or distributor for commercial distribution. In addition, the device must meet one of the following conditions: (1) It is intended for use by a patient or dentist (or other specially qualified persons), or (2) it is intended solely for use by a physician or dentist and is not generally available to other physicians or dentists.

A commercial distributor who places a device into commercial distribution for the first time under their own name and a repackager who places their own name on a device, and does not change any other labeling or otherwise affect the device, shall be exempted from premarket notification if the device was legally in commercial distribution before May 28, 1976, or a premarket notification was submitted by another person.

The information collected in a premarket notification is used by the medical, scientific, and engineering staffs of FDA in making determinations as to whether or not devices can be allowed to enter the U.S. market. The premarket notification review process allows for scientific and/or medical review of devices, subject to section 510(k) of the act, to confirm that the new devices are as safe and as effective as legally marketed predicate devices. This review process, therefore, prevents potentially unsafe and/or ineffective devices, including those with fraudulent claims, from entering the U.S. market. This information will allow FDA to collect data to ensure that the use of the device will not present an unreasonable risk for the subject's rights. The respondents to this information

collection will primarily be medical device manufacturers and businesses.

FDA form 3514 was developed to assist respondents in organizing 510(k) data for submission to FDA. This form also assists respondents in organizing and submitting data for other FDA medical device programs such as premarket approval applications, investigational device exemptions, and humanitarian device exemptions.

In the **Federal Register** of April 30, 2001 (66 FR 21398), the agency requested comments on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	Form No.	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
807.81 and 807.87 (part 807, subpart E)		4,000	1	4,000	80	320,000
	FDA 3514	2,000	1	2,000	.5	1,000
Total						321,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR section	No. of recordkeepers	Annual frequency of recordkeeping	Total annual records	Hours per recordkeeper	Total hours
807.93	2,000	10	20,000	0.5	10,000
Total					10,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on conversations with industry and trade association representatives, and from internal review of the documents listed in tables 1 and 2 of this document. The total burden for using voluntary FDA form 3514 is estimated to be approximately 1,000 hours and has been included in this information collection. Once this information collection has been approved, the burden for FDA form 3514 will be reported and approved in each of the following OMB information collections: 0910–0078, investigational device exemption reports and records; 0910–0231, premarket approval of medical devices; and 0910–0332, medical devices, humanitarian devices.

Dated: July 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17977 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0359]

Program Priorities in the Center for Food Safety and Applied Nutrition; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments concerning the establishment of program priorities in the Center for Food Safety and Applied Nutrition (CFSAN) for fiscal year (FY) 2002. As part of its annual planning, budgeting, and resource allocation process, CFSAN is reviewing its programs to set priorities and establish work product expectations. This notice is being published to give the public an opportunity to provide input into the priority-setting process.

DATES: Submit written or electronic comments by September 17, 2001.

ADDRESSES: Submit written comments concerning this document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Donald J. Carrington, Center for Food Safety and Applied Nutrition (HFS–666), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–5290, e-mail: DCarring@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 9, 2001, CFSAN released a document entitled ''2001 CFSAN Program Priorities.'' The document, a copy of which is available on CFSAN's Web page (www.cfsan.fda.gov), constitutes the Center's priority workplan for FY 2001, i.e., October 1, 2000, through September 30, 2001. (Copies are also available from the contact person listed above.) The 2001 workplan is based on input we received from our stakeholders (see 65 FR 39415, June 26, 2000), as well as input generated internally. Throughout the priority-setting process, we focused on one central question: ''Where do we do the most good for consumers?''

The paramount theme for the FY 2001 workplan has been program continuity. We continue to place our highest emphasis on the food safety initiative, food additives, dietary supplements,

and food biotechnology. Outside of these priorities, the workplan identifies 10 other program areas and cross-cutting areas that need emphasis: (1) Nutrition, health claims and labeling; (2) chemical contaminants, pesticides and other hazards; (3) cosmetics; (4) preparing to move CFSAN offices and laboratories to a new facility in College Park, MD; (5) enhancing the science base; (6) international activities; (7) emerging areas (e.g., food allergens); (8) enhancing regulatory processes; (9) focused economic-based regulations; and (10) management initiatives.

The FY 2001 workplan contains two lists of activities in most major sections of the document—the ''A'' list and the ''B'' list. Our goal is to fully complete at least 90 percent of the ''A'' list activities. Activities on the ''B'' list are those we plan to make progress on, but may not complete before the end of the fiscal year. A new feature of the FY 2001 workplan has been ''B'' list items with an asterisk. These are the highest priority ''B'' list activities, most of which are 2-year projects that we are positioning to be on the ''A'' list the following year.

CFSAN intends to issue a progress report shortly on what program priority activities already have been completed to date in FY 2001.

CFSAN has responsibility for many important ongoing activities that are not identified in the workplan. For example, the Center's base programs in data collection, research, and enforcement are important and are ongoing. Rather, the workplan addresses primarily those initiatives representing something new or different that we need to address in 2001, as well as priority initiatives that are being continued from the 2000 workplan. In addition, the workplan does not address the myriad of unanticipated issues that often require a substantial investment of CFSAN resources (e.g., response to outbreaks of foodborne illness).

II. 2002 CFSAN Program Priorities

FDA is requesting comments concerning the establishment of program priorities in CFSAN for FY 2002. The input will be used to develop CFSAN's 2002 workplan. The workplan will set forth the Center's program priorities for October 1, 2001, through September 30, 2002. FDA intends to make the 2002 workplan available in the fall of 2001.

The format of the 2002 workplan will be similar to last year's workplan. FDA expects there will be considerable continuity and follow-through between the 2001 and 2002 workplans. For example, major documents published in early 2001 for public comment (e.g., biotechnology proposal; draft *Listeria* risk assessment) would likely be high priority for completion of final documents in FY 2002. Moreover, a number of goals inherently require a multi-year effort. For example, the Food Allergen Compliance Policy Guide issued in 2001 will need inspectional followup in 2002. FDA requests comments on other broad program areas that should continue to be a priority in FY 2002, or new areas that need to be initiated.

In addition, as noted above, the 2001 workplan highlights certain ''B'' list activities with an asterisk. Many of these are 2-year projects that we are positioning to be candidates for the ''A'' list next year. FDA requests comments on which ''*B'' and regular ''B'' list activities (i.e., those not designated with an asterisk) should be elevated to the ''A'' list for completion in 2002. Finally, as noted, FDA requests comments on new program areas or activities that should be added as a high priority for FY 2002.

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this notice by September 17, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 11, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17919 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 9, 2001, from 8:30 a.m. to 5 p.m., and on August 10, 2001, from 8:30 a.m. to 3 p.m.

Location: National Institutes of Health, Jack Masur Auditorium, Bldg. 10, 9000 Rockville Pike, Bethesda, MD.

Contact: Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, Woodmont II Bldg., 1451 Rockville Pike, Rockville, MD 20752, 419–259–6211, or Jaime Henriquez, 301–827–6803, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: On August 9, 2001, in the morning, the committee will discuss new drug application (NDA) 21–272, Remodulin® (treprostinil sodium injection), United Therapeutics Corp., for the treatment of pulmonary hypertension. On August 9, 2001, in the afternoon, the committee will discuss NDA 21–321, Extraneal® (7.5 percent icodextrin) peritoneal dialysis solution, Baxter Healthcare Corp. On August 10, 2001, in the morning, the committee will discuss NDA 21–290, Tracleer® (bosentan tablets), Actelion, Ltd., for the treatment of pulmonary hypertension.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 2, 2001. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9 a.m. on each day. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 2, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 12, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–17921 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1555]

Guidance for Industry on Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of guidance for industry entitled ''Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products.'' This guidance sets forth the agency's interpretation of its Hazard Analysis Critical Control Point (HACCP) regulations for fish and fishery products as they pertain to the inspection of facilities and records. The agency is clarifying that a processor's refusal to allow FDA to inspect its processing facilities, or to provide HACCP records or plans to an inspector during an inspection, violates the regulations and thus may trigger a regulatory response by the agency. FDA determined that there was a need for clarification because some domestic firms questioned whether records can be made available after an inspection (rather than during) and some foreign firms canceled scheduled inspections by FDA, but offered to make records available for review. This guidance is for domestic processors and for foreign processors that export fish and fishery products to the United States.

DATES: Submit written comments on agency guidance documents at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Industry Activities Staff, Office of Constituent Operations, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington DC 20204. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Center for Food Safety and Applied Nutrition, (HFS–415) Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3150.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products.'' FDA seafood safety regulations require processors of fish and fishery products to operate preventive control systems for human food safety that incorporate the principles of HACCP (part 123 (21 CFR part 123)). The regulations further provide that fish and fishery products are adulterated under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(4)) if their processor fails to have and implement a HACCP plan when one is necessary, or otherwise fails to meet any of the requirements of the regulations, including allowing the official review of records (§ 123.6(g)). Processors must make their HACCP records and plans available ''for official review and copying at reasonable times'' (§ 123.9 (c)). This guidance, previously made available in draft for public comment, is intended to clarify that onsite inspection of a processing facility and concurrent review of HACCP records are essential elements of FDA's Seafood HACCP program as set forth at part 123. Thus, the failure to provide records and plans by a domestic or foreign processor during an inspection violates the regulation, even if a firm volunteers the documents after the inspection. FDA believes that violations of these provisions are significant.

In the **Federal Register** of November 14, 2000 (65 FR 68150) FDA published a notice announcing the availability of the draft version of this guidance and requested the submission of written comments by December 14, 2000. One comment was received in response to the draft guidance. That comment expressed concern that FDA is modifying the regulation so that offsite storage of HACCP records will no longer be permitted. FDA disagrees. This guidance does not change any provision of the regulation, but seeks to clarify those provisions dealing with inspections and records availability. The provision in question, § 123.9(b)(3), allows a processor to store records offsite under two circumstances: (1) The facility is closed for prolonged periods between seasonal packs, or (2) the facility is a processing vessel or remote site with limited storage capacity. However, 123.9(b)(3) requires that records be returned to the processing site immediately for official review upon demand (e.g., within 24 hours). As made clear by this requirement for immediate return, this provision does not contemplate that records would be made available for review offsite or after the inspection is completed. Thus, the guidance does not affect offsite storage of records under § 123.9(b)(3). The guidance addresses the circumstances in which processors want to submit HACCP records to FDA for review only after an onsite inspection has been conducted without access to records.

This guidance is being issued consistent with FDA's good guidance practices (21 CFR 10.115; 65 FR 56468, September 19, 2000). The guidance represents the agency's current thinking on refusal of inspection or access to HACCP records that pertain to the safe and sanitary processing of fish and fishery products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

II. Comments

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://vm.cfsan.fda.gov/dms/guidance.html.

Dated: July 11, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17920 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0297]

Medical Devices; Availability of Information Given to Advisory Committee Members in Connection with CDRH Open Public Panel Meetings; Draft Guidance for Industry and FDA Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Availability of Information Given to Advisory Committee Members in Connection with CDRH Open Public Panel Meetings; Draft Guidance for Industry and FDA Staff.'' This document provides guidance to the Center for Devices and Radiological Health (CDRH) staff and to industry whose device is the subject of an open advisory committee meeting. The Federal Advisory Committee Act (FACA) generally requires FDA to make available to the public the information given to panel members, except for material that is exempt under the Freedom of Information Act (FOIA). This draft guidance describes the process CDRH intends to follow when making this information publicly available. This draft guidance also describes how these materials should be assembled and timeframes for their availability. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments concerning this guidance by October 16, 2001.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Availability of Information Given to Advisory Committee Members in Connection with CDRH Open Public Panel Meetings; Draft Guidance for Industry and FDA Staff'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022.

SUPPLEMENTARY INFORMATION:

I. Background

FACA provides at section 10(b) that materials that are made available to an advisory committee in connection with an open advisory committee meeting shall also be made available to the public, if the materials are not exempt from disclosure under FOIA. This FACA provision is intended to facilitate meaningful public participation at such meetings. CDRH has now developed a process to make materials provided to advisory committee members in connection with open public meetings available for public disclosure, whenever practicable before or at the time of the meeting. This process also ensures that those materials exempt from disclosure under FOIA are protected. This draft guidance is designed to minimize the amount of time and resources spent in reviewing, redacting (the deletion of nondisclosable information), and publishing this information so that panel meetings can proceed when they are scheduled and in compliance with the requirements of FACA.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on the availability of information given to advisory committee members in connection with CDRH open public panel meetings. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statutes and regulations.

The agency has adopted good guidance practices (GGPs), and published the final rule, which set forth the agency's regulations for the development, issuance, and use of guidance documents (21 CFR 10.115; 65 FR 56468, September 19, 2000). This draft guidance document is issued as a level 1 guidance in accordance with the GGP regulations.

III. Electronic Access

In order to receive ''Availability of Information Given to Advisory Committee Members in Connection with CDRH Open Public Panel Meetings; Draft Guidance for Industry and FDA Staff'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 1341 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

IV. Comments

Interested persons may submit to Dockets Management Branch (address above) written or electronic comments regarding this draft guidance by October 16, 2001. Submit two copies of any comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and any received comment may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 2001.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 01–17976 Filed 7–17–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–312 and HCFA–R–263]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Conflict of Interest and Ownership and Control Information;

Form No.: HCFA–R–312 (OMB# 0938–0795);

Use: This Conflict of Interest questionnaire is sent to all Medicare Fiscal Intermediaries (FIs) and Carriers to collect full and complete information on any entity's or individual's ownership interest (defined as a 5 per centum or more) in an organization that may present a potential conflict of interest in their role as a Medicare FI or Carrier. The information gathered is used to ensure that all potential, apparent and actual conflicts of interest involving Medicare contracts are appropriately mitigated and that employees of the contractors, including officers, directors, trustees and members of their immediate families, do not utilize their positions with the contractor for their own private business interest to the detriment of the Medicare program.;

Frequency: Annually;

Affected Public: Not-for-profit institutions, and Business or other for-profit;

Number of Respondents: 37;

Total Annual Responses: 37;

Total Annual Hours: 11,100.

(2)*Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: On Site Inspection for Durable Medical Equipment (DME) Supplier Location & Supporting Regulations in 42 CFR, 424.57;

Form Nos.: HCFA–R–263 (OMB# 0938–0749);

Use: To identify and implement measures to prevent fraud and abuse in the Medicare program. Controlling the entry of suppliers of durable medical equipment, prosthetics, orthotics, or supplies (DMEPOS) to Medicare has been identified as one of the most effective ways to prevent fraud and abuse. To meet this challenge, HCFA is moving forward with a plan to improve the quality of the process for enrolling and reenrolling DMEPOS suppliers into the Medicare program by enhancing procedures for verifying supplier information collected on the Form HCFA–855S (DMEPOS Supplier Enrollment Application, OMB Approval No. 0938–0685). This form will be used to complete information on DMEPOS suppliers' compliance with regulations found in 42 CFR 424.57.

Frequency: On occasion;

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government;

Number of Respondents: 20,000;

Total Annual Responses: 20,000;

Total Annual Hours: 10,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 19, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–17959 Filed 7–17–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Program Announcement for Delta State Rural Development Network Grants

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice of availability of funds; request for applications.

SUMMARY: The Office of Rural Health Policy (ORHP) in the Health Resources and Services Administration (HRSA) announces that applications are being accepted for grants for Delta State Rural Development Networks (DSRDN). One grant will be awarded in each of the eight States designated by Congress for inclusion in the service area of the Delta Regional Authority: Alabama, Arkansas, Illinois, Kentucky, Louisiana, Missouri, Mississippi and Tennessee. Public Law 104–299, enacted in 1996, authorizes the Rural Health Outreach, Network Development and Telemedicine Grant program. The Consolidated Appropriations Act, 2001, Public Law 106–554 includes, in the Rural Health Outreach appropriation line, funding for a special initiative. ORHP will use these special initiative funds to award grants to rural networks in the eight Delta States. Grants will be for a three-year project period, with annual renewal dependant on availability of funds and evaluation of grantee performance.

Application Requests, Dates and Addresses: The application form and guidance for this Grant Program are available at the ORHP web site address at *http://ruralhealth.hrsa.gov.* Applicants may request a hard copy of these materials from the HRSA Grants Application Center (GAC) at 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209; telephone number 1–877–477–2123. The GAC email address is *hrsagac@hrsa.gov.*

In order to be considered for competition, an original and one copy of the applications for this grant program must be received by August 15, 2001. To be considered submitted on time applications must be OFFICIALLY POSTMARKED BY 11:59 P.M. August 14, 2001. Postmarked means Official Post Office cancellation mark, Federal Express Shipping Receipt Form, United States Parcel Company receipt or other carrier that Officially records the pick-up or drop-off time of a package. PRIVATE POSTAGE METER CANCELLED PACKAGES WILL NOT BE ACCEPTED UNLESS THE PACKAGE ARRIVES ON OR BEFORE THE DUE DATE.

Applications must be mailed or delivered to: HRSA Grants Application Center (GAC), 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209.

Applications postmarked after the deadline date or sent to any address other than the address above will be returned to the applicant and not reviewed.

Funds Available: ORHP expects to award $5,431,000 among the eight States identified by the Delta Regional Authority as being in the Delta. These States are Alabama, Arkansas, Illinois, Kentucky, Louisiana, Missouri, Mississippi and Tennessee. Approximate State allocations are expected to be as follows: Alabama $398, 000; Arkansas $991,000; Illinois $424,000; Kentucky 503,000; Louisiana $768,000; Missouri $742,000; Mississippi $1,193,000; Tennessee $503,000. There are 205 designated rural counties in these Delta States including 15 in Alabama, 38 in Arkansas, 16 in Illinois, 19 in Kentucky, 29 in Louisiana, 28 in Missouri, 41 in Mississippi and 19 in Tennessee. To determine the amount of funding each DSRDN will receive, ORHP will consider the following factors: (1) The number of rural Delta counties in each State, and (2) The extent to which the DSRDN grant applicant justifies the amount of funds requested. (For the list of the eligible counties see Appendix I.)

FOR FURTHER INFORMATION CONTACT: Questions concerning programmatic aspects of the DSRDN grants may be directed to Dr. Marcia Brand, Director of the Office of Rural Health Policy, at 301–443–0835, or by email at *mbrand@hrsa.gov.*

SUPPLEMENTARY INFORMATION: *Program Objectives:* DSRDN will work closely with State Offices of Rural Health and other stakeholders to publicize to eligible communities and organizations the opportunities available through the DSRDNs. ORHP expects DSRDNs to award subcontracts to help local providers and organizations form a culturally appropriate Rural Health Outreach Network covering each designated rural Delta County. Subcontract guidelines can be found in the Program Guide, which is part of the application materials. Such networks may, with the consent of the participating counties, be designed along prevailing service area boundaries rather than county lines. These locally controlled networks will receive funds to enhance network development, assess health needs, plan projects and seek funding, which will focus on improved access to primary health care to the medically underserved such as the under and uninsured. As a demonstration of community support, it is encouraged that the networks receive the endorsement of the county Chief Executive(s) for the geographic area to be served. These subcontracts should account for approximately two-thirds of the DSRDN's first year budget, or approximately $17,700 per eligible county.

Eligible Applicants: To be eligible to receive a grant through this program, an entity shall be a rural public or private not-for-profit entity that is or represents a network or potential network that includes three or more health care providers or other entities that provide or support the delivery of health care services. The lead applicant for each State must be based in one of the 205 identified rural Delta counties. Except for the lead applicant, other network members may be for-profit entities and may be located in a rural or urban area. The DSRDN must have the capacity and expertise to work with all the counties in the State. Examples of organizations that could work together to form a DSRDN network would be rural hospitals, universities, AHECs, Emergency Medical Services offices, community health centers, private providers, county councils, county health departments, mental health organizations, Faith-based and other organizations that will contribute significantly to goals of the network.

Evaluation Criteria: Reviewers will rank review and rank applications based upon the following criteria.

1. Ability to make staff reliably available in person in the rural Mississippi Delta Counties of the State to be served. (20 points)
2. Capacity to manage multiple subcontracts totaling several hundred thousand dollars. (15 points)
3. Organizational experience in rural health (e.g., working with rural health providers, addressing health care needs of rural communities). (15 points)
4. Demonstrated successful experience in developing and strengthening community-based organizations. (15 points)
5. Organizational experience working in rural counties in the Mississippi River Delta Region. (15 points)
6. Expertise in planning and implementing community health improvement projects. (10 points)
7. Demonstrated success in implementing rural community health improvement projects. (10 points)

Funding Preferences

As provided in the law a funding preference will be awarded to any qualified organization that can demonstrate substantial inclusion of any one of the following:

A. The project includes a majority of the health care providers serving in the area or region to be served by the network participants. (The applicant must document the number of health care providers in the service area or region and the percentage of those providers that will be involved in the project.)

B. The project includes any Federally qualified health centers, rural health clinics, and local public health departments serving the area or region. The involvement must be more than a referral relationship with other providers in the area. The entity must be a full and active member of the network. A letter of commitment must demonstrate the organization's roles, responsibilities, and contribution of resources to the project.

C. The project includes outpatient mental health providers serving in the area or region. (The applicant must identify the mental health providers in the area and demonstrate their level of participation in the project.)

D. Appropriate social service providers, such as agencies on aging, school systems, and providers under the Women, Infants and Children (WIC) program that are working to improve access to care and the coordination of health care services in the service area or region. (The applicant must identify the social service providers in the area and demonstrate their level of participation in the project.)

Applicants receiving the preference will be placed in a more competitive position among the applications that can be funded. Applications that do not receive a funding preference will be given full and equitable consideration during the review process. However, all applications that request and are eligible to receive a funding preference will be funded before applications in the funding line that do not have a funding preference.

To receive a funding preference, you must request it. Further, you must identify the type of preference for which you are eligible and demonstrate your eligibility in your application.

Requirements for Cost Sharing or Matching: None.

Executive Order 12372

This grant program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs), a list of which will be included in the

application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. All SPOC recommendations should be submitted to Larry Poole, Office of Grants Management, Bureau of Primary Health Care, 4350 East West Highway, 11th Floor, Bethesda, Maryland 20814, (301) 594–4260. The due date for State process recommendations is 60 days after the application deadline of August 15, 2001, for the Delta State Rural Development Network Program for competing applications. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date. (See Part 148 of the PHS Grants Administration Manual, Intergovernmental Review of PHS Programs under Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget—#0937–0195. Under these requirements, the 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 non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424)

b. An abstract of the project not to exceed one page, which provides:

(1) A description of the population to be served

(2) A summary of the services to be provided

(3) A description of the coordination planned with the appropriate State or local health agencies.

OMB Catalog of Federal Domestic Assistance Number: 93.912C

Dated: July 3, 2001.

Elizabeth M. Duke,

Acting Administrator.

Appendix I—Rural Delta Counties Eligible for the Delta State Rural Development Network Grant Program

Alabama Counties (15)

Barbour, Bullock, Choctaw, Clarke, Dallas, Greene, Hale, Lowndes, Macon, Marengo, Perry, Pickens, Sumter, Washington and Wilcox.

Arkansas Counties (38)

Arkansas, Ashley, Baxter, Bradley, Calhoun, Chicot, Clay, Cleveland, Craighead, Cross, Dallas, Desha, Drew, Fulton, Grant, Greene, Independence, Izard, Jackson, Lawrence, Lee, Lincoln, Marion, Mississippi, Monroe, Ouachita, Phillips, Poinsett, Prairie, Randolph, St. Francis, Searcy, Sharp, Stone, Union, Van Buren, White, Woodruff

Illinois Counties (16)

Alexander, Franklin, Gallatin, Hamilton, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union, White, Williamson

Kentucky Counties (19)

Ballard, Caldwell, Calloway, Carlisle, Crittenden, Fulton, Graves, Hickman, Hopkins, Livingston, Lyon, Marshall, McCracken, McLean, Muhlenberg, Todd, Trigg, Union, Webster

Louisiana Parishes (29)

Allen, Assumption, Avoyelles, Caldwell, Catahoula, Concordia, E. Carroll, E. Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Richland, St. Helena, Tangipahoa, Tensas, Union, Washington, W. Carroll, W. Feliciana, Winn

Mississippi Counties (41)

Adams, Amite, Attala, Benton, Bolivar, Carroll, Claiborne, Coahoma, Copiah, Covington, Franklin, Grenada, Holmes, Humphreys, Issaquena, Jefferson, Jefferson Davis, Lafayette, Lawrence, Leflore, Lincoln, Marion, Marshall, Montgomery, Panola, Pike, Quitman, Sharkey, Simpson, Sunflower, Tallahatchie, Tate, Tippah, Tunica, Union, Walthall, Warren, Washington, Wilkinson, Yalobusha, Yazoo

Missouri Counties (28)

Bollinger, Butler, Cape Girardeau, Carter, Dent, Douglas, Dunklin, Howell, Iron, Madison, Mississippi, New Madrid, Oregon, Ozark, Pemiscott, Perry, Phelps, Reynolds, Ripley, Ste. Genevieve, St. Francois, Scott, Shannon, Stoddard, Texas, Washington, Wayne, Wright

Tennessee Counties (19)

Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy, Madison, Obion, Weakley

[FR Doc. 01–17979 Filed 7–17–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: June 2001

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of June 2001, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ANDERSON, JOHN WARD ..... INDIANAPOLIS, IN	07/19/01
BEVERLY ENTERPRISES-CALIFORNIA ..... FORT SMITH, AR	06/01/01
CHAMPION, DARON ..... DECATUR, GA	07/19/01
CHOPRA, AMARJIT S ..... SUFFERN, NY	07/19/01
CREATIVE TUTORIAL, L L C .. ST LOUIS, MO	01/16/01
DE OCA, NORKA MONTES .... OPA LOCKA, FL	07/19/01
DEJOURNETT, MARY ..... RENO, NV	07/19/01
ELLIOTT-WOODY, TERESA L W WARWICK, RI	07/19/01
ESCUDERO, DANIEL ..... MIAMI, FL	07/19/01
GONZALEZ, ZORAIDA OR-TEGA ..... DELTONA, FL	07/19/01
GREENFIELD, RONALD W ..... WALL, NJ	07/21/00
HANNEMAN, DENISE D ..... NEW LONDON, WI	07/19/01
HARTZELL, ROBERT ..... SPRINGHILL, FL	07/19/01
HONAKER, MELISSA GALE ... WAPATO, WA	07/19/01

Subject, city, state	Effective date
HUERTA, EUSEBIO ..... MIAMI, FL	04/19/01
IZQUIERDO, AMAURY ..... FT LAUDERDALE, FL	07/19/01
KELLEY, MORRIS E ..... COCOA BEACH, FL	09/21/00
LAUNSBY, MAVIS ..... BROWNSVILLE, TX	07/19/01
LIMA, PATRICE LOUISE ..... FRESNO, CA	07/19/01
LOPEZ, EDELBERTO ..... MIAMI, FL	07/19/01
MARIANOVSKY, ZHANNA ..... BROOKLYN, NY	07/19/01
OROPESA, DELIA MARIA ..... MIAMI, FL	07/19/01
OTERO, NORMA L ..... MIAMI, FL	07/19/01
RATER, STEPHEN W ..... OREGON, WI	04/13/01
RIOS, JOSE ..... ELIZABETH, NJ	07/19/01
SARANTIS, KOSMAS ..... TARPON SPRINGS, FL	07/19/01
SIDDIQUI, SHOAIB HUSSAIN E HANOVER, NJ	07/19/01
STEYER, SHARON L ..... WINTER PARK, FL	07/19/01
SUTHERLAND, JOHN MICHAEL ..... COCOA BEACH, FL	09/21/00
VILLARREAL, CORINA KATHERINE ..... VISALIA, CA	07/19/01
VIVANCO, CARIDAD ..... MIAMI, FL	07/19/01
WEBB, STEPHANIE M ..... ATLANTA, GA	07/19/01
ZIMMERMAN, RAYMOND ..... PALM HARBOR, FL	07/19/01
FELONY CONVICTION FOR HEALTH CARE FRAUD	
FERDOWS, DEAN ..... CANOGA PARK, CA	07/19/01
VALENTINE, JULIE ..... MARINA DEL REY, CA	07/19/01
FELONY CONTROL SUBSTANCE CONVICTION	
BROWN, LEETHA W LEWIS ... VERSAILLES, KY	07/19/01
KRUSEN, DONNA INGLE ..... ARLINGTON, TX	07/19/01
MULLINS, PHYLLIS ANN ..... GULFPORT, MS	07/19/01
SHODA, DOROTHY ANN ..... FORT WAYNE, IN	07/19/01
WORSENCROFT, NORALEE .. VIRGINIA BCH, VA	07/19/01
PATIENT ABUSE/NEGLECT CONVICTIONS	
ALFORD, HERBERT W ..... PAMPLICO, SC	07/19/01
BERRY, SANDRA SUE ..... ROSHARON, TX	07/19/01
BLAIR, DARREL LAMONT ..... NASHVILLE, TN	07/19/01
CAMERON, SHIRLEY JAUNICE ..... WAVELAND, MS	07/19/01
CARPENTER, MILTON L ..... GULFPORT, MS	07/19/01
CHANEY, KATTIE M ..... HATTIESBURG, MS	07/19/01
CHRISTMAS, CHRISTOPHER COLUMBU ..... BUNKIE, LA	07/19/01
COCKRELL, JOHNNIE ..... SALEM, OR	07/19/01
CRANE, KONUTA HELEN ..... CUSHING, OK	07/19/01
DENTON, STEPHEN L ..... ATHENS, TN	07/19/01
ELLIOTT, MARY LOUISE ..... FAIRHOPE, AL	07/19/01
HAYES, JOSEPH S ..... JOHNSON CITY, TN	07/19/01
HAZELTON, CYNTHIA J ..... EAU CLAIRE, WI	07/19/01
KAYDE, AVANELL ..... MILWAUKEE, WI	07/19/01
KEITH, COWETA FAYE ..... CRIPPLE CREEK, CO	07/19/01
MAGANA, NYTERIA YVETTE HERALD, CA	07/19/01
MCDOUGALL, PATRICIA L ..... PLAINS, MT	07/19/01
MCDOWELL, DEBORAH ..... CLARKSDALE, MS	07/19/01
MONTEITH, BARBARA MARIE CHRISTIANA, TN	07/19/01
MOORE, ELLIOTT BRUCE ..... UTICA, NY	07/19/01
OREE, JERRY LOUIS ..... COLUMBIA, SC	07/19/01
PAYTON, DARNELL ..... DEKALB, MS	07/19/01
PETERSON, RICKY A ..... KNOXVILLE, TN	07/19/01
PRICE, THOMAS D ..... LAUREL, MS	07/19/01
ROSEN, STEPHEN CLARK ..... RESEDA, CA	07/19/01
SANTANA, SUSAN ..... RIVERHEAD, NY	07/19/01
SCHULTZ, JOHN P ..... PLAIN, WI	07/19/01
SMITH, JENNIFER L ..... MEMPHIS, TN	07/19/01
WILLIAMS, MARVIN RAY ..... GLENMORA, LA	07/19/01
LICENSE REVOCATION/SUSPENSION/SURRENDER	
ALBERTSON, KELLY J ..... OTTUMWA, IA	07/19/01
AMBERS, MARTIN WILLIAM ... VACAVILLE, CA	07/19/01
APARICIO, DANIEL ANGEL .... EL MONTE, CA	07/19/01
ARMENTROUT, TANNY J ..... FOUNTAIN, CO	07/19/01
BANTA, KENNETH M ..... DAYTON, KY	07/19/01
BAUMGART, TERRY D ..... SAN PEDRO, CA	07/19/01
BECKWIN, JOSEPH AYER ..... FAIRFIELD, AL	07/19/01
BERRIOS, GERALDINE G ..... SYRACUSE, NY	07/19/01
BIRD, DELORES GAIL BAKER WILLIAMSBURG, KY	07/19/01
BOYD, MELINDA ANN ..... MIDLAND, TX	07/19/01
BULLION, THOMAS C ..... OXFORD, MS	07/19/01
BURNS, BRIAN THOMAS ..... AUBURN, NY	07/19/01
BURNS, KATHLEEN M ..... PORTLAND, OR	07/19/01
BUSI, JOHN L ..... COLUMBUS, OH	07/19/01
BUTKOVSKY, CLAIRE LORRAINE ..... LEXINGTON, KY	07/01/01
CAI, ZUO PING ..... EL MONTE, CA	07/19/01
CARNEY, DEBORAH A ..... ROCHESTER, NY	07/19/01
CHALLMAN, RONALD JAMES LOUISVILLE, KY	07/19/01
CHAROENKUL, CHOMYONG KULVANICH ..... ARDSLEY, NY	07/19/01
CHRISTENSEN, CHRIS ARTHUR ..... SILVERTON, ID	07/19/01
CHRISTMAS, DONNA ..... GRINNELL, IA	07/19/01
CONDER-STONE, FRANCES D ..... OWENSBORO, KY	07/19/01
DAILY, GALE ..... WILLINGBORO, NJ	07/19/01
DAVIS, SUSAN ELIZABETH .... SCOTTSBORO, AL	07/19/01
DEAN, NANCY C ..... HOUSTON, TX	07/19/01
DELAROSA, LISA G BONZA ... LOUISVILLE, KY	07/19/01
DIPRIMA, RICHARD ..... MADISON, WI	07/19/01
EASTHAM, JUDITH ANN ..... KERNERSVILLE, NC	07/19/01
EDEN, VALLIE D ..... BLOOMINGTON, IN	07/19/01
FROST, DEVORAH C ..... SAN ANTONIO, TX	07/19/01
GARDNER, JIMMY L ..... ORANGEBURG, SC	07/19/01
GIRGIS, ALFRED ..... LOS ANGELES, CA	07/19/01
GRESHAM, JOAN LESLIE ..... JEMISON, AL	07/19/01
GRESSETT, PHILLIP D ..... CHRISTOVAL, TX	07/19/01
GRIFFIN, CHELSEA LEA ..... DAPHNE, AL	07/19/01
HAAS, WILLIAM L ..... GRAND JUNCTION, CO	07/19/01
HAMPTON, VICTORIA L SMITH ..... LOUISVILLE, KY	07/19/01
HARDRICK, CARRIE RUTH .... COTTONWOOD, AL	07/19/01
HARRIS, DONNA ..... SUMRALL, MS	07/19/01
HAYYAT, SAMI ..... MIDDLEBURY, VT	07/19/01
HENDERSON, RHUNDA FAYE SMITHVILLE, TX	07/19/01
HOWELL, JAMIE L SHOULDERS ..... SHEPHERDSVILLE, KY	07/19/01

Subject, city, state	Effective date
JANSSEN, KENNETH MICHAEL TOW, TX	07/19/01
JENKINS, JUDITH GREFF SAN ANTONIO, TX	07/19/01
JEPPSON, NATHAN B W VALLEY CITY, UT	07/19/01
KOTTMAN, MICHELLE A CEDAR RAPIDS, IA	07/19/01
LAJEVIC, JAMES C BOULDER CITY, NV	07/19/01
LASSITER, MICHELLE SUE SUMMERDALE, AL	07/19/01
LEMOINE, JANA BERNADETTE AUSTIN, TX	07/19/01
LEWIS, RALPH JR PHILADELPHIA, MS	07/19/01
MANTLE, LISA DIANE BOGLE FANCY FARM, KY	07/19/01
MARX, OLIVEA A LOVELAND, CO	07/19/01
MATEJCEK, BEVERLY J DAY DAVENPORT, IA	07/19/01
MCKENZIE, JANIS ASHLAND, MS	07/19/01
MCNALLY, MARCY PHILADELPHIA, MS	07/19/01
MOORE, KENNETH G LEXINGTON, KY	07/19/01
MORRISON, CYNTHIA ITHACA, NY	07/19/01
NICHOLS, WILLIAM KEVIN PHILADELPHIA, MS	07/19/01
OWEN, EVELYN PIPES WALLS, MS	07/19/01
OWENS, CABE MICHAEL HOUSTON, TX	07/19/01
PANDLY, RAJENDRA P DENVER, CO	07/19/01
PEUGEOT, RENEE L BOEME, TX	07/19/01
PHAM, THUY DENNIS LANSDALE, PA	07/19/01
POLVICK, CHRISTY ANN WICKLIFFE, KY	07/19/01
PORTER, SENIETTA BECK ELGIN, IL	07/19/01
PRATHER, DENISE EUNICE, LA	07/19/01
PRECHTEL, ELAINE R JASPER, IN	07/19/01
PRITCHARD, DARCY L CASTORLAND, NY	07/19/01
PUGH, GINGER IRENE CORDOVA, AL	07/19/01
RAMSEY, LISA K MERCER, MO	07/19/01
RAVENELL, VENESSIA SAINT STEPHEN, SC	07/19/01
RAY, MARY E BATESVILLE, MS	07/19/01
REGENOLD, ALISA ANN LEROY, IL	07/19/01
RICCA, JUDITH D OCEAN SPRINGS, MS	07/19/01
RICHMOND, MARY RUTH PROVO, UT	07/19/01
RICKETTS, WILBERT GEORGE INDIANAPOLIS, IN	07/19/01
RILEY, KAYLA BOULDER, CO	07/19/01
ROLEY, THOMAS JUSTIN STOCKTON, CA	07/19/01
ROSE, MELODY R COLORADO SPRNGS, CO	07/19/01
ROUNTREE, WILLIAM DONALD LOUISVILLE, KY	07/19/01
SAMS, JOHN ELLIOT POLSON COLUMBUS, MS	07/19/01
SANTIAGO, RUTH MARIE NEWARK, NJ	07/19/01
SATTERFIELD, REBECCA LYNN DE SOTO, IL	07/19/01
SCHUSSLER, CHRISTINA MARIE MUNCIE, IN	07/19/01
SCOLF, SHERRI ANN FIELDS BROOKSVILLE, KY	07/19/01
SCOTT, JANICE Y NASHVILLE, TN	07/19/01
SHOEMAKER, KIMBERLY COLLIE LAKELAND, FL	07/19/01
SHOGREN, TERESA A MARSHALLTOWN, IA	07/19/01
SIMS, LOYD VANCLEAVE, MS	07/19/01
SLACK, EDWARD GEORGE SACRAMENTO, CA	07/19/01
SLONE, JEANETTA RISNER BULAN, KY	07/19/01
SMITH, GREGORY MARK SAN FRANCISCO, CA	07/19/01
SMITH, WANDA C CANON CITY, CO	07/19/01
STIR, DWAINE EDWARD PADUCAH, KY	07/19/01
STOFFEL, MARY BETH PATOKA, IL	07/19/01
STRANDER, LORALI H AMMON, ID	07/19/01
SUMCHAI, AHIMSA PORTER SAN FRANCISCO, CA	07/19/01
SWANSON, JULIA ANN GALESBURG, IL	07/19/01
TOYER, CEDRIC DEMETRIUS BIRMINGHAM, AL	07/19/01
TREMONTANA, NORMA CAROLYN ESTE PRATTVILLE, AL	07/19/01
VAUGHT, CORINNE NAMPA, ID	07/19/01
WARE, ROBERT DAKIN POPLARVILLE, MS	07/19/01
WEATHERMAN, SCOTT LOUISVILLE, KY	07/19/01
WELLS, JANET L ROY, UT	07/19/01
WHITWORTH, DAVID LEE LOUISVILLE, KY	07/19/01
WILLIAMS, CINDY SHARON PHOENIX, AZ	07/19/01
WOOD, JOANIE LYNN TALLADEGA, AL	07/19/01
WRIGHT, ROSCOE EMANUEL DETROIT, MI	07/19/01
FEDERAL/STATE EXCLUSION/SUSPENSION	
BARROS, CAMILO J LINCOLNWOOD, IL	07/19/01
HOLLAND, VICTORIA R WOODLAND HILLS, CA	07/19/01
FRAUD/KICKBACKS	
GREENBERG, PATRICIA ST LOUIS, MO	01/16/01
IGBOKWE, ONYUWOMA NICHOLAS HOUSTON, TX	05/19/00
OLMO, JAIME ALBERTO HOUSTON, TX	05/19/00
OLMO, JAVIER A SUGARLAND, TX	05/19/00
SHELTON, SUSAN LEE PHOENIX, AZ	04/17/01
SUEN, SZE MING MILILANI, HI	02/23/01
SUEN, LURENA MILILANI, HI	02/23/01
VIDALES, ROSA I SUGARLAND, TX	05/19/00
WAHIAWA CLINIC, INC WAHIAWA, HI	02/23/01
OWNED/CONTROLLED BY CONVICTED EXCLUDED	
A & A MEDICAL CENTER CORP MIAMI, FL	07/19/01
ADVANCED OPTICAL, INC TRENTON, NJ	07/19/01
BEST MEDICAL CARE, INC MIAMI, FL	07/19/01
NEXT LEVEL PERSONAL FITNESS SY OAKLAND, CA	07/19/01
DEFAULT ON HEAL LOAN	
ALKAMSHEH, IBRAHIM DALLAS, TX	07/19/01
ARMITAGE, SHERRI A EDGELEY, ND	07/19/01
ASATO, THERESA T REDDING, CA	07/19/01
ASSEM, AHMAD H SAN JOSE, CA	07/19/01
BULLARD, DANIEL H ORLAND PARK, IL	07/19/01
DISALVO, CRISTINO G WILLIAMSPORT, PA	07/19/01
DRUCTOR, JAMES D PITTSBURGH, PA	07/19/01
EZZEH, MARY A GARLAND, TX	05/29/01
FINCH, JOHNNY L ELIZABETH CITY, NC	07/19/01
GREMONPREZ, JUDY A SPRINGFIELD, MO	07/19/01
HASSAPAKIS, CRAIG L MODESTO, CA	07/19/01
HAUKAAS, THOMAS F TAMPA, FL	07/19/01
ICHIUJI, ARNOLD T SALINAS, CA	07/19/01
INGALLS, JAMES ARDEN CARROLLTON, TX	07/19/01
JONES, YVONNE UPPER DARBY, PA	07/19/01
KAY, ROBERT J	07/19/01

Subject, city, state	Effective date
ELLICOTT CITY, MD	
KIRVEN, LISA D ..... BRONX, NY	07/19/01
KUPSC, ROBERT ..... WEYMOUTH, MA	07/19/01
LARNER, JEFFREY T ..... PITTSBURGH, PA	07/19/01
LEE, STEVE YONGSIK ..... CLIFTON, NJ	07/19/01
LEFKOWITZ, GERALD ALLEN CHARLOTTE, NC	07/19/01
LEVISON, ROBERT ..... PHOENIX, AZ	07/19/01
LOCKHART, WALTER CORNELL JR ..... ANNAPOLIS, MD	07/19/01
MADUFORD, ALOYSIUS C ..... YORK, PA	07/19/01
NDUBISI, BONIFACE U ..... JACKSONVILLE, FL	07/19/01
PERRY, MAURICE ANTHONY RESEDA, CA	07/19/01
POGUE, JOHN G ..... SHREVEPORT, LA	07/19/01
SANDERS, BETHANNE L ..... CHEVY CHASE, MD	07/19/01
STONE, DONALD KIM ..... CLEARWATER, FL	07/19/01
STRANKMAN, NANCY ANN .... TUCKER, GA	07/19/01
STRICKLAND, JEFFREY LEE NORCROSS, GA	07/19/01
SUWANTAVEESRI, TATSANEE ..... MIDDLESEX, NJ	07/19/01
TALBOT, LISA M ..... NEW BEDFORD, MA	07/19/01
VAN NICE, DENNIS G ..... MIDLAND, TX	07/19/01
WESSON, MICAH A ..... SHERMAN, TX	07/19/01
WHITE, SHARON L ..... PALM HARBOR, FL	07/19/01
WOODBERRY-WRIGHT, GERALDINE ..... HAMPTON, VA	07/19/01
PEER REVIEW ORGANIZATION CASES	
GARDNER, BILLY L ..... HARPER, KS	04/17/87

Dated: June 29, 2001.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 01–17878 Filed 7–17–01; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a Teleconference Meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in August 2001.

The meeting will include the review, discussion and evaluation of grant applications reviewed by IRGs. Therefore, the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, 10(d).

A summary of the meeting and roster of council members may be obtained from: Ms. Cynthia Graham, CSAT, National Advisory Council, Rockwall II Building, Suite 619, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8923.

Substantive program information may be obtained from the contact below whose name and telephone number are listed.

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.

Meeting Date: August 15, 2001.

Place: Center for Substance Abuse Treatment, 5515 Security Lane, 6th Floor Conference Room, Suite 615, Rockville, MD 20852.

Type: CLOSED: August 15, 2001—2:00—4:00 p.m.

Contact: Cynthia Graham, M.S., Committee Management Officer, Telephone: (301) 443–8923, and FAX: (301) 480–6077.

Dated: July 12, 2001.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 01–17980 Filed 7–17–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare a Management Plan and Environmental Impact Statement for Bison and Elk at the National Elk Refuge and Grand Teton National Park in Teton County, Wyoming

AGENCY: Fish and Wildlife Service and National Park Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (FWS) and National Park Service (NPS), in cooperation with the USDA Animal and Plant Health Inspection Service (APHIS) and the Bridger-Teton National Forest (BTNF), are beginning to prepare a management plan and environmental impact statement (EIS) for management of bison and elk in the National Elk Refuge (NER) and Grand Teton National Park (GTNP) in Wyoming. Bison and elk utilizing these areas comprise a large portion of the ''Jackson Bison and Elk Herds.'' The planning/EIS process will involve analysis of ecosystem level conditions and actions which affect management of bison and elk on the park and refuge and will develop herd management alternatives for accomplishing the goals, objectives, and purposes of the NER and GTNP. Since most bison and elk utilizing these areas at some time during the year also utilize other areas during other periods of the year, the planning process will involve all agencies having some authority over the same animals. The FWS and NPS are lead agencies and the USDA Forest Service and APHIS are cooperating agencies in the preparation of the EIS. The State of Wyoming has not yet determined its level of involvement in the project.

This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are herein solicited. Additional notices of information/document availability and requests for comments and participation will be published at appropriate times in the process

DATES: Written comments on the scope of issues should be received by the Jackson Bison and Elk Assistant Project Leader (see **ADDRESSES,** below) by August 24, 2001. Prescoping public meetings were held in Wyoming from February 10 through May 5, 2001. All project-related comments received by the project team prior to this notice (e.g. in prescoping) will be incorporated into the scoping record and considered in the process.

The project scoping meetings listed below have been scheduled. A project mailing list was begun with the prescoping process. Mailers advising of the meetings listed below, and all additional public meetings for the project, will be sent to all individuals and organizations on the project mailing list. Requests for addition to the mailing list can be made by correspondence to the assistant project leader (see **ADDRESSES**, below). Information related to all project meetings may be viewed at the project website via: <*http://bisonandelkplan.fws.gov/*>.

JACKSON BISON AND ELK MANAGEMENT PLAN/EIS SCOPING MEETINGS

Date	City	Location
Friday, July 20, 2001	Jackson, WY	Commissioners' Chamber (200 S. Willow)
Saturday, July 21, 2001	Rock Springs, WY	Holiday Inn (1675 Sunset Drive)
Monday, July 23, 2001	Idaho Falls, ID	Quality Inn (850 Lindsay Blvd.)
Tuesday, July 24, 2001	Bozeman, MT	Best Western Grantree (1325 N. 7th)
Wednesday, July 25, 2001	Sheridan, WY	Best Western Sheridan Center (612 N. Main)
Thursday, July 26, 2001	Casper, WY	Holiday Inn (300 W. ''F'' St.)
Friday, July 27, 2001	Riverton, WY	City Hall (816 N. Federal Blvd.)
Wednesday, August 1, 2001	Cheyenne, WY	Little America (2800 W. Lincolnway)
Thursday, August 2, 2001	Lakewood, CO	Denver Sheraton West (360 Union Blvd.)
Friday, August 3, 2001	Arlington, VA	Holiday Inn at Ballston (4610 N. Fairfax Dr.)

All meetings will be from 6:30 to 8:30pm.

This information will also be available on the website, sent to the mailing list, announced by local radio stations, and published in local newspapers.

ADDRESSES: Send written comments, and/or requests to be added to the mailing list, to Don DeLong, Assistant Project Leader, Jackson Bison and Elk Management Planning Office, PO Box 510, Jackson, Wyoming 83001, USA. Phone: 307–733–9212 extension 235, or via email to <bison/elk_planning@fws.gov>

FOR FURTHER INFORMATION CONTACT: The Assistant Project Leader listed above, or Dr. Dan E. Huff, Project Leader, US Fish and Wildlife Service, Region 6, Box 25486, Denver Federal Center, Denver, CO 80225, USA. Phone: 303–236–8145 extension 605.

SUPPLEMENTARY INFORMATION: Dan Huff and Don DeLong are primary authors of this document.

GTNP and the NER border one another and are located just north of Jackson, in northwestern Wyoming. Together with the BTNF, they make up most of the southern half of the Greater Yellowstone Ecosystem. The NER comprises about 25,000 acres and the GTNP, about 304,000 acres. The Jackson Bison and Elk Herds make up one of the largest concentrations of free-ranging ungulates in North America. Currently, these herds total approximately 600 bison and 14,000 elk. The herds migrate across several jurisdictional boundaries including GTNP and southern Yellowstone National Park, the BTNF, Bureau of Land Management resource areas, and state and private lands, before they over-winter on the BTNF and the NER. Because of the wide range of authorities and interests, including cooperative management by the State of Wyoming on most federal lands, the NPS and FWS are seeking a cooperative approach to management planning involving all of the associated federal and state agencies and a broad range of organized and private interests.

A management plan (Jackson Bison Herd Long Term Management Plan and Environmental Assessment) was developed by GTNP and the NER, in cooperation with and Wyoming Game and Fish Department and the BTNF, for the Jackson Bison Herd and finalized in September, 1996. A Record of Decision (ROD) for that document was approved in 1997. But, a lawsuit was brought by the Fund for Animals (FFA) in 1998 enjoining most federal management actions proposed in the 1996 plan. The court ruled that destruction of bison on federal lands for population control purposes could not be carried out until additional NEPA compliance was completed for those actions. The court also directed that additional NEPA compliance consider the effects of elk winter-feeding by the FWS on the NER, on the Jackson bison population.

The Refuge Improvement Act of 1997 requires that ''Comprehensive Conservation Plans'' (CCPs) be developed for all national wildlife refuges. For the NER, elk management, including winter-feeding would make up the most significant issue in that CCP. In order to coordinate the compliance required for NER and GTNP bison and elk management under NEPA itself, the FFA lawsuit, and the Refuge Improvement Act, and since many management actions for one affect both species, this planning/compliance process was proposed by GTNP and the NER, and directed by the DOI Assistant Secretary for Fish and Wildlife and Parks in 1999.

A series of prescoping public meetings was held on this project, prior to formal scoping, to share information and demonstrate interests in future desired conditions by the wide range of interests. Results of these meetings are available on the project WebPage. While formal identification of project scope, including issues to be addressed, will be carried out in the scoping process, information from the prescoping meetings make it likely that bison and elk population size, habitat impacts of bison and elk and habitat management, associated recreation (including hunting programs), winter-feeding, and disease management will all be addressed. These issues may be redefined, and additional issues are likely to be identified.

Estimated dates for milestones in this process are listed below. Any revised dates will be provided in newsletters to the project mailing list, in news releases, and at the website.

Situation Assessment (completed)—September 21, 2000;

Prescoping Meetings (completed)—February 10–May 5, 2001;

Notice of Intent'' published in **Federal Register**—July 15, 2001;

Scoping Meetings—July 20–August 3, 2001;

Draft Plan/EIS available to the public—September 15, 2002;

Final Plan/EIS available to the public—September 15, 2003;

''Record of Decision'' published in **Federal Register**—January 1, 2004.

Dated: July 17, 2001.

Duane K. McDermond,

Regional Chief, National Wildlife Refuge System.

[FR Doc. 01–17960 Filed 7–17–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Pursuant to Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on July 6, 2001, a proposed Consent Decree in *United States* v. *Battery Properties, Inc.,* Civil Action No. 1–01–0009, was lodged with the United States District Court for the Middle District of Tennessee.

In this action the United States sought to recover response costs incurred by

the Environmental Protection Agency (''EPA'') during the performance of a response action to address releases and threatened releases of hazardous substances at the Mallory Capacitor Co. Superfund Site (''Site'') in Waynesboro, Wayne County, Tennessee. The Decree resolves the liability of Defendant Battery Properties, Inc. for the United States' past response costs, interim response costs, and future oversight costs. The Defendant will pay $39,149 to the Hazardous Substances Superfund in reimbursement of EPA's response costs at or in connection with the Site through September 30, 1999. The Defendant will pay all response costs incurred between October 1, 1999 and the date of entry of the consent decree. In addition, Defendant will pay EPA's future oversight costs incurred during Defendant's performance under EPA's March 4, 1992 Unilateral Administrative Order for Remedial Design and Remedial Action.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Battery Properties, Inc.,* DOJ Ref. 90–11–2–733/1.

The Consent Decree may be examined at the Office of the United States Attorney, Middle District of Tennessee, 110 Ninth Avenue, S., Suite A–961, Nashville, Tennessee 37203, and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington DC 20044–7611. In requesting a copy, please refer to *United States* v. *Battery Properties, Inc.,* Civ. No. 1–01–0009 (M.D. Tenn.), DOJ Ref. 90–11–2–733/1, and enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 01–17879 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Environment and Natural Resources Division; Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Hartz Construction Co., Inc.,* Civ. No. 98–C–4785 (N.D. Ill.), was lodged with the United States District Court for the Northern District of Illinois on June 15, 2001. This proposed Consent Decree concerns a complaint filed by the United States of America against Hartz Construction Co., Inc., pursuant to section 309(b) and (d), and section 404(s), of the Clean Water Act, 33 U.S.C. 1319(b), (d), 1344(s), to obtain injunctive relief and impose civil penalties against the Defendant for unlawfully discharging dredged or fill materials into waters of the United States at two sites located in Cook County, Illinois, and for failing to comply with requests for information in accordance with Clean Water Act section 308(a), 33 U.S.C. 1318(a).

The proposed Consent Decree requires the Defendant to pay a civil penalty in the amount of $80,000, for its unauthorized discharges and for its noncompliance with requests for information. In addition, the Defendant has established an area within or adjacent to both of the sites for the purpose of creating waters of the United States to mitigate the loss of waters of the United States as alleged in the Complaint. The proposed Consent Decree further reflects the fact that the Defendant has represented that it has now fully and completely responded to the requests for information.

The Department of Justice will receive written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Attention: Joshua M. Levin, P.O. Box 23986, Washington, D.C. 20026–3986. Please refer to the matter of *United States* v. *Hartz Construction Co., Inc.,* DJ Reference No. 90–5–1–1–05007.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, IL 60604. In addition, the proposed Consent Decree may be viewed on the World Wide Web at http://www.usdoj.gov/enrd/enrd-home.html.

Scott A. Schachter,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 01–17880 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993: AAF Association, Inc.

Notice is hereby given that, on June 19, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Grass Valley Group, Beaverton, OR; NL Technology, North Andover, MA; Pandora International, Ltd., Northfleet, Kent, United Kingdom; and Warner Bros., Burbank, CA have been added as parties to this venture. Also, Sonic Foundry, Madison, WI has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 20, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 11, 2001 (66 FR 18799).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–17883 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993: Fire Sprinkler Manufacturers' Joint Research and Development Consortium

Notice is hereby given that, on January 31, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Fire Sprinkler Manufacturers' Joint Research and Development Consortium (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are: Central Sprinkler, Inc., Exeter, NH; Firematic Sprinkler Services, Inc., Shrewsbury, MA; Gem Sprinkler Company, Exeter, NH; Globe Fire Sprinkler Corporation, Standish, MI; Kidde Fire Fighting USA, Exton, PA; National Fire Sprinkler Association, Inc., Patterson, NY; The Reliable Automatic Sprinkler Company, Inc., Mount Vernon, NY; Star Sprinkler, Inc., Exeter, NH; Tyco Flow Control, Exeter, NH; Tyden Group, Grand Rapids, MI; Victaulic Fire Safety Company, LLC, Easton, PA; and The Viking Corporation, Hastings, MI.

The general area of planned activity is to collect, exchange and analyze research information to determine, in conjunction with the U.S. Consumer Product Safety Commission or such other agency as may be deemed an interested party, whether listing and approval test standards, as well as installation and maintenance standards, relating to fire sprinklers need to be revised and, if necessary, to develop and recommend changes to such standards.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–17884 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—GENRAC, LLC

Notice is hereby given that, on April 5, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), GENRAC, LLC has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are: GENRAC, LLC, Oak Ridge, TN; Abgenix, Inc., Freemont, CA; and CJ America, Inc., Fort Lee, NJ.

The general area of planned activity is to provide a mechanism for members to utilize the multidisciplinary research and development capabilities of Oak Ridge National Laboratory and the University of Tennessee in order to participate in defined research and development programs in basic functional genomics technology and techniques and to share in the knowledge and benefits of intellectual property developed therefrom.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–17882 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II)

The notice on behalf of International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (''IPACT–II'') published in the **Federal Register** on Thursday, August 17, 2000 (65 FR 50218) is retracted and replaced by the following:

Notice is hereby given that, on July 6, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (''IPACT–II'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in name of some of its members.

The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Astra AB is now known as AstraZeneca AB, Sodertalje, Sweden; Rhone-Poulenc Rorer Pharmaceuticals, Inc., is now known as Aventis Pharmaceuticals Products, Inc., Collegeville, PA; and Fisons plc, is now known as Fisons Ltd., Holmes Chapel, England, United Kingdom.

No other changes have been made in either the membership or planned activity of IPACT–II. Membership in this joint research project remains open, and IPACT–II intends to file additional written notification disclosing all changes in membership.

On February 21, 1991, IPACT–II filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 2, 1991 (56 FR 13489).

The last notification was filed with the Department on March 6, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1997 (62 FR 15939).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–17881 Filed 7–17–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized,

collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed revision of the Report of Construction Contractor's Wage Rates (WD–10).

DATES: Written comments must be submitted to the office listed in the addressee section below no later than September 17, 2001.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The Davis-Bacon Act provides that every government contract in excess of $2,000 which involves the employment of mechanics and/or laborers, contain a provision stating the minimum wages to be paid, which are based on the prevailing wage rate in the area for corresponding classes of mechanics and laborers employed on similar projects. Further, Section 1.3 of 29 CFR part I provides that the Wage and Hour Administrator will conduct a continuing program for the obtaining and compiling of wage rate information for the purpose of making wage determinations.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Wage and Hour Division seeks the approval of the revision of the currently approved information collection WD–10. The form has been revised in format to allow information to fit on legal size paper (8½ x 14). Instructions have been provided on a second page. The WD–10 form has been revised to be user friendly and machine readable. Electronic imaging of WD–10 forms will expedite data transfer from hard copy to the supporting database. The form redesign is necessary for character recognition software to work effectively. An electronic WD–10 form is being developed which mirrors the paper form and will make it easier for respondents to provide information. The revision of the paper WD–10 and electronic submission of Form WD–10 will expedite data transfer to the supporting database. The use of the electronic WD–10 will expedite the survey process to allow more accurate and timely wage determinations. It is anticipated that completion and electronic submission capability of the WD–10 over the Internet will occur in 2002.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Report of Construction Contractor's Wage Rates.

OMB Number: 1215–0046.

Agency Number: WD–10.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Total Respondents: 37,500.

Total Responses: 75,000.

Time per Response: 20 minutes.

Estimated Total Burden Hours: 25,000.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 25, 2001.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 01–17970 Filed 7–17–01; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF DEFENSE

Department of the Army

Mississippi River Commission; Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission, Defense.

TIME AND DATE: 3:30 p.m., August 13, 2001.

PLACE: On board MISSISSIPPI V at Riverside Park Dock, LaCrosse, WI.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting the Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within St. Paul District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 3:30 p.m., August 15, 2001.

PLACE: On board MISSISSIPPI V at Keokuk/Hubingers Landing, Keokuk, IA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting the Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Rock Island District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 8:30 a.m., August 17, 2001.

PLACE: On board MISSISSIPPI V at City Front, St. Louis, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting the Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within St. Louis District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 8:30 a.m., August 20, 2001.

PLACE: On board MISSISSIPPI V at Mud Island Park Landing, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting the Corps of Engineers

and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Memphis District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 8:30 a.m., August 21, 2001.

PLACE: On board MISSISSIPPI V at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting the Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Vicksburg District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 8:30 a.m., August 23, 2001.

PLACE: On board MISSISSIPPI V at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting the Corps of Engineers and Commission and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within New Orleans District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18012 Filed 7–13–01; 4:22 pm]

BILLING CODE 3710–GX–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for the Creation of a Toolbox for Individual Artists

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to one (1) award of a Cooperative Agreement to compile a Toolbox is intended to assist individual artists in carrying out the business aspects of their careers. Toolbox topics will include financial management, law, marketing, and insurance, and the Toolbox will contain sample forms, checklists, references, and procedures. Completion of the project is contemplated in one year. Those interested in receiving the Solicitation package should reference Program Solicitation PS 01–02 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. It is anticipated that the Program Solicitation will also be posted on the Endowment's Web site at http://www.arts.gov.

DATES: Program Solicitation PS 01–02 is scheduled for release approximately August 6, 2001 with proposals due on September 4, 2001.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506 (202)/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements.

[FR Doc. 01–17885 Filed 7–17–01; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board Panel

[Docket No. 50–213–OLA ASLBP No. 01–787–02–OLA]

Before Administrative Judges: Ann Marshall Young, Chair, Dr. Peter S. Lam, Thomas D. Murphy; In the Matter of Connecticut Yankee Atomic Power Company (Haddam Neck Plant); Notice of Hearing

July 12, 2001.

This proceeding concerns a license amendment application of Connecticut Yankee Atomic Power Company (CYAPCO), seeking to add a new license condition to approve a License Termination Plan (LTP) for its Haddam Neck Plant pursuant to 10 CFR 50.82(a)(9), (10), and allow CYAPCO to make changes to the approved LTP without prior NRC approval if certain criteria specified in the license condition are met. After a public meeting held October 17, 2000, NRC Staff proposed to determine that the amendment request involves no significant hazards consideration under 10 CFR 50.92(c), and provided notice of this finding and of the opportunity for a hearing with regard to the amendment request. 65 FR 77913 (Dec. 13, 2000). In response to this notice, the Citizens Awareness Network (CAN) and the Connecticut Department of Public Utility Control (CDPUC) filed requests for hearing dated January 11 and 17, 2001, respectively. On January 31, 2001, an Atomic Safety and Licensing Board, consisting of the members listed above, was established to preside over this proceeding. 66 FR 9111 (Feb. 6, 2001).

Notice is hereby given that, by Memorandum and Order dated July 9, 2001, the Board granted Petitioners CAN and CDPUC a hearing, after holding oral argument in a series of prehearing conferences on the contentions and arguments of the Petitioners, CYAPCO and the NRC Staff. In this Memorandum and Order, the Board found that both CAN and CDPUC have standing to proceed, and admitted contentions relating to adequacy of the site characterization, scope of work required to meet the requirements of the rules, dose calculations, and water contamination.

This proceeding will be conducted under the Commission's hearing procedures set forth in 10 CFR part 2, subpart G. During the course of the proceeding, the Board may conduct additional oral argument as provided in 10 CFR 2.755, hold additional prehearing conferences pursuant to 10 CFR 2.752, and conduct an evidentiary hearing in accordance with 10 CFR 2.750–.751. The time and place of these sessions will be announced in Licensing Board Orders. Except as limited by the parameters of telephone conferences (which will in any event be transcribed), members of the public are invited to attend any such sessions.

Additionally, as provided in 10 CFR 2.715(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in the proceeding. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff. A copy of the statement should also be served on the Chairman of the Atomic Safety and Licensing Board. At a later date, the Board will entertain oral limited appearance statements at a location or locations in the vicinity of the Haddam Neck Plant, which is located

approximately 21 miles southeast of Hartford, Connecticut, on the east bank of the Connecticut River. Notice of these oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room.

Documents related to this proceeding are available electronically through the Agencywide Documents access and Management System (ADAMS), with access to the public through the NRC's Internet Web site (Public Electronic Reading Room Link, *http://www.nrc.gov/NRC/ADAMS/index.html)*. The NRC Public Documents Room (PDR) and many public libraries have terminals for public access to the Internet. Documents that may relate to this proceeding that are dated earlier than December 1, 1999, are available in microfiche form (with print form available on one-day recall) for public inspection at the PDR, Room 0–1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

Dated: July 12, 2001.

For the Atomic Safety and Licensing Board.

Ann Marshall Young,

Chair, Administrative Judge.

[FR Doc. 01–17952 Filed 7–17–01; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

PSEG Nuclear, LLC, Hope Creek Generating Station; Exemption

1.0 Background

The PSEG Nuclear LLC (PSEG or the licensee) is the holder of Facility Operating License No. NPF–57 which authorizes operation of the Hope Creek Generating Station (HCGS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor located in Salem County in New Jersey.

2.0 Request/Action

Title 10 of the Code of Federal Regulations, part 50, appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, appendix G, states that ''[t]he appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' In addition, Appendix G of 10 CFR part 50 specifies that the requirements for these limits ''must be at least as conservative as limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the ASME Code [American Society of Mechanical Engineers Boiler and Pressure Vessel Code].''

By letter dated December 1, 2000, as supplemented by letters dated February 12, May 7, and May 14, 2001, PSEG submitted a license amendment request to increase the HCGS core thermal power level by 1.4 percent. The amendment request included proposed P–T limit curves for the HCGS RPV. As part of the same submittal, PSEG requested an exemption from specific requirements of 10 CFR 50.60(a) and Appendix G. The proposed exemption would allow the use of ASME Code Cases N–588, ''Alternative to Reference Flaw Orientation of Appendix G for Circumferential Welds in Reactor Vessels, Section XI, Division 1,'' and N–640, ''Alternative Reference Fracture Toughness for Development of P–T Limit Curves for ASME Section XI, Division 1,'' as alternative methods for complying with the fracture toughness requirements in 10 CFR Part 50, Appendix G. The proposed amendment relies, in part, on the requested exemption since the proposed P–T limit curves for the HCGS RPV were developed based on the use of Code Cases N–588 and N–640. Pursuant to 10 CFR 50.60(b), proposed alternatives to the requirements in Appendices G and H of 10 CFR Part 50 may be used by licensees when the Commission grants an exemption under 10 CFR 50.12.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The licensee's application states that the proposed exemption meets the special circumstances provisions in 10 CFR 50.12(a)(2)(ii), which states that ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

As previously discussed, the licensee has requested an exemption to use ASME Code Cases N–588 and N–640 as alternative methods for complying with the fracture toughness requirements in 10 CFR Part 50, Appendix G. The underlying purpose of 10 CFR part 50, appendix G, is to protect the integrity of the reactor coolant pressure boundary in nuclear power plants. This is accomplished through these regulations that, in part, specify fracture toughness requirements for ferritic materials of the reactor coolant pressure boundary. The staff's review related to each of the Code Cases is discussed below.

Code Case N–588

Code Case N–588 amends the provisions of the 1989 Edition of ASME Section XI, Appendix G, by permitting the postulation of a circumferentially oriented reference flaw as the limiting flaw in an RPV circumferential weld for the purpose of establishing RPV P–T limits. The 1989 Edition of ASME Section XI, Appendix G, would require that such a reference flaw be postulated as an axially oriented flaw in the circumferential weld.

The licensee addressed the technical justification for this exemption by citing industry experience and aspects of RPV fabrication which support the postulation of circumferentially oriented flaws for these welds. The reference flaw is a postulated flaw that accounts for the possibility of a prior existing defect that may have gone undetected during the fabrication process. Postulating the ASME Section XI, Appendix G reference flaw in a circumferential weld is physically unrealistic and overly conservative, because the length of the flaw is 1.5 times the vessel wall thickness, which is much longer than the width of the circumferential weld. Industry experience with the repair of weld indications found during preservice inspection, inservice nondestructive examinations, and data taken from destructive examination of actual vessel welds confirms that any remaining defects are small, laminar in nature, and do not cross transverse to the weld bead. Therefore, any postulated defects introduced during the fabrication process, and not detected during subsequent nondestructive examinations, would only be expected to be oriented in the direction of weld fabrication. ASME Code Case N–588 also provides appropriate procedures for determining the stress intensity factors for use in developing RPV P–T limits in accordance with ASME Code, Section XI, Appendix G, procedures. The procedures allowed by ASME Code Case

N–588 are conservative and provide a margin of safety in the development of RPV P–T operating and pressure test limits that will prevent nonductile fracture of the vessel.

The staff concurs with the licensee's conclusion that the postulation of an axially oriented flaw on a circumferential RPV weld is a level of conservatism that is not required to establish P–T limits to protect the reactor coolant system pressure boundary from failure during hydrostatic testing, heatup, and cooldown. Based on the manufacturing processes used to fabricate RPVs for U.S. facilities, it is reasonable to conclude that, if a significant defect were to exist in a circumferential weld, it would lie in the plane of the welding direction. The use of stress magnification factors which account for this difference in flaw orientation (i.e., account for a factor of approximately two in the difference in the applied pressure stress between the axial and circumferential directions) is acceptable.

The staff also notes that, Code Case N–588, Section 2214.3, includes changes to the methodology for determining the thermal stress intensity, KIT, which was incorporated into Section XI of the ASME Code after the 1989 Edition. The staff has reviewed the basis for these changes in the KIT methodology in detail. The staff accepts that the modifications made to the KIT methodology in Section 2214.3 of Code Case N–588 result in a determination of KIT that is consistent with the methodology found in the 1989 Edition of ASME Code Section XI, Appendix G, and that the use of equivalent KIT values for axial and circumferential flaws is acceptable.

Application of ASME Code Case N–588 when determining P–T operating limit curves per ASME Code, Section XI, appendix G, provides appropriate procedures for determining limiting maximum postulated defects and considering those defects in developing the P–T limits. This application of the code case maintains that margin of safety originally contemplated when ASME Code Section XI, appendix G was developed.

Based on the above considerations, the staff concludes that use of Code Case N–588 for development of the HCGS RPV P–T limit curves will meet the underlying purpose of Appendix G of 10 CFR part 50 with respect to protecting the integrity of the reactor coolant pressure boundary. In this case, since strict compliance with the requirements of 10 CFR 50.60(a) and 10 CFR part 50, appendix G, is not necessary to serve the overall intent of the regulations, the staff also concludes that application of Code Case N–588 for the HCGS meets the special circumstances provisions in 10 CFR 50.12(a)(2)(ii), for granting exemptions to the regulations.

Code Case N–640

Code Case N–640 amends the provisions of ASME Section XI, Appendix G, by permitting the use of the K_{Ic} equation as found in Appendix A in ASME Section XI, in lieu of the K_{Ia} equation as found in Appendix G in ASME Section XI. Use of the K_{Ic} equation in determining the lower bound fracture toughness in the development of the P–T operating limits curve is more technically correct than the use of the K_{Ia} equation since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The staff has required use of the initial conservatism of the K_{Ia} equation since 1974 when the equation was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} equation is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P–T curves based on the K_{Ic} equation will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations.

Based on the above considerations, the staff concludes that use of Code Case N–640 for development of the HCGS RPV P–T limit curves will meet the underlying purpose of appendix G of 10 CFR part 50 with respect to protecting the integrity of the reactor coolant pressure boundary. In this case, since strict compliance with the requirements of 10 CFR 50.60(a) and 10 CFR part 50, appendix G, is not necessary to serve the overall intent of the regulations, the staff also concludes that application of Code Case N–640 for the HCGS meets the special circumstances provisions in 10 CFR 50.12(a)(2)(ii), for granting exemptions to the regulations.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants PSEG Nuclear LLC an exemption from the requirements of 10 CFR 50.60(a) and 10 CFR part 50, appendix G, for HCGS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 33717).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of July 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–17954 Filed 7–17–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland. The meeting will provide an opportunity for discussion on the revised draft Chapter 3 entitled, ''Integrated Safety Analysis'' of NUREG–1520, Standard Review Plan (SRP) for the Review of a License Application for a Fuel Cycle Facility. The March 30, 2001, draft Chapter 3 can be found in both a ''clean'' and marked-up version in the NRC Public Electronic Reading Room under ''Recently Released Documents, April 3, 2001''. It can also be found on the Internet at the following website: *http://techconf.llnl.gov/cgi-bin/library?source=*&library=Part_70_lib.*

The web site can also be reached by the following method:

1. Go the main NRC web site at: *http://www.nrc.gov.*
2. Scroll down to the bottom of that page and click on the word ''Rulemaking.''
3. Scroll down on the Rulemaking page until the words ''Technical Conference'' appear. Click on those words.
4. On the page titled ''Welcome to the NRC Technical Conference Forum,'' click on the link ''Conference'' or ''Technical Conferences''.
5. Scroll down to the topic ''Draft Standard Review Plan and Guidance on Amendment to 10 CFR part 70.''
6. Select ''Document Library''.

Purpose: This meeting will provide an opportunity to discuss comments on the staff's revised draft Chapter 3 and its appendix.

DATES: The meeting is scheduled for Tuesday, August 2, 2001, from 1:30 p.m. to 4:00 p.m. The meeting is open to the public.

ADDRESSES: Two White Flint North, 11545 Rockville Pike, Room T–10A1, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Yawar H. Faraz, Senior Project Manager, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–8113, e-mail *yhf@nrc.gov.*

Dated at Rockville, Maryland this 11th day of July, 2001.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–17953 Filed 7–17–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a regulatory guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Draft Regulatory Guide DG–1110 is a proposed Revision 1 of Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis.'' DG–1110 is being developed to provide guidance to licensees on methods acceptable to the NRC staff for assessing the nature and impact of licensing basis changes when the licensee chooses to support, or is requested by the NRC staff to support, such changes with risk information.

A proposed Revision 1 of Chapter 19, ''Use of Probabilistic Risk Assessment in Plant-Specific, Risk-Informed Decisionmaking: General Guidance,'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' is being issued for public comment as a companion document. Chapter 19 of the Standard Review Plan will be used by the NRC staff for evaluating licensee submittals that use the guidance in Regulatory Guide 1.174 on risk-informed decisionmaking that uses probabilistic risk assessment.

This draft guide and draft standard review plan chapter have not received complete staff approval and do not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by September 17, 2001.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *cag@nrc.gov.* For information about the draft guide and the related standard review plan chapter, contact Ms. M.T. Drouin at (301) 415–6675; e-mail mxd@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of this draft regulatory guide are available on the NRC's web site <*www.nrc.gov*> in the Reference Library under Regulatory Guides. Electronic copies are also available in NRC's Public Electronic Reading Room at the same web site; DG–1110 is under ADAMS Accession Number ML011770102. Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; email *pdr@nrc>gov.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *distribution@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 27th day of June 2001.

For the Nuclear Regulatory Commission.

Mark A. Cunningham,

Branch Chief, Probabilistic Risk Analysis Branch, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 01–17955 Filed 7–17–01; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: July 26, 2001 at 8:30 a.m.

PLACE: Commission conference room, 1333 H Street, NW., Suite 300, Washington, DC, 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: Discussion and vote on the Postal Rate Commission's fiscal year 2002 budget.

CONTACT PERSON FOR MORE INFORMATION: Steven W. Williams, acting secretary, Postal Rate Commission, 202–789–6840.

Dated: July 16, 2001.

Steven W. Williams,

Acting Secretary.

[FR Doc. 01–18110 Filed 7–16–01; 2:09 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25061; 812–11616]

CDC IXIS Asset Management Advisers, L.P., et al.; Notice of Application

July 12, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(c) and 17(b) of

the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act, under section 6(c) for an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e–1 under the Act, and under section 10(f) of the Act for an exemption from section 10(f).

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between the broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a principal underwriter. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by a broker-dealer, which is an affiliated person of an investment adviser to another portion, subject to the limits in rule 12d3–1 under the Act.

APPLICANTS: CDC IXIS Asset Management Advisers, L.P. (formerly known as Nvest Funds Management, L.P.) (''NFM'') and CDC Nvest Funds Trust I (''Trust'').

FILING DATES: The application was filed on May 25, 1999, and amended on March 5, 2001 and June 28, 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 August 6, 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, 399 Boylston Street, 6th Floor, Boston, MA 02116, Attn: John E. Pelletier; copy to: Ryan C. Larrenaga, Esq., Ropes & Gray, One International Place, Boston, MA 02110–2624.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Branch Chief, or Nadya B. Roytblat, Assistant Director, 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 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company with twelve series, four of which are advised by NFM and three or more investment subadvisers (the ''Star Funds'').[1]

2. NFM is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and provides investment advisory and administrative services to the Trust. The assets of the Star Funds are allocated by NFM among multiple subadvisers (''Subadvisers''). Each Subadviser has discretion to purchase and sell securities for a discrete segment of a Star Fund's assets in accordance with that Star Fund's objectives and the Subadviser's own investment style and strategies. The subadvisory fees paid to each Subadviser are either paid by NFM or, if paid directly to the Subadviser by the Trust, reduce the management fee received by NFM from the Trust by the amount of the subadvisory fee.

3. The requested relief would permit: (a) any broker-dealer that itself serves as Subadviser (either directly or through a separate operating division) or is an affiliated person of a Subadviser (an ''Affiliated Subadviser'') to a Multi-Segment Fund (as defined below) (an ''Affiliated Broker-Dealer'') to engage in principal transactions with a portion of the Multi-Segment Fund that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or the Affiliated Subadvisor (each such portion, an ''Unaffiliated Segment''); (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Segment, and the Unaffiliated Segment to utilize such brokerage services, without complying with rule 17e–1(b) and (c) under the Act; (c) an Unaffiliated Segment to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or a person of which an Affiliated Subadviser is an affiliated person (''Affiliated Underwriter''); (d) a portion of the Star Fund advised by an Affiliated Subadviser (''Affiliated Segment'') to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Segment with purchases by an Unaffiliated Segment; and (e) an Unaffiliated Segment to acquire securities issued by an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser engaged in securities-related activities (''Securities Affiliate'') within the limits of rule 12d3–1. The requested relief would apply only if the Affiliated Broker-Dealer is not an affiliated person or an affiliated person of an affiliated person of NFM, the Subadviser making the investment decision with respect to the Unaffiliated Portion (''Unaffiliated Subadviser''), a principal underwriter, promoter, or an officer, trustee, or employee of the Multi-Managed Portfolio engaging in the transaction.

4. Applicants request that the exemptive relief apply to the Trust or any existing or future registered open-end management investment company or series thereof advised by (a) NFM or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with NFM and (b) at least one other investment adviser registered under the Advisers Act or exempt from such registration (the Star Funds and such investment companies or series thereof, each a ''Multi-Segment Fund'' or ''Fund''). The relief also would apply to any existing or future entity that serves as an Affiliated Subadviser, Affiliated Broker-Dealer, or Affiliated Underwriter to a Multi-Segment Fund. Any investment company that currently intends to rely on the order is named as an applicant. NFM will take steps designed to ensure that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

[1] Specifically, the Star Funds are the CDC Nvest Star Advisers Fund, the CDC Nvest Star Worldwide Fund, the CDC Nvest Star Small Cap Fund and the CDC Nvest Star Value Fund.

Applicants' Legal Analysis

A. Principal Transactions between an Unaffiliated Segment and an Affiliated Broker-Dealer

1. Section 17(a) of the Act generally prohibits sales or purchases of securities or other property between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter. Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Subadviser would be an affiliated person of a Fund, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and thus an affiliated person of an affiliated person (''second-tier affiliate'') of a Fund, including the Unaffiliated Segment. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Segment of a Multi-Segment Fund with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Segment solely because an Affiliated Subadviser is the Subadviser to another portion of the same Fund. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of NFM, the Unaffiliated Subadviser making the investment decision, any principal underwriter or promoter of the Fund, or any officer, director or employee of the Fund.

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 the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser purchases securities on behalf of an Unaffiliated Segment in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the value of the assets allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated Segment would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Segment. Applicants further submit that NFM's power to dismiss Subadvisers or to change the portion of a Multi-Segment Fund allocated to each Subadviser reinforces a Subadviser's incentive to maximize the investment performance of its own portion of the Fund.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a discrete portion of the Multi-Segment Fund. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants represent that NFM does not dictate brokerage allocation or investment decisions to any Fund advised by a Subadviser, or have the contractual right to do so. Applicants contend that, in managing a discrete portion of a Multi-Segment Fund, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Fund, since each Unaffiliated Subadviser is required to manage the Unaffiliated Segment in accordance with the investment objectives and related investment policies of the Fund as described in its registration statement. Applicants also assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Fund achieving best price and execution on its principal transactions, while giving rise to none of the abuses that the Act was designed to prevent.

B. Payment of Brokerage Compensation by an Unaffiliated Segment to an Affiliated Broker-Dealer

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the ''usual and customary broker's commission'' for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(c) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Subadviser to another portion of the Multi-Segment Fund) or a second-tier affiliate of an Unaffiliated Segment and thus subject to section 17(e). Applicants request an exemption under section 6(c) from section 17(e) and rule 17e–1 to the extent necessary to permit an Unaffiliated Segment to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business in connection with the sale of securities to or by such Unaffiliated Segment, without complying with the requirements of rule 17e–1(b) and (c). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Segment solely because an Affiliated Subadviser is the Subadviser to another portion of the same Multi-Segment Fund. The relief would not apply if the Affiliated Broker-Dealer (except by virtue of

serving as Subadviser) is an affiliated person or a second-tier affiliate of NFM, the Unaffiliated Subadviser to the Unaffiliated Segment of the Multi-Segment Fund, any principal underwriter or promoter of the Fund, or any officer, director or employee of the Fund.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Segment it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair as required by rule 17e–1(a). Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Segment.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of those persons. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser, although under contract to manage only a distinct portion of a Multi-Segment Fund, is considered an investment adviser to the entire Fund. As a result, applicants believe that all purchases of securities by an Unaffiliated Segment from an underwriting syndicate a principal underwriter of which is an Affiliated Underwriter would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Segment to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Fund. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Subadviser) is an affiliated person or a second-tier affiliate of NFM, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Segment of the Multi-Segment Fund, any principal underwriter or promoter of the Fund, or any officer, director, or employee of the Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Segment to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Segment with purchases by an Unaffiliated Segment.

4. Applicants state that section 10(f) was adopted in response to concerns about the ''dumping'' of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Multi-Segment Funds because a decision by an Unaffiliated Subadviser to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for ''dumping.'' In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

D. Purchases of Securities of Securities Affiliates by an Unaffiliated Segment.

1. Section 12(d)(3) of the Act, in relevant part, generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting (collectively, ''securities-related activities''). Rule 12d3–1 under the Act exempts certain transactions from the prohibitions of section 12(d)(3) if specified conditions are met. One of these conditions, paragraph (c) of rule 12d3–1, generally provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person of the investment company's investment adviser, promoter, or principal underwriter.

2. Applicants state that each Subadviser is considered to be an affiliated person of an entire Multi-Segment Fund. Accordingly, a Securities Affiliate is either an affiliated person (as Subadviser to another portion of the Multi-Segment Fund) or a second-tier affiliate of an Unaffiliated Segment. Thus, an Unaffiliated Segment may not purchase securities of a Securities Affiliate in reliance on rule 12d3–1 because of paragraph (c). Applicants request relief under section 6(c) from section 12(d)(3) to permit an Unaffiliated Segment of a Multi-Segment Fund to acquire securities of a Securities Affiliate within the limits of rule 12d3–1. The requested exemption would apply only where a Securities Affiliate is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Segment within the meaning of rule 12d3–1(c) solely because an Affiliated Subadviser is the Subadviser to another portion of the same Multi-Segment Fund.

3. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment decisions for the assets allocated to its portion of the Multi-Segment Fund. Further, applicants submit that prohibiting the Unaffiliated Portions from purchasing securities issued by Securities Affiliates could harm the interests of a Fund's shareholders by preventing the Unaffiliated Subadviser from achieving optimal investment results.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Multi-Segment Fund relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be

operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Affiliated Underwriter or Securities Affiliate (except by virtue of serving as Subadviser to a discrete portion of a Multi-Segment Fund) will be an affiliated person or a second-tier affiliated of NFM, any Unaffiliated Subadviser, or any principal underwriter, promoter, officer, director, or employee of a Multi-Segment Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadvisers concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Segment during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Segment with purchases by an Unaffiliated Segment.

6. With respect to purchases by an Unaffiliated Segment of securities issued by a Securities Affiliate, the conditions of rule 12d3–1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17887 Filed 7–17–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25062; 812–12184]

Apex Municipal Fund, Inc., et al.; Notice of Application

July 12, 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) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order to permit (a) certain registered investment companies to pay an affiliated lending agent a fee based on a share of the revenue derived from securities lending activities; (b) the registered investment companies and certain affiliated institutional accounts to use cash collateral from securities lending transactions and/or uninvested cash to purchase shares of affiliated money market funds or affiliated private investment companies; (c) the registered investment companies to lend portfolio securities to affiliated broker-dealers; and (d) the registered investment companies to engage in certain purchase and sale transactions with each other.

Applicants: Apex Municipal Fund, Inc., The Asset Program, Inc., CBA Money Fund, CMA Government Securities Fund, CMA Money Fund, CMA Multi-State Municipal Series Trust, CMA Tax-Exempt Fund, CMA Treasury Fund, The Corporate Fund Accumulation Program, Inc., Corporate High Yield Fund II, Inc., Corporate High Yield Fund III, Inc., Corporate High Yield Fund, Inc., Debt Strategies Fund, Inc., Financial Institutions Series Trust—Summit Cash Reserves Fund, Global Financial Services Master Trust, Master Basic Value Trust, Master Equity Income Fund, Master Focus Twenty Trust, Master Internet Strategies Trust, Master Large Cap Series Trust, Master Mid Cap Growth Trust, Master Premier Growth Trust, Master Senior Floating Rate Trust, Master Small Cap Value Trust, Master U.S. High Yield Fund Trust, Mercury Global Holdings, Inc., Mercury Index Funds, Inc., Mercury QA Equity Series, Inc., Mercury QA Strategy Series, Inc., Merrill Lynch Arizona Municipal Bond Fund, Merrill Lynch Arkansas Municipal Bond Fund, Merrill Lynch Balanced Capital Fund, Inc., Merrill Lynch Bond Fund, Inc., Merrill Lynch California Insured Municipal Bond Fund, Merrill Lynch California Limited Maturity Municipal Bond Fund, Merrill Lynch California Municipal Bond Fund, Merrill Lynch Colorado Municipal Bond Fund, Merrill Lynch Connecticut Municipal Bond Fund, Merrill Lynch Developing Capital Markets Fund, Inc., Merrill Lynch Disciplined Equity Fund, Inc., Merrill Lynch Dragon Fund, Inc., Merrill Lynch Emerging Markets Debt Fund, Inc., Merrill Lynch Eurofund, Merrill Lynch Florida Limited Maturity Municipal Bond Fund, Merrill Lynch Florida Municipal Bond Fund, Merrill Lynch Focus Value Fund, Inc., Merrill Lynch Fundamental Growth Fund, Inc., Merrill Lynch Funds for Institutions Series, Merrill Lynch Global Allocation Fund, Inc., Merrill Lynch Global Bond Fund for Investment and Retirement, Merrill Lynch Global Growth Fund, Inc., Merrill Lynch Global Small Cap Fund, Inc., Merrill Lynch Global Technology Fund, Inc., Merrill Lynch Global Value Fund, Inc., Merrill Lynch Growth Fund, Merrill Lynch Healthcare Fund, Inc., Merrill Lynch High Income Municipal Bond Fund, Inc., Merrill Lynch Index Funds, Inc., Merrill Lynch Intermediate Term Fund of Merrill Lynch Municipal Series Trust, Merrill Lynch International Equity Fund, Merrill Lynch Latin America Fund, Inc., Merrill Lynch Maryland Municipal Bond Fund, Merrill Lynch Massachusetts Municipal Bond Fund, Merrill Lynch Michigan Municipal Bond Fund, Merrill Lynch Minnesota Municipal Bond Fund, Merrill Lynch Municipal Bond Fund, Inc., Merrill Lynch Municipal Strategy Fund, Inc., Merrill Lynch Natural Resources Trust, Merrill Lynch New Jersey Municipal Bond Fund, Merrill Lynch New Mexico Municipal Bond Fund, Merrill Lynch New York Municipal Bond Fund, Merrill Lynch North Carolina Municipal Bond Fund, Merrill Lynch Ohio Municipal Bond Fund, Merrill Lynch Oregon Municipal Bond Fund, Merrill Lynch Pacific Fund, Inc., Merrill Lynch Pennsylvania Municipal Bond Fund, Merrill Lynch Ready Assets Trust, Merrill Lynch Real Estate Fund, Inc., Merrill Lynch Retirement Reserves Money Fund of Merrill Lynch Retirement Series Trust, Merrill Lynch Senior Floating Rate Fund, Inc., Merrill Lynch Series Fund, Inc., Merrill Lynch Short-Term Global Income Fund, Inc., Merrill Lynch Short-Term U.S. Government Fund, Inc., Merrill Lynch Texas Municipal Bond Fund, Merrill Lynch U.S. Government Mortgage Fund, Merrill Lynch U.S. Treasury Money Fund, Merrill Lynch USA Government Reserves, Merrill Lynch Utility and Telecommunications Fund, Inc., Merrill Lynch Variable Series Funds, Inc., Merrill Lynch World Income Fund, Inc., MuniAssets Fund, Inc., The Municipal Fund Accumulation Program, Inc., MuniEnhanced Fund, Inc., MuniHoldings California Insured Fund, Inc., MuniHoldings Florida Insured Fund, MuniHoldings Fund, Inc., MuniHoldings Fund II, Inc., MuniHoldings Insured Fund II, Inc., MuniHoldings Insured Fund, Inc., MuniHoldings Michigan Insured Fund II, Inc., MuniHoldings New Jersey Insured Fund, Inc., MuniHoldings New York Insured Fund, Inc., MuniInsured

Fund, Inc., MuniVest Fund, Inc., MuniVest Fund II, Inc., MuniYield Arizona Fund, Inc., MuniYield California Fund, Inc., MuniYield California Insured Fund II, Inc., MuniYield California Insured Fund, Inc., MuniYield Florida Fund, MuniYield Florida Insured Fund, MuniYield Fund, Inc., MuniYield Insured Fund, Inc., MuniYield Michigan Fund, Inc., MuniYield Michigan Insured Fund, Inc., MuniYield New Jersey Fund, Inc., MuniYield New Jersey Insured Fund, Inc., MuniYield New York Insured Fund, Inc., MuniYield Pennsylvania Insured Fund, MuniYield Quality Fund II, Inc., MuniYield Quality Fund, Inc., Quantitative Master Series Trust, Senior High Income Portfolio, Inc., Somerset Exchange Fund, and The S&P 500® Protected Equity Fund, Inc. (each a ''Fund''); Merrill Lynch Investment Managers, L.P. (''MLIM''), Fund Asset Management, L.P. (''FAM''), and Merrill Lynch Asset Management U.K. Limited (''MLAM UK'') (each an ''Adviser''); QA Advisers LLC (''QALLC''); and Merrill Lynch & Co., Inc., (''ML & Co.''), Merrill Lynch Pierce, Fenner & Smith Incorporated, Merrill Lynch Government Securities, Inc., and Merrill Lynch International (each an ''Affiliated Broker-Dealer'').

Filing Date: The application was filed on July 20, 2000 and amended on July 6, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 August 2, 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, N.W., Washington, DC 20549–0609. Applicants, c/o MLIM, L.P., P.O. Box 9011, Princeton, New Jersey 08543–9011.

FOR FURTHER INFORMATION CONTACT: Sara Crovitz, Senior Counsel, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0101 (telephone (202) 942–8090).

Applicants' Representations

1. Each of the Funds is either an open-end or closed-end management investment company registered under the Act. Several of the Funds are comprised of multiple series. Certain of the Funds are ''master funds'' in a ''master-feeder structure.'' Fifteen of the Funds are money market funds that comply with the requirements of rule 2a–7 under the Act (''Money Market Funds''). Each of the Funds is advised by either MLIM or FAM, and certain of the Funds are subadvised by MLAM U.K.

2. ML & Co. is a holding company incorporated in Delaware that provides investment, financing, insurance, and related services through its subsidiaries. Each of the Advisers is a wholly owned subsidiary of ML & Co. and is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). Each of the Affiliated Broker-Dealers is a subsidiary of ML & Co.

3. QALLC (also referred to as ''Lending Agent'') is a Delaware limited liability company of which MLIM is the sole member and is registered as an investment adviser under the Advisers Act. QALLC will serve as lending agent in a securities lending program (''Lending Program'') for certain Funds (''Lending Funds'') and institutional clients of entities controlled by or under common control with ML & Co. (''Institutional Clients''). Institutional Clients may include qualified employee benefit plans, trusts, corporate cash accounts, unregistered funds (including those exempted from the definition of investment company by sections 3(c)(1) or 3(c)(7) of the Act), Taft-Hartley plans, foundations, endowments and bank collective investment trusts. QALLC also will form a private investment company (''New Fund''), for which it will serve as managing member. New Fund will serve as an investment option for the cash collateral and/or uninvested cash of Funds and Institutional Clients. New Fund will not register under the Act in reliance on the exemption from the definition of investment company provided by section 3(c)(7).

4. Applicants request that the order also apply to (a) any other registered investment company or series thereof that currently is or in the future may be advised or sub-advised (subject to the condition set forth below) by any of the Advisers or any other entity controlling, controlled by, or under common control with any of the Advisers or ML & Co. (each Adviser or entity, and ''Advisory Entity''); (b) any other registered investment advisers that currently are or in the future may be controlling, controlled by, or under common control with any of the Advisers or ML & Co.; (c) any other broker-dealers now or in the future controlling, controlled by, or under common control with ML & Co.; and (d) any other unregistered fund organized to receive cash collateral and uninvested cash that may be managed by QALLC or any entity controlling, controlled by, or under common control with QALLC and/or ML & Co.[1] A Fund that is subadvised, but not advised, by an Advisory Entity may rely on the order, provided that the Advisory Entity manages the Cash Balances (as defined below) and that any relief granted from the provisions of sections 12(d)(1)(A) and (B) of the Act shall be available only if the Fund is in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Money Market Fund in which the Fund invests Cash Balances.

5. Each Lending Fund has the ability to increase its income by participating in the Lending Program, under which it may lend portfolio securities to broker-dealers, including Affiliated Broker-Dealers, or institutional investors deemed by its Adviser to be of good standing. Each Lending Fund will participate in the Lending Program subject to securities lending guidelines adopted by the Fund's board of directors/trustees (''Board''), including by a majority of the directors/trustees who are not interested persons within the meaning of section 2(a)(19) of the Act (''Disinterested Directors''). The agreements governing any loans will require that the loans be continuously secured by collateral equal at all times in value to at least the market value of the securities loaned. Collateral for such loans may include cash)''Cash Collateral'') or other collateral, such as U.S. Government securities.

6. Under the Lending Program, the Lending Agent will be responsible for soliciting borrowers for each Lending

[1] All registered investment companies, unregistered investment vehicles, and investment advisers that currently intend to rely on the order are named as applicants. Any future Funds, unregistered investment vehicles, broker-dealers and investment advisers that rely on the requested relief will do so only in compliance with the terms and conditions of the application.

Fund's securities, monitoring daily the value of the loaned securities and collateral, and requesting that borrowers add to the collateral when required by the loan arrangements.[2] The Lending Agent may manage Cash Collateral only in accordance with specific parameters provided by the Lending Fund's Adviser. These guidelines include permissible investment of the Cash Collateral as well as a list of eligible types of investments.

7. When a securities loan is collateralized with Cash Collateral, the Lending Fund will receive a portion of the return earned on the investment of the Cash Collateral. Depending on the arrangements negotiated with the borrower by the Lending Agent, the Lending Fund may pay the borrower a rate of interest for use of the Cash Collateral. When the collateral is not Cash Collateral, the Lending Agent will negotiate a lending fee to be paid by the borrower to the Lending Fund. For its services to the Lending Funds, the Lending Agent will receive fees based on a share of the revenue generated from the securities lending transactions.

8. Funds may have uninvested cash (''Uninvested Cash'') that comes from a variety of sources, including dividend or interest payments, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of portfolio securities to meet anticipated redemptions, as well as new monies received from investors.

9. Applicants propose that Funds (''Investing Funds'') and Institutional Clients invest Cash Collateral and Uninvested Cash (together, ''Cash Balances'') in shares of Money Market funds or New fund. At least one series of New Fund in which the Investing Funds invest will operate as a money market portfolio that complies with the requirements of rule 2a–7 under the Act. Another series will invest in high quality securities with relatively short maturities, but which will not necessarily comply with all of the investment restrictions of rule 2a–7.[3] Series of New Fund in which the Investing Funds invest will offer daily redemption of shares at current net asset value per share. New Fund will not impose any sales load or redemption or distribution fees on any series in which the Investing Funds invest. QALLC will not charge any investment advisory fee with respect to shares of any series of New Fund owned by an Investing Fund.

10. Applicants request an order to permit (a) Lending Funds to pay the Lending Agent a fee based on a share of the revenue derived from securities lending activities; (b) Investing Funds and Institutional Clients to invest Cash Balances in Money Market Funds and/or New Fund; (c) Lending Funds to lend portfolio securities to Affiliated Broker-Dealers; and (d) Investing Funds to engage in certain transactions with each other.

Applicant's Legal Analysis

A. Payment of Lending Agent Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission considers whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

2. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person, and if the other person is an investment company, the investment adviser. The Advisers, as investment advisers to the Lending Funds, are affiliated persons of the Lending Funds. Applicants state that because the Lending Agent and the Advisers are under the common control of ML & Co., the Lending Agent may be deemed an affiliated person of the Advisers, and an affiliated person of an affiliated person (''second-tier affiliate'') of the Lending Funds. Accordingly, applicants request an order under section 17(d) and rule 17d–1 to permit each Lending Fund to pay and the Lending Agent to accept lending agent fees that are based on a share of the proceeds derived by the Lending Funds from the loans of portfolio securities.

3. Applicants propose that each Lending Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with the Lending Agent will meet the standards of rule 17d–1:

(a) In connection with the initial approval of QALLC as Lending Agent for the Lending Funds, and implementation of the proposed fee arrangement, a majority of the Board of each Lending Fund (including a majority of the Disinterested Directors) will determine that: (i) the contract with QALLC is in the best interest of the Lending Fund and its shareholders; (ii) the services to be performed by QALLC are appropriate for the Lending Fund; (iii) the nature and quality of the services provided by QALLC are at least equal to those provided by others offering the same or similar services; and (iv) the fees for QALLC's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality;

(b) In connection with the approval of QALLC as Lending Agent for the Lending Funds and the initial implementation of the proposed fee arrangement, the Board of each Lending Fund will review competing quotations with respect to lending agency fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above;

(c) Each Lending Fund's contract with QALLC for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Directors) makes the findings referred to in paragraph (a) above.

(d) The Board, including a majority of Disinterested Directors, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were conducted in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures for continuing appropriateness; and

(e) Each Lending Fund will (i) maintain and preserve permanently and in an easily accessible place a written copy of the procedures and conditions described in the application and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Lending Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting

[2] The personnel who will provide day-to-day lending agency services to the Lending Funds do not and will not provide investment advisory services to the Lending Funds, or participate in any way in the selection of the portfolio securities or other aspects of the management of the Lending Funds.

[3] An Investing Fund can invest Cash Collateral, but not Uninvested Cash, in a series of New Fund that does not comply with rule 2a–7.

forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which a determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

B. Investment of Cash Balances in Money Market Funds and New Fund

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities 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 be owned by investment companies. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit each Investing Fund to use Cash Balances to acquire shares of one or more Money Market Funds in excess of the limits imposed by section 12(d)(1)(A), and the Money Market Funds to sell their securities to the Investing Funds in excess of the percentage limitations in section 12(d)(1)(B).[4] Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to address. Applicants state that the arrangement will not result in an inappropriate layering of fees because the Money Market Funds will not charge a sales load, redemption fee, distribution fee adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers Inc. Conduct rules (''NASD Conduct Rules''), or if such shares are subject to any such fees, the respective Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. In addition, before approving or renewing any advisory contract, the Board, including a majority of the Disinterested Directors, will consider the extent to which the advisory fees charged to an Investing Fund by its Adviser should be reduced or waived to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. If a Money Market Fund offers more than one class of shares, each Investing Fund will invest its Cash Balances only in the class with the lowest expense ratio at the time of investment. Applicants also represent that no Money Market Fund whose shares are acquired by an Investing Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A).

3. Sections 17(a)(1) and (2) of the Act prohibit an affiliated person of a registered investment company, or any second-tier affiliate, acting as principal, from selling any security to, or purchasing any security from, the registered investment company. As noted above, section 2(a)(3) defines an affiliated person of another person to include persons that are under common control. Applicants state that because the Advisers may be deemed to control the Funds and because QALLC may be deemed to control New Fund, the Funds and New Fund may be deemed to be affiliated persons, or second-tier affiliates. In addition, section 2(a)(3) defines an affiliated person of another person to include 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. To the extent that an Investing Fund owns 5% or more of the voting securities of a Money Market Fund or New Fund, applicants state that the Money Market Fund or New Fund could be an affiliated person of the Investing Fund. Accordingly, applicant state that section 17(a) would prohibit the sale of shares of the Money Market Fund or New Fund to an Investing Fund, and the redemption of such shares by the Money Market Fund or New Fund from the Investing Fund.

4. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act if the 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.

5. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Investing Funds to use Cash Balances to purchase shares of the Money Market Funds or a series of New Fund and to permit the redemption of the shares. Applicants maintain that the terms of the proposed transaction are reasonable and fair because the Investing Funds will purchase and sell shares of the Money Market Fund or New Fund on the same terms and on the same basis as other shareholders. Applicants assert that the proposed transactions comply with each Investing Funds' investment restrictions and policies. Applicants state that Investing Funds that comply with the requirements of rule 2a–7 under the Act will only invest in a series of New Fund complying with the provisions of rule 2a–7. Applicants further state that investment of Cash Collateral in new Fund and the Money Market Funds will be conducted in accordance with the securities lending guidelines of the Commission's staff. Applicants also state that New Fund will comply with the major substantive provisions of the Act, including the prohibitions against affiliated transactions, leveraging and issuing senior securities, and rights of redemption.

6. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. In addition to the potential affiliations described above, applicants state that Institutional Clients also may be deemed affiliated persons of the Money Market Funds or New Fund because the Institutional Clients may be advised by Advisers or may own 5% or more of the outstanding voting securities of a Money Market Fund or a series of New Fund. Applicants state that the Investing Funds and Institutional Clients (by purchasing and redeeming shares of New Fund or a Money Fund), the

[4] No exemptive relief is sought from the provisions of section 12(d)(1)(A) and (B) with respect to any investments in a Money Market Fund by (a) any Fund that is subadvised (but not advised) by an Advisory Entity and that is not in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Money Market Fund, and (b) any Institutional Client that is a section 3(c)(1) or 3(c)(7) entity.

Advisers (by managing the assets of the Investing Funds and certain Institutional Clients), QALLC (by acting as investment adviser to New Fund and as Lending Agent), New Fund (by selling shares to and redeeming shares from the Investing Funds), and each Money Market Fund (by selling shares to and redeeming shares from the Investing Funds and Institutional Clients) may be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) and rule 17d–1 to permit the described transactions relating to investments of Cash Balances in the New Fund and Money Market Funds. For the reasons discussed above, applicants believe that the proposed transactions meet the standards of rule 17d–1

C. Lending to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company or an affiliated person of such a person, acting as principal, to borrow money or other property from the registered investment company. Applicants state that because an Affiliated Broker-Dealer would be under common control with the Advisers, an Affiliated Broker-Dearler may be considered an affiliated person, or a second-tier affiliate, of a Lending Fund. Applicants state that section 17(a)(3) would prohibit Affiliated Broker-Dealers from borrowing securities from Lending Funds.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3), and under section 17(d) and rule 17d–1 to permit Lending Funds to lend portfolio securities to Affiliated Broker-Dealers.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Lending Fund will be made with a spread that is no longer than that applied to comparable loans to unaffiliated broker-dealers.[5] In this regard, applicants state that at least 50% of the loans made by the Lending Funds, on an aggregate basis, will be made to unaffiliated borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board of each Lending Fund, including a majority of the Disinterested Directors, and all transactions with Affiliated Broker-Dealers will be reviewed periodically by an officer of the Lending fund. The Board, including a majority of the Disinterested Directors, also will review detailed quarterly compliance reports on all lending activity.

D. Interfund Transactions

1. Applicants state that the Funds currently rely on rule 17a–7 under the Act to engage in purchase and sale transactions of certain securities (''Interfund Transactions''). Rule 17a–7 excepts from the prohibitions of section 17(a) the purchase or sale of certain securities between registered investment companies that are affiliated persons, or second-tier affiliates, of each other or between a registered investment company and a person that is an affiliated person of such company (or a second-tier affiliate) solely by reason of having a common investment adviser or affiliated investment advisers, common officers, and/or common directors. Applicants state that the Funds may become affiliated persons of each other by virtue of an Investing Fund owning 5% or more of the outstanding voting securities of a Money Market Fund or a series of New Fund. Thus, applicants state that certain Funds may not be able to rely on rule 17a–7 to effect Interfund Transactions.

2. Applicants request an order under sections 6(c) and 17(b) to permit the Interfund Transactions. Applicants state that the Funds will comply with rule 17a–7 under the Act in all respects, other than the requirement that the participants be affiliated solely by reason of having a common investment adviser or affiliated investment advisers, common officers, and/or common directors. Applicants state that the additional affiliation created under sections 2(a)(3)(A) and (B) by the investment of Cash Balances does not affect the other protections provided by rule 17a–7, including the integrity of the pricing mechanism employed and oversight by each Fund's Board.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

A. General

1. New Fund will be advised by QALLC or an entity controlling, controlled by, or under common control with QALLC and/or ML & Co. Each Fund will be advised and/or subadvised by an Advisory Entity. A Fund that is subadvised, but not advised, by an Advisory Entity may rely on the order, provided that the Advisory Entity manages the Cash Balances and that any relief granted from the provisions of sections 12(d)(1)(A) and (B) of the Act shall be available only if the Fund is in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Money Market Fund in which the Fund invests Cash Balances.

2. The Lending Program of each Lending fund will comply with all present and future applicable Commission and staff positions regarding securities lending agreements.

3. Before a Lending Fund may participate in the Lending Program, a majority of the Board (including a majority of the Disinterested Directors) of the Lending Fund will approve the Lending Fund's participation in the Lending Program. The Board of each Lending Fund will evaluate the Lending Program and its results no less frequently than annually and a majority of the Board (including a majority of the Disinterested Directors) will determine that investing Cash Collateral in any of the Money Market Funds is in the best interests of the shareholders of the Lending Fund.

4. Each investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds and New Fund only to the extent that the Investing Fund's aggregate investment of such Uninvested Cash in the Money Market Funds and New Fund does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

B. Investment of Cash Balances in New Fund

1. A majority of the Board of an Investing Fund (including a majority of the Disinterested Directors), will initially and at least annually thereafter determine that the investment of Cash Balances in shares of New Fund is in the best interest of the shareholders of the Investing Fund.

2. QALLC will not charge any advisory fees with respect to a class or series of shares of New Fund in which any Investing Fund may invest.

3. Investment in shares of any series of New Fund by a particular Investing Fund will be consistent with that Investing Fund's investment objectives and policies.

[5] A ''spread'' is the compensation earned by a Lending Fund from a securities loan, which compensation is in the form either of a lending fee payable by the borrower to the Lending Fund (when non-cash collateral is posted) or the excess retained by the Lending Fund over a rebate rate payable by the Lending Fund to the borrower (when cash collateral is posted and then invested by the Lending Fund).

4. An Investing Fund's Cash Balances will be invested in a particular investment series of New Fund only if that investment series invests solely in the types of instruments that the Investing Fund has authorized for the investment of its Cash Balances.

5. Any investment series of New Fund that uses the penny rounding method of valuation as defined in rule 2a–7 under the Act will comply with rule 2a–7 under the Act. With respect to such series, New Fund (through QALLC as the managing member) will adopt and monitor the procedures described in rule 2a–7(c)(8) under the Act and QALLC will take such other actions as are required to be taken pursuant to such procedures. An Investing Fund may purchase shares of an investment series of New Fund using the penny rounding method of valuation only if QALLC determines on an ongoing basis that such investment series is in compliance with rule 2a–7. QALLC will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which such determination was made. This record will be subject to examination by the Commission and the staff.

6. An Investing Fund that complies with the requirements of rule 2a–7 under the Act will not invest its Cash Balances in an investment series of New Fund that does not comply with the requirements of rule 2a–7.

7. New Fund will comply as to each investment series in which any Investing Fund invests with the requirements, other than to the extent of transactions described in the application, of sections 17(a), (d) and (e) and 18 of the Act as if New Fund were a registered open-end investment company. With respect to all redemption requests made by an Investing Fund, New Fund will comply with section 22(e) of the Act. QALLC shall, as managing member, adopt procedures designed to ensure that any such series of New Fund complies with sections 17(a), (d) and (e), 18, and 22(e) of the Act. QALLC will also periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii) and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and the staff.

8. The net asset value per share of each series of New Fund in which the Investing Funds may invest will be determined separately for each series by dividing the value of the assets belonging to that series, less the liabilities of that series, by the number of shares of New Fund outstanding with respect to that series.

9. The shares of New Fund in which the Investing Funds may invest will not be subject to a sales load, redemption fee, any asset-based sales charge or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

10. Each Investing Fund will purchase and redeem shares of New Fund on the same basis as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis as other shareholders investing in the same series of New Fund (except that QALLC will not charge any investment advisory fee with respect to shares owned by an Investing Fund). A separate account will be established in the shareholder records of New Fund for the account of each applicable Investing Fund.

11. New Fund will not acquire any securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

C. Investment of Cash Balances in Money Market Funds

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), or if the shares are subject to any such fee, the respective Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of the fees incurred by the Investing Fund.

2. Prior to reliance on this order, an Investing Fund will hold a meeting of the Board for the purpose of voting on the advisory contract under section 15 of the Act. Before approving or renewing any advisory contract for an Investing Fund, the Board, including a majority of the Disinterested Directors, taking into account all relevant factors, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of the Uninvested Cash being invested in the Money Market Fund. In connection with this consideration, the Adviser will provide the Investing Fund's Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Fund. The minute books of the Investing Fund will record fully the Board's considerations in approving the advisory contract, including the consideration relating to the fees referred to above.

3. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectuses and statements of additional information. Money Market Funds will not acquire shares of any investment company that does not comply with the requirements of rule 2a–7.

4. No Money Market Fund whose shares are acquired by an Investing Fund shall acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

D. The Lending Exemption

1. The Lending Funds, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated borrowers.

2. A Lending Fund will not make any loan to an Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction costs incurred in making such loan.

3. (a) All loans will be made with spreads no lower than those set forth in a schedule of spreads which will be established and may be modified from time to time by each Lending Fund's Board and by a majority of the Disinterested Directors (''Schedule of Spreads'').

(b) The Schedule of Spreads will set forth rates of compensation to the Lending Fund that are reasonable and fair and that are determined in light of those considerations set forth in the application.

(c) The Schedule of Spreads will be uniformly applied to all borrowers of the Lending Fund's portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any borrower.

(d) If a security is loaned to an unaffiliated borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

(e) The Lending Fund's Lending Program will be monitored on a daily basis by an officer of the Lending Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Lending Fund's Board, including a majority of the Disinterested Directors.

4. The total value of the securities loaned to any one broker-dealer on the approved list of borrowers of securities from a Lending Fund will be in accordance with a schedule to be approved by the Board of each Lending Fund, but in no event will the total value of the securities loaned to any one Affiliated Broker-Dealer exceed 10% of the net assets of such Lending Fund, computed at market value.

5. The Boards of the Lending Funds, including a majority of the Disinterested Directors, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of this order if granted and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

6. The Lending Funds will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal years in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of securities loaned, the face amount of the securities loaned, the fee received (or the rebate rate remitted), the identity of the borrower, the terms of the loan and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable, and that the procedures followed in making such loan were in accordance with the procedures and other undertakings set forth herein.

E. Interfund Transactions

1. To engage in Interfund Transactions, the Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or second-tier affiliates) of each other solely by reason of having a common investment adviser, or investment advisers that are affiliated persons of each other, common officers, and/or common directors, solely because the Funds might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17928 Filed 7–17–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44538; File No. SR–Amex–2001–37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Reinstatement for 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

July 11, 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 June 4, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to reinstate for 90 days its pilot program relating to facilitation cross transactions, described in detail in part II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reinstatement for 90 days its pilot program, which expired on May 28, 2001, relating to member firm facilitation cross transactions. Revised Commentary .02(d) to Amex Rule 950(d), approved by the Commission on June 2, 2000,[3] established a pilot program to allow facilitation cross transactions in equity options.[4] The pilot program entitles a floor broker to, under certain conditions, cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer

[3] *See* Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000). The pilot program was subsequently extended twice. *See* Securities Exchange Act Release Nos. 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000), and 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that with a contra side order from the firm's proprietary account.

provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor brokers has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the number firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transactions.

In the year since the pilot program began, the Exchange has found it to be generally successful. The Exchange seeks to reinstate the pilot program for 90 days, pending consideration of a related proposed rule change it has filed with Commission[6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

In order to allow the pilot program to be reinstated without significant interruption, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, this proposal, pursuant to Section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5) of the Act[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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 the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Amex–2001–37 and should be submitted by August 8, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the reinstatement of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will allow the pilot program to be reinstated while revisions are being considered, and does not raise any new regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on an accelerated basis as a pilot program through October 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret McFarland,

Deputy Secretary.

[FR Doc. 01–17889 Filed 7–17–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44544; File No. SR–ISE–2001–04]

Self Regulatory Organizations; International Securities Exchange LLC; Order Granting Approval to Proposed Rule Change Relating To Its Disciplinary Procedures

July 12, 2001.

On February 6, 2001, the International Securities Exchange LLC (''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make certain changes to its

[5] Amex trading floor practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. See Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[6] *See* File No. SR–Amex–00–49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 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).

[11] *See supra,* note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

[13] *See, e.g.,* Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[14] 17 CFR 200.30–3(a)(12).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

disciplinary rule and procedures. These changes are intended to reflect and facilitate the ''hybrid'' regulatory scheme resulting from the ISE's regulatory services agreement with NASD Regulation, Inc. (''NASDR'') pursuant to which, among other things, NASDR provides services related to conducting regulatory investigations and disciplinary actions.

The proposed rule change was published for comment in the **Federal Register** on May 29, 2001.[3] The Commission received no comments on the proposal.

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[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Sections 6(b)(6) and 6(b)(7) of the Act, respectively,[6] in that the proposed rule change satisfies the requirements that an Exchange's rule: (1) Provide that its members and persons associated with its members shall be appropriately disciplined for violation of the Exchange Act, the rules and regulations thereunder, or the rules of the exchange; and (2) provides a fair procedure for the disciplinary of members and persons associated with members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–ISE–2001–04) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17929 Filed 7–17–01; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 44327 (May 18, 2001), 66 FR 29188.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(6)–(7).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44550; File No. SR–NSCC–2001–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Processing Commission Payments

July 12, 2001.

On April 27, 2001, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–2001–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on May 29, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The purpose of the filing is to further standardize and automate NSCC's processing of commission payments to non-clearing members. In accordance with NSCC Rule 16, NSCC's Commission Bill Service currently permits non-clearing members entitled to a credit to receive their monthly commission bill payments either electronically by Automated Clearing House (''ACH'') wire transfer or manually by check. At present, slightly less than 50% of NSCC's approximate 350 non-clearing members receive their commission bill payments by check. Such manual distributions are made on the floors of the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''AMEX''). The proposed rule change will require all non-clearing members to execute appropriate ACH documentation and to receive their credit payments by ACH wire transfer.

In the event a non-clearing member does not pay an amount it owes to NSCC, the rule is being changed to explicitly permit NSCC to set-off any future commission bill credits to which the non-clearing member is entitled.

Subject to Commission approval, NSCC will implement the proposed rule changes on July 13, 2001. Any non-clearing member that has not executed the appropriate ACH wire transfer documentation will not receive any credit payments until it does.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44330 (May 29, 2001), 66 FR 29192.

II. Discussion

Section 17A(b)(3)(F)[3] of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system. The proposed rule change allows NSCC to require non-clearing members to receive their monthly commission payments by wire transfer rather than by check. By electronically transferring such funds, NSCC can further standardize and automate its processing systems which is consistent with NSCC's obligation to remove impediments to and perfect the mechanism of the national system for clearance and settlement. Therefore, the Commission finds that NSCC's proposed rule change is consistent with its obligations under section 17A(b)(3)(F) of the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2001–08) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17931 Filed 7–17–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44539; No. SR–NYSE–2001–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 13 on XPress Quote Parameters

July 11, 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 June 13, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to NYSE Rule 13.30 to decrease the minimum number of shares for XPress order and quotes and to decrease the time that a published bid or offer must remain at the same price to be XPress eligible. The text of the proposed rule change is set forth below. Additions are in italics. Deletions are in brackets.

Rule 13 Definitions of Orders

Supplementary Material

* * * * *

.30 The minimum number of shares for an XPress order is [25,000] *15,000* shares. The published bid or offer must be at the same price for no less than [25,000] *15,000* shares for at least [30] *15* seconds in order to be indicated as an XPress Quote.

* * * * *

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

As part of its continuing efforts to enhance participation in its auction market, the Exchange created a new type of order, known as an XPress Order, which was approved by the Commission in December 2000.[3] The Exchange believes that this order type responds to the needs of market participants for "clean executions when entering large-size orders in response to bids and offers which have been displayed for a minimum time period.

An XPress order is defined as an order of a specified minimum size which is to be executed against a displayed XPress quote, or at an improved price, if obtainable. In order to be indicated as an XPress quote, a published bid or offer must be for no less than the specified minimum share size at the same price for no less than 30 seconds. The minimum size for XPress orders and XPress quotes initially has been set at 25,000 shares.

In filing SR–NYSE–99–24, the Exchange discussed decreasing the minimum size and time thresholds for XPress orders and quotations within six months after the initial implementation of the XPress product. At this time, and in accordance with this previously expressed intention, the Exchange proposes to amend NYSE Rule 13.30 to:

(i) Reduce the minimum size of an XPress quote from 25,000 shares to 15,000 shares;

(ii) Reduce the time period for designation as an XPress quote from 30 seconds to 15 seconds; and

(iii) Reduce the minimum size of an XPress order from 25,000 shares to 15,000 shares.

The Exchange believes that these reductions in the size and time thresholds are appropriate in order to expand the availability of the XPress product.

2. Statutory Basis

The Exchange believes the basis for this proposed rule change is the requirement under Section 6(b)(5) of the Act[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, the Exchange believes that the XPress system is consistent with Section 11A(a)(1)(C)(i) of the Act[5] in that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on 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 the 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 NYSE. All submissions should refer to the File No. SR–NYSE–2001–14 and should be submitted by August 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17890 Filed 7–17–01; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 43763 (December 21, 2000) 65 FR 83120 (December 29, 2000).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78k–1(a)(1)(C)(i).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44537; File No. SR–PHLX–2001–36]

Self Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Revise the Fine Schedule for Options Floor Procedure Advices

July 11, 2001.

On May 17, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Fine Schedule for Options Floor Procedure Advices. The Phlx amended the proposal on May 29, 2001.

The proposed rule change, as amended, was published for comment in the **Federal Register** on June 5, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of Section 6 of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act [6] because it will help prevent fraudulent and manipulative acts and practices, as well as promote just and equitable principles of trade. The Commission finds the proposal is consistent with Section 6(b)(6) of the Act,[7] because the proposal provides a mechanism for the appropriate discipline for violations of certain rules and regulations.

In addition, the Commission finds the proposal is consistent with Section 6(b)(7) of the Act [8] because the proposal provides a fair procedure for the disciplining of members and persons associated with members. The Commission also finds the proposal is consistent with Section 6(b)(8) of the Act,[9] in that it furthers the statutory goal of providing a fair procedure for disciplining the Phlx's members and associated persons. Finally, the Commission finds the proposal is consistent with Securities Exchange Act Rule 19d–1(c)(2) [10] that governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Phlx's minor rule violation enforcement and reporting plan. The Commission believes that the violation of any self-regulatory organizations' rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the minor rule violation enforcement and reporting plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Phlx will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under its plan, on plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PHLX–2001–36), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17888 Filed 7–17–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44366 (May 29, 2001), 66 FR 30258.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7).

[9] 15 U.S.C. 78f(b)(8).

[10] 17 CFR 240.19d–1(c)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44543; File No. SR–Philx–2001–26]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Relating to ROT Vocalization Requirements for Options Quotations

July 12, 2001.

I. Introduction

On March 5, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add an express vocalization requirement for Phlx Registered Options Traders (''ROTs'') whose quotation for a particular option series is different from the disseminated quote. The **Federal Register** published the proposed rule change for comment on June 6, 2001.[3] The Commission received no comments on the proposed rule change. This order approves the proposal.

II. Description of Proposal

The Phlx proposes to amend Commentary .01 to Phlx Rule 1080 to clarify that the quote disseminated by the Exchange's Auto-Quote system [4] or by a specialist's proprietary system that interfaces with the Exchange's Automated Options Market, which electronically prices options, is deemed to be the quote of all ROTs [5] in the crowd unless the ROT has vocalized a different quote in a clear and audible manner with sufficient time for the specialist to take action to update the quote, if necessary.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44369 (May 30, 2001), 66 FR 30496.

[4] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations.

[5] A ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade options for his own account. *See* Phlx Rule 1014(b).

[6] The ROT must vocalize a different quote before an order enters the system. If an ROT believes that he or she has been unfairly allocated a portion of the order, he or she can challenge the allocation pursuant to Phlx Rule 124. Telephone call between Rick Rudolph, Counsel, Phlx, Terri Evans, Special Counsel, Division of Market Regulation (''Division''), Commission, and Sonia Patton, Staff Attorney, Division, Commission (May 24, 2001).

On September 11, 2000, the Commission issued an order[7] that requires four of the five options exchanges, including the Phlx to adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they will trade any option, or the allocation of orders in that option.[8] The Exchange believes that the proposed rule change is responsive to, and compliant with, the Order.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanisms of a free and open market by clarifying that quotes on the Exchange are deemed to be the quotes for all ROTs in the crowd unless the ROT vocalizes a different quote.[11] Further, the Commission believes that this requirement is consistent with the Quote Rule[12] that is now applicable to the options exchanges, including the Phlx.[13] Under the proposed rule change, ROTs would be required to execute orders at the disseminated price, unless the ROT to vocalized a different quote in a clear and audible manner with sufficient time for the specialist to update the quote, if necessary. The Commission notes that an ROT that believes that he or she has been unfairly allocated a portion of an order may challenge the allocation pursuant to Phlx Rule 124. The Commission believes that these procedures are reasonable and should permit the Exchange to function smoothly.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–2001–26) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17930 Filed 7–17–01; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000)(''Order'').

[8] *See* Section IV.B.j. of the Order.

[9] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposal, the Commission is not making any finding regarding the method by which quotes on the Exchange are derived in the first place.

[12] 17 CFR 240.11Ac1–1.

[13] *See* Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before September 17, 2001.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Mary Sprague, Financial Specialist, Office of the Chief Financial Officer, Small Business Administration, 409 3rd Street, SW., Suite 6000, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Sprague, Financial Specialist, (202) 205–7536 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Transaction Report on Loans Serviced by Lenders.

Form No: 172.

Description of Respondents: Small Business Administration Participating Lenders.

Annual Responses: 25,284.

Annual Burden: 4,214.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–17945 Filed 7–17–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 17, 2001. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Application for Pool of Guaranteed Internet Certificates.

Form No: 1454.

Frequency: On Occasion.

Description of Respondents: SBA Loan Pool Assemblers.

Annual Responses: 475.

Annual Burden: 1,425.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–17897 Filed 7–17–01; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3348, Amdt. 3]

State of Louisiana

In accordance with a notice received from the Federal Emergency Management Agency, dated July 10, 2001, the above-numbered Declaration is hereby amended to include East Feliciana, Saint Helena and West Baton Rouge Parishes in the State of Louisiana as disaster areas caused by Tropical Storm Allison occurring on June 5, 2001 and continuing through June 22, 2001.

In addition, applications for economic injury loans from small businesses located in Wilkinson County in the State of Mississippi may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 10, 2001, and for loans for economic injury is March 11, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 12, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–17946 Filed 7–17–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3341]

State of Minnesota; Amendment #7

In accordance with a notice received from the Federal Emergency Management Agency, dated July 3, 2001, the above-numbered Declaration is hereby amended to close the incident period for this disaster effective July 3, 2001.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 31, 2001 and for economic injury the deadline is February 15, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 12, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–17896 Filed 7–17–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3720]

Bureau for International Narcotics & Law Enforcement Affairs; Office of Anti-Crime Programs

SUMMARY: The Office of Anti-Crime Programs (INL/C) is seeking proposals from qualified U.S. Organizations and Institutions with relevant capability and experience to conduct a program in civic education on crime and corruption for a two year period. Current plans are to award a Cooperative Agreement for $400,000 to initiate the Civic Education Program (CEP) in three countries (El Salvador, Nigeria and Peru), with the understanding that additional program funds and target countries may be added on a case-by-case basis.

Application packages are due Wednesday, August 15, 2001. Interested applicants may obtain detailed application instructions from the following web site: www.statebuy.gov; click on grant opportunities.

For questions, please contact: Linda Gower, Grants Officer, INL/RM/MS, Department of State, Navy Hill South, 2430 E. Street, NW, Washington, DC 20520 Tel. 202–776–8774.

Dated: July 11, 2001.

Linda G. Gower,

Acting Chief, Management Systems Division, Department of State.

[FR Doc. 01–17974 Filed 7–17–01; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF TRANSPORTATION

[Docket OST–2001–10144]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on two consumer complaint forms. One complaint form concerns accessibility problems experienced by a passenger with a disability in air travel and the other complaint form concerns alleged discrimination on the basis of race, ethnicity, national origin, religion, sex or sexual orientation by an airline.

DATES: Comments are due August 17, 2001. Interested persons are invited to submit comments regarding this proposal.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of the General Counsel, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, 202–366–9342 (voice), (202) 755–7687 (TTY), 202–366–7132 (fax), or *blane.workie@ost.dot.gov* (email). Arrangements to receive this notice in an alternative format may be made by contacting the above named individual.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Transportation (DOT) has submitted to OMB, for emergency processing, an information collection package with respect to the two proposed complaint forms concerning air travel service problems.

The Department will use the complaint forms for the collection of information from person(s) who wish to file complaints to the Department regarding accessibility of airline service and alleged discrimination by an airline. The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Department has requested emergency clearance of the collection of information, as described below, with approval being sought by August 15, 2001.

(1) Title of the Information Collection Proposal

Complaint Concerning Accessibility of Airline Service (Passengers with Disabilities); Complaint Alleging Discrimination by an Airline Based on Race, Ethnicity, National Origin, Religion, Sex, or Sexual Orientation.

(2) Summary of the Collection of Information

Each respondent (claimant) would be asked to submit the following information:

1. Name, address, and telephone number of passenger or contact person, if other than the passenger.
2. Name of the airline or company about which person(s) is complaining.
3. Date(s) of the alleged violation (i.e. flight date).
4. Flight number, if known.
5. Origin and destination cities of trip.
6. Brief description of the alleged violation and prohibited bases of the complaint.
7. Brief description of efforts to resolve the complaint through airline staff.
8. Information as to whether complainant has or will file a claim with a court or another agency.

(3) Description of the Need for the Information and Its Proposed Use

The complaint forms provide information to make the public aware of their rights. Additionally, the complaint form concerning accessibility of airline service makes it easier and provides a less burdensome way for person(s) to file a complaint under the Air Carrier Access Act (ACAA) and 14 CFR part 382, our implementing regulation. The ACAA prohibits discrimination against passengers with disabilities by air carriers in providing air transportation service. The complaint form concerning allegations of discrimination by an airline make it easier and less burdensome for person(s) who wish to file a complaint under various federal statues, particularly 49 U.S.C. 40127, prohibiting U.S. and foreign air carriers from subjecting any air traveler to discrimination on the bases of race, color, national origin, religion, sex or ancestry.

The completion of the complaint forms is entirely voluntarily. Many consumers prefer completing the complaint forms to drafting a letter or email because it tends to take less time. An additional benefit of the complaint forms is that the forms specifically ask questions about the type of information that is needed to conduct an investigation. The information in the complaint forms will be used to contact complainants and for conducting investigations.

The forms are written in plain English; are user-friendly; take less time to complete than a letter or email; and enhance the quality and clarity of information collected that is required to investigate alleged complaints of discrimination.

(4) Description of the Likely Respondents, and Proposed Frequency of the Response to the Collection of Information:

The likely respondents will be consumers who wish to file complaints of discrimination. The Department of Transportation presently receives approximately 675 disability complaints a year and 75 discrimination complaints a year. Assuming that 5% of complainants will use the complaint forms, the estimated number of respondents is 38. The proposed frequency of the response to the collection of information is annually.

(5) Estimate of the Total Reporting Burden That Will Result From the Collection of Information:

Number of respondents: 38
Total annual responses: 38
Total burden hours: 19 (@ 30 minutes per response).

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Issued this 13th day of July, 2001, at Washington, DC.

Michael A. Robinson,

Clearance Officer, Department of Transportation.

[FR Doc. 01–17941 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Department of Transportation's (DOT) intention to request the extension of a previously approved collection.

DATES: Comments on this notice must be received by August 17, 2001, to: Attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Allan Ladd Hakes, US Department of Transportation (M–62), (202)366–4268, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

OMB Control Number: 2105–0531.

Affected Public: Schools, hospitals, and other nonprofit organizations receiving Federal financial assistance from the Department of Transportation (DOT).

Annual Estimated Burden: 10,500.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on July 13, 2001.

Michael Robinson,

Information Resource Management, United States Department of Transportation.

[FR Doc. 01–17942 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Three Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on 3 current public information collections which will be submitted to OMB for renewal.

DATES: Comments must be submitted on or before September 17, 2001.

ADDRESSES: Comments may be mailed or delivered to FAA, at the following address: Ms. Judy Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Avenue, S.W., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street, at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of collection. Also note, that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

Following are short synopses of the 3 information collection activities which will be submitted to OMB for requests for renewal:

1. 2120–0034, Medical Standards and Certification. This information for the medical certification of airmen is collected under the authority of 49 U.S.C. 440113, 44701, 44501, 44702,

44709, 45303, and 80111. The airmen medical certification program is implemented by Title 14, CFR parts 61 and 67. Using four forms to collect information the FAA determines if applicants are medically qualified to perform the duties associated with the class of airman medical certificate sought. The applicants are persons desiring medical certificates. The estimated total burden hours are 900,000 hours annually.

2. 2120–0593, Commuter Operations and General Certification and Operations Requirements. This request for clearance reflects requirements necessary under 14 CFR parts 135, 121 and 125 to comply with part 119. The FAA will use the information it collects and reviews to insure compliance and adherence to regulations and if necessary take enforcement action on violator of the regulations. The current estimated burden is 8,803 hours annually.

3. 2120–0656, Airport Security, part 107. 14 CFR part 107, Airport Security, implements the provisions of the Pubic Law 103–272 and the Aviation Security Improvement Act that relate to security of persons and property at airports operating in commercial air transportation. Airport security programs are needed to ensure protection of persons and property in air transportation against acts of criminal violence to ensure passenger screening procedures are effective and that information is available to comply with Congressional reporting requirements. The affected public is an estimated 465 Regulated Airport Operators. The current estimated annual burden is 512,426 hours annually.

Issued in Washington, DC on July 12, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–17962 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Iron County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation corridor in Iron County, Utah.

FOR FURTHER INFORMATION CONTACT: Gregory Punske, P.E., Project Development Engineer, FHWA, Utah Division, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118–1847, Telephone: (801) 963–0182.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Utah Department of Transportation (UDOT) and Iron County will prepare an Environmental Impact Statement (EIS) for a proposed transportation corridor in Iron County between the North Kanarraville Interchange (Exit 51) at I–15 (southern terminus) and State Route (SR) 56 (northern terminus) a distance of approximately 9.7 km (6 miles).

The proposed transportation corridor is considered necessary to reduce out-of-direction travel; to improve accessibility for residents, commercial vehicles, and emergency service providers to this area of Iron County; and provide a transportation network to support planned growth and economic development in Iron County and Cedar City for the next 20 years.

Alternatives under consideration include a no-build and five build alternatives. All build alternatives consist of a new four-lane roadway on new alignment and extend northward from I–15 to SR–56. The difference between the build alternatives is where they connect to SR 56.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public meeting will be held in Cedar City in August 2001. In addition, a public hearing will be held. Public Notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 12, 2001.

William R. Gedris,

Structural/Environmental Engineer.

[FR Doc. 01–17913 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Scioto County, OH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Scioto County, Ohio.

FOR FURTHER INFORMATION, CONTACT: Andreas Garnes, Rural Programs Engineer, Federal Highway Administration, 200 N. High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6856.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposal to improve transportation in the United States Route 23 and United State Route 52 (US 23/US 52) corridor by locating a freeway route from the vicinity of Lucasville being the northern terminus to the vicinity of Sciotoville being the southern terminus via the preferred alternative study area identified in the Feasibility Study Report dated April 2001. A transportation investment is considered necessary to improve the regional transportation network by providing an improved travel corridor; to reduce anticipated congestion on US 23/US 52 from projected traffic volumes; to improve safety; and to support existing industry and future development through improved access to southern Ohio. Alternatives under consideration include: (1) Taking no action; (2) building a modern five-lane rural arterial utilizing existing roadways within the Airport Bypass Study Area as defined in the September 2000 Feasibility Study Report; and (3) constructing a roadway on a new alignment bypassing the City of Portsmouth within the Airport Bypass Study Area.

US 23/US 52 through the study area contain physical limitations that contribute to several transportation problems. These problems include high traffic volumes and the diversion of through traffic to local roadways. These

inadequacies lead to safety problems, reduced levels of service, and transportation inefficiencies.

The proposed improvement of US 23/US 52 would meet the intent of the Appalachian Regional Commission, as well as the goals of Access Ohio, of improving mobility along this macro corridor in order to encourage economic development. The US 23/US 52 corridor is part of Appalachian Corridor B and a larger roadway network connecting Columbus, Ohio to Asheville, North Carolina. With US 23 upgrades either completed or under construction south of Ohio, the only gaps remaining in this route will be in Ohio. Substantial transportation improvements in the study area could close an important ''missing link'' in the overall corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the project area. These are currently anticipated for Summer of 2002 and Winter of 2003. In addition, a hearing will be held in conjunction with the Draft EIS in late 2003. Public notice will be given of the exact time and place of the meetings and hearing to be held for the project. The Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues relating to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be sent to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 9, 2001.

Andreas Garnes,

Rural Programs Engineer, Federal Highway Administration, Columbus, Ohio

[FR Doc. 01–17886 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2001–10138]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BANANA WIND.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 17, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10138. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: BANANA WIND. Owner: Greg D. Smith.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''51-foot; 52,000 lb.; pursuant to 46 USC 14502; maximum 12 passengers''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Private day and evening sailing charters-Great Lakes; specifically Lake Erie, Detroit River, Lake St. Clair-St. Clair River, and Lake Huron (throughout the months of May through September), inland waterways and intercoastal from Lake Erie to Florida, and Tampa Bay south to Miami, Florida, including the Keys (throughout the months of October through May).

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1979. Place of construction: Taiwan, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''This waiver will have no impact on other commercial passenger vessels. Sailing charters in the Great Lakes area are few and far between. It is felt there will be little to no impact in any area as this will be a single boat in operation by myself.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''This waiver will have no impact on U.S. shipyards''

Dated: July 13, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary Maritime Administration.

[FR Doc. 01–17947 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2001–10139]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HABITAT IV TWO.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 17, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10139. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

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Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: HABITAT IV TWO. Owner: Keltner Farris.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Measures as 37.7′ length, 13′ width, 8.2′ depth * * * with tonnage as 26 gross tons and 21 net tons * * *''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Intended use for this vessel is to do Custom Charter Cruises–providing accommodations for overnight lodging, while sightseeing, and/or personalized fishing/hunting expeditions, with capacity of 4–6 passengers plus 2 crew. We would plan on viewing Alaska's Southeast Region from Dixion Ent. to Kodiak, Alaska.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1980. Place of construction: Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''Since, these will be Custom Cruises, we have found very few similar operating vessels in this market at present * * * similar vessels operating or purpose to operate in the same market is unlikely at this time; therefore would have no unduly adverse effect on market impact or vessel operators * * *''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''Granting, this waiver will not have a negative impact on U.S. shipyards, since this was built in 1980 by East Coast builder * * * .''

Dated: July 13, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary Maritime Administration.

[FR Doc. 01–17948 Filed 7–17–01; 8:45 am]

BILLING CODE 4910–81–P

Federal Register

Wednesday,
July 18, 2001

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 13, 61, 91, et al.

Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13, 61, 91, 119, 125, 135, and 142

[Docket No. FAA–2001–10047; Notice No. 01–08]

[RIN 2120–AH06]

Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to update and revise the regulations governing operations by aircraft in fractional ownership programs. This action is undertaken because the FAA has determined that current regulations do not adequately define fractional ownership programs and do not clearly allocate responsibility and authority for safety and compliance with the regulations. The proposed revisions would define fractional ownership programs and their various participants, allocate responsibility and authority for safety of flight operations for purposes of compliance with the regulations, and ensure that fractional ownership program aircraft operations maintain a high level of safety. Elements of this proposal would provide in certain of the regulations applicable to fractional ownership programs a level of safety equivalent to certain regulations that apply to on-demand operators. Changes are also proposed to some regulations that apply to on-demand operators meeting certain criteria to permit these operators an alternate means of compliance for certain commercial operations.

DATES: Comments must be received on or before October 16, 2001.

ADDRESSES: Address your comments 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–2001–XXXXX at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the 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 comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office 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: Katherine Hakala Perfetti, Flight Standards Service (AFS–200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3760, email: *katherine.perfetti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. [FAA–2000–XXXX.]'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

You may download an electronic copy of this document, using a modem and suitable communications software, from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512–1661), or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322–2722 or (202) 267–5948).

Internet users may reach the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the GPO's web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History and Background

In 1986, Executive Jet Aviation, Inc. created a new program that offered to aircraft owners increased flexibility in the ownership and operation of aircraft by individuals and corporations. This program used existing aircraft acquisition concepts, including shared aircraft ownership, and provided for the management of the aircraft by an aircraft management company. The aircraft owners participating in the program agreed not only to share their aircraft with others having an ownership interest in that aircraft, but also to lease their aircraft to other owners in the program. The aircraft owners used the common management company to maintain the aircraft and administer the leasing of the aircraft among the owners. An FAA regional determination allowed this ''fractional ownership'' program to operate under 14 CFR part 91.

Since that time, the number of companies offering fractional ownership programs has grown. During the 1990s this growth was substantial and sustained. As of early 2000, the leading fractional ownership programs managed approximately 465 aircraft on behalf of 3,446 shareowners. Growth in fractional ownership programs is expected to increase.

While the vast majority of these programs are conducted under 14 CFR part 91, some are conducted under 14 CFR part 135. Of those operating under part 91, the FAA believes that most follow the ''best practices'' of corporate

aviation. FAA and NTSB accident data for U.S.-registered turbine-powered aircraft during the ten-year period from 1987–1998 demonstrates that fractional ownership aircraft operations are very safe.

As fractional ownership programs have grown in size, complexity and number, there has been considerable controversy within the aviation community as to their appropriate regulatory structure. Additionally, the FAA has had evolving concerns regarding issues of accountability and responsibility for compliance. Consequently, the FAA has continued its analysis of the appropriate regulatory environment for these programs.

Fractional Ownership Aviation Rulemaking Committee

In October of 1999, the FAA convened a special aviation rulemaking committee, the Fractional Ownership Aviation Rulemaking Committee (FOARC), pursuant to the Administrator's authority under 49 U.S.C. 106(p)(5), to address the issues surrounding the regulation of fractional ownership program operations. Pursuant to the order of October 6, 1999 that established the FOARC, the committee's objective was to ''propose such revisions to the Federal Aviation Regulations and associated guidance material as may be appropriate with respect to fractional ownership programs.''

The FOARC was composed of 27 members selected by the FAA as representative of the various constituencies interested in regulation of fractional ownership program operations. Designated advisors and counsel assisted the FOARC.

FOARC members represented on-demand charter operators, fractional ownership program managers and owners, aircraft manufacturers, corporate flight departments, traditional aircraft management companies, aircraft financing and insurance companies, and industry trade associations. Representatives of the FAA, the U.S. Department of Transportation and foreign civil aviation authorities were also included.

The FOARC met for nine days in November and December 1999. Within the FOARC's meeting schedule, two days were set aside for public hearings to provide the public an opportunity to comment or present positions on this issue. Notice of these public meetings was provided in the **Federal Register** and through the media. The FAA reviewed and considered all material presented by participants at the public meetings. The FOARC presented its initial recommendations to the FAA on February 23, 2000. The order that established the FOARC was further extended to allow continued discussions with the committee and to reconvene the committee to discuss issues and to provide further input following FAA internal review of the FOARC's recommendations.

Early in its deliberations, the members of the FOARC agreed that the committee would attempt to reach consensus recommendations and that, absent consensus, majority and minority reports would be provided to the FAA. In the end, the members of the FOARC reached unanimous consensus on all the committee's recommendations, including those with respect to changes in both parts 91 and 135. Those recommendations, delivered to the FAA in the form of the FOARC's final proposed NPRM, are the basis of this NPRM.

General Discussion of the Proposal

Operational Control and Regulatory Responsibility

Safety is the shared responsibility of the entire aviation community. The FAA's objective is to ensure the appropriate level of safety for aircraft operations. Prior to the introduction of fractional ownership programs, the regulations recognized differing levels of operational control and regulatory responsibility among persons traveling by air, and provided levels of oversight intended to maintain an appropriate level of safety in view of these differences.

Airline passengers exercise no control over and bear no responsibility for the airworthiness or operation of the aircraft aboard which they are flown. Because the traveling public has no control over, or responsibility for, airline safety-of-flight issues, the FAA has determined that an appropriate level of public safety is provided by imposing on scheduled airline service very stringent regulations and oversight under part 121 and part 135.

Passengers who are transported by part 135 on-demand operators or by part 121 supplemental operators bear no responsibility for the operation of the aircraft aboard which they are flown. On-demand or supplemental air charter passengers negotiate the point and time of origin and destination of the flight, and may have the ability (subject to the pilot's supervening authority) to direct or redirect the flight. Under these circumstances, the FAA has determined that the appropriate level of public safety is provided by imposing stringent regulations and oversight under part 121 or part 135.

Aircraft owners flying aboard aircraft they own or lease exercise full control over and bear full responsibility for the airworthiness and operation of their aircraft. Under these circumstances, the FAA has determined that the appropriate level of public safety is provided by imposing general operating and flight regulations and oversight under part 91.

These policies and differing levels of responsibility were reflected in the development of part 91, subpart D, subsequently subpart F, which governs much of business aviation today. On July 25, 1972, the FAA promulgated Amendment 91–101 to 14 CFR part 91 (37 FR 14758, July 25, 1972). This Amendment added to part 91 a new subpart D, applicable to large and turbojet-powered multiengine aircraft. Subpart D was the predecessor to the current subpart F of part 91 (54 FR 34314, Aug. 18, 1989). Section 91.181 of subpart D was the predecessor of current § 91.501 (54 FR 34314).

In creating the new subpart, the FAA continued its longstanding policy that individuals and corporations may operate their aircraft under part 91 and included these operations as the cornerstone of the new subpart. This policy is currently embodied in § 91.501(b)(4), which allows a person to operate his or her aircraft ''for his personal transportation, or the transportation of his guests when no charge, assessment, or fee is made for the transportation,'' and in § 91.501(b)(5), which allows for the ''[c]arriage of officials, employees, guests, and property of a company on an airplane operated by that company * * * when the carriage is within the scope of, and incidental to, the business of the company * * *''

In preserving these uses under part 91, the FAA chose to focus on the commercial (on-demand charter) or non-commercial (business or personal) motive a company or individual has in operating an aircraft, rather than on the form of the arrangements that led to the acquisition of the aircraft interest. In proposing the new subpart, the FAA pointed out that, ''in order to augment or more fully utilize their fleets, many corporate aircraft operators entered into agreements for the loan, exchange, or sharing of their aircraft'' (36 FR 19509). The FAA permitted such arrangements to continue under the new subpart, and specifically allowed for even more complex arrangements, such as time-sharing arrangements, interchange agreements, and joint ownership arrangements. In explaining its

determination that such arrangements do not affect which part of the regulations the aircraft should operate under, the FAA stated in the preamble to the final rule (37 FR 14758):

''[T]he decision to proceed with the upgrading of part 91 for large and turbine-powered multiengine airplanes is an important threshold step in the FAA policy to remove, to the extent possible, those differences in the safety standards that [are] primarily economic in nature and result in unnecessary restrictions or limitations on aircraft operators. In accordance with that policy, the need for different or additional safety standards for corporate operations should be resolved on the basis of safety, rather than economics or juristic semantics. Safetywise, we have determined that neither the relationship of the corporations nor the type of compensation received for the services rendered should be relevant or controlling under the standards of the new subpart D for the various corporate kinds of operations that do not involve common carriage.

''In order to make this change in policy clear to all interested persons, § 91.181(b) includes a list of the kinds of operations that may be conducted under subpart D. In addition, § 91.181(c) of subpart D expressly provides that charges covering the normal operating expenses of the aircraft and the salary of the crew may be made under a time sharing or interchange agreement as defined in that section. This policy also applies to a corporation regardless of its relationship, if any, to the corporation for which the carriage is conducted. Accordingly, the application of subpart D to a corporate operator will no longer be dependent on whether that operator is a parent or subsidiary corporation or a member of a conglomerate. It should be noted, however, that if a corporation is established solely for the purpose of providing transportation to the parent corporation, a subsidiary or other corporation, the foregoing policy does not apply. In that case, the primary business of the corporation operating the airplane is transportation and the carriage of persons or goods for any other corporation, for a fee or charge of any kind, would require the corporation operating the airplane to hold a commercial operator certificate under part 121 or 135, as appropriate.''

This statement of the intent of subpart D highlights the importance of identifying, in the context of shared aircraft ownership and use arrangements, the person in operational control of the aircraft at any given time. Historically, this information has been used to determine whether an operation may be conducted under part 91 with adequate assurance of public safety, or must be conducted under the requirements of on-demand air passenger service under part 135. This statement also highlights the longstanding ability of aircraft owners to purchase aviation expertise for the purpose of managing, maintaining or otherwise aiding the operation of the aircraft they operate under part 91.

Current § 91.501 authorizes, under part 91, operations involving the personal use of aircraft (§ 91.501(b)(4)), the use of aircraft within the same corporate group (§ 91.501(b)(5)), and the use of time sharing agreements (§ 91.501(c)(1)), interchange agreements (§ 91.501(c)(2)), and joint ownership agreements (§ 91.501(c)(3)) within or outside of the same corporate group (§ 91.501(b)(6)).

FOARC Discussions and Consensus

It is within the context of the operational control and regulatory responsibility discussion above that the FOARC considered the regulation of fractional ownership programs. During these deliberations, the FOARC determined that fractional owners flying aboard fractionally-owned aircraft contractually acknowledge substantial control over and bear substantial responsibility for the airworthiness and operation of their aircraft. Like whole aircraft owners, fractional owners can initiate, conduct, redirect and terminate a flight. Fractional owners also operate their aircraft under part 91 only for themselves and their guests and may not offer transportation for hire to the general public unless they do so under part 135 or part 121. Additionally, the FOARC noted that both fractional owners and whole aircraft owners have other shared characteristics that relate at least in part to safety: (1) They conduct research so that they can be assured that they will select the right aircraft and realize an adequate return from their capital investment; (2) they possess an interest in an aircraft acquired through a significant capital investment; (3) they purchase aviation expertise for the purpose of managing, maintaining or otherwise aiding the operation of the aircraft they operate under part 91, including the option to select flight crews; and (4) they bear the risk of loss or damage to the aircraft and the risk of diminution of value of the aircraft. On-demand charter passengers, on the other hand, do not assume any of these risks and responsibilities nor do they have any significant financial investment in the chartered aircraft.

Based on its analysis of fractional ownership program arrangements, the FOARC concluded that fractional owners flying aboard fractionally-owned and operated aircraft share more of their regulatory characteristics with the owners of non-commercially operated aircraft than with passengers using on-demand operators. Consequently, the FOARC concluded that fractional ownership programs are properly regulated under part 91 of the Federal Aviation Regulations. Fractional owners operating under part 91 are engaged in non-commercial operations and, as such, may not offer air transportation services (common carriage), air commerce services for compensation, chargeback, or hire without appropriate air carrier certification and appropriate economic authority, although fractional owners may be compensated to the extent permitted under applicable existing sections of part 91.

Fractional owners differ from a majority of whole business or personal aircraft owners in that (1) fractionally-owned aircraft typically have multiple owners, (2) their aircraft's availability is a component of a pooled fleet under a dry lease exchange program with the other fractional owners, (3) the owners of a fractionally-owned aircraft agree to use the services of a single company to manage their aircraft, and (4) all owners agree to a uniform aircraft configuration. With the exception of item 3 above, these characteristics also constitute the differences between fractional ownership programs and situations where aircraft are managed by traditional aircraft management companies. The FOARC concluded that these distinctions, unique among general aviation operations, suggest the need for definition and appropriate regulation under part 91.

To clearly define the safety responsibilities of fractional owners and fractional ownership program managers under the regulations, the FOARC recommended that a new subpart K of 14 CFR part 91 be established to regulate fractional ownership programs. Proposed subpart K further establishes a clear regulatory infrastructure for fractional owners to exercise their operational control responsibilities, including the responsibility for the operation and airworthiness of program aircraft. It also specifies a fractional aircraft program manager's obligations with respect to its provision of aircraft management services related to the airworthiness and operation of fractional ownership program aircraft.

The FOARC recommended that proposed subpart K of part 91 should apply only to fractional ownership program aircraft and not to other business aircraft arrangements including traditional flight departments, the use of management companies providing aviation expertise, flying clubs, partnerships or other ownership forms such as joint ownership. These types of operations do not meet the new definitions of ''fractional ownership program,'' and components of those programs, set forth in proposed subpart

K. These definitions clearly delineate the differences between fractional ownership program requirements, other types of ownership and traditional management arrangements. A fractional ownership program manager may elect to conduct its programs under part 121 or part 135, instead of proposed subpart K of part 91, if such operations comply with the certification requirements of part 119 and the operating requirements of part 121 or 135, as appropriate. Part 119 certification to operate under part 121 or 135 would allow the program manager to provide air transportation services to the general public, and not be limited to providing fractional ownership program management services only to fractional owners and their guests.

Most fractional ownership program operations today are conducted in accordance with industry best practices that exceed part 91 requirements. These practices have resulted in an excellent safety record. The FOARC recommended that many of those best practices, together with new requirements, be codified in proposed subpart K. The FOARC recognized that the regulatory requirements proposed in subpart K impose a significant new regulatory standard upon all current and future fractional owners and program managers. The FOARC believed that this standard was necessary in the public interest to maintain this level of public safety for fractional ownership program operations.

The FOARC concluded that certain changes to part 135 are required. As the FOARC evaluated existing best practices in the industry and parallel provisions of parts 119, 121 and 135 in developing proposed subpart K, the FOARC determined that certain provisions of proposed subpart K provide a level of safety equivalent to the parallel provisions of part 135. Corresponding amendments are proposed to the pertinent sections of part 135 to permit an alternative means of compliance for on-demand operators under these sections of part 135, as appropriate. These changes also reflect improvements in technology and the ability to operate safely as proven by the operating experience of business aircraft operators, including fractional owners.

The FOARC recommended that, if this proposal is adopted, the FAA work closely with the affected parties and the industry to develop guidance and to implement the changes proposed to parts 91 and 135. The FOARC also recommended that the FAA commit sufficient resources to implement these changes.

The FOARC recommended that the FAA establish a national point of contact for fractional ownership operational and airworthiness issues to ensure standardization of the implementation process and policy application. The FOARC recommended that the FAA should put procedures in place to ensure that fractional ownership program managers also are subject to FAA oversight and surveillance equal to that experienced by part 135 or part 121 operators. The FOARC also recommended that approvals for fractional ownership program operations (such as MELs, RVSM, manual reviews and maintenance programs) be conducted through a process similar to part 135 and/or part 121 processes and procedures, as appropriate.

The FOARC recommended that the FAA provide equivalent assistance to part 135 operators endeavoring to meet the revised part 135 regulations. Finally, the FOARC recommended that the FAA conduct appropriate training and ensure that any internal administrative changes, necessary for on-going oversight of compliance with these regulations, are made. The consensus achieved by the FOARC was contingent upon the FAA's commitment to fully implement the FAA inspection and oversight requirement of part 91, subpart K to the degree currently employed in part 135 operations.

The FAA agrees with the FOARC recommendations and is publishing this NPRM to reflect those recommendations. The FAA believes that this proposed rule, if adopted, will satisfy FAA concerns regarding fractional owners' and fractional ownership program managers' accountability and responsibility for compliance with these proposed regulations, particularly with respect to operational control issues. The FAA believes that the proposals pertaining to crewmember training, experience, rest and duty will provide an appropriate level of safety for these kinds of operations. The FAA further agrees that implementation of this proposed rule will require the development of guidance material, inspector training, inspector assignment, and oversight and surveillance policies. The FAA intends to invite industry to assist in the development of the implementation strategy and documents. Further, the FAA agrees that oversight and surveillance policies, and approval processes, need to be modified appropriate to these operations and consistent with the recommendations of the FOARC.

The FAA intends to implement this proposed rule, if adopted, within a fifteen month compliance period using a phased-in compliance schedule which would allow continued operations under existing part 91 while incrementally transitioning to the new regulatory requirements. The FAA invites comments on this compliance proposal.

Section-by-Section Analysis

14 CFR Part 13

Section 13.19 Certificate and Management Specifications Action

One aspect of this proposal would be the creation of a requirement for all persons conducting operations under proposed subpart K or furnishing fractional ownership program management services to do so under management specifications issued by the FAA. Provisions are included in § 91.1017 for amending the management specifications. However, because the management specifications are a prerequisite to all program operations, the FOARC believed that a suspension or revocation of those management specifications would affect program operations to the same extent that a certificate suspension or revocation would affect the operations of certificated entities. For that reason, FOARC recommended amending § 13.19 to ensure that the suspension or revocation of management specifications would be handled like analogous certificate actions, and that the users of the management specifications would be afforded similar procedural protections, including the right to appeal any suspension or revocation to the National Transportation Safety Board.

The FAA recognizes that proposed § 13.19 would require a statutory amendment to authorize the proposed process. However, the FAA believes that the treatment of the revocation or suspension of management specifications should be similar to the analogous treatment of certificates. The FAA seeks comments to determine whether such a process would be appropriate if the statutory authority existed. The FAA also seeks comments on whether these proposed amendments can be effectively implemented without the right to appeal any suspension or revocation to the National Transportation Safety Board. After review of the comments, the FAA will consider whether it is necessary to seek this legislative authority.

14 CFR Part 61

Section 61.57 Recent Flight Experience: Pilot in Command

In the course of examining the details of fractional ownership and on-demand charter operations, the FOARC found differences in pilot requirements between proposed subpart K and part 135, one of which relates to the night currency requirement. In response to operator safety concerns, the FAA amended § 61.57(e) on April 30, 1999 to provide an alternate means of compliance for meeting FAA's night currency requirement. The new alternative allowed operators to maintain currency by using both the aircraft and part 142 approved training programs.

The applicability of the alternative was unclear, however, because in order to qualify for the alternate means of compliance, a pilot must ''operate more than one type of aircraft.'' Under this definition, operators were uncertain how to determine if a pilot ''operated'' more than one type of aircraft.

The proposed change to § 61.57(e) would clarify the existing alternative and provide a second alternate means of compliance for pilots of turbine-powered aircraft that require more than one pilot and that meet additional experience requirements. The first alternative allows pilots to maintain night currency through the performance of three takeoffs and landings to a full stop over a 6 calendar month period. The second alternative allows pilots to maintain night currency through the performance of 6 takeoffs and landings to a full stop in a simulator training program approved under part 142 of this chapter. The FAA believes these alternatives provide an equivalent level of safety for night flying operations.

14 CFR Part 91

Section 91.501 Applicability

A number of proposed changes are necessary to conform existing regulations to the proposed subpart K and for other technical purposes. Several substantive changes to § 91.501 regarding the applicability of subpart F to fractional ownership program aircraft are being proposed. They are discussed below.

Current § 91.501(a) limits the applicability of the exceptions-to-certification options and other requirements of subpart F to large airplanes and multiengine turbine-powered airplanes of U.S. registry. Small airplanes and other aircraft regardless of size (e.g., helicopters and single-engine turbine-powered airplanes) require exemption authority to operate under current subpart F. Such authority has been routinely granted to members of the National Business Aviation Association (NBAA) by Exemption No. 1637, first issued on October 23, 1972, and has been renewed periodically. Individual exemptions also have been granted to non-NBAA members operating these aircraft.

Proposed § 91.501(a) would extend the applicability of subpart F to all aircraft in a fractional ownership program regardless of size, type or the number of engines without the need for exemption authority so long as these fractional ownership program aircraft are operating under proposed subpart K.

In addition, proposed § 91.501(b)(10) would be added to the types of operations permitted by current section 91.501(b)(1)–(9) and would clarify that fractional ownership program aircraft operated by a fractional owner may engage in any of those types of operations, such as personal use of aircraft (§ 91.501(b)(4)), use of aircraft within the same corporate group (§ 91.501(b)(5)), and use of time sharing and interchange agreements (§ 91.501 (c)(1)–(2)) so long as any compensation is limited to amounts permitted by § 91.501(b) for the type of operation being conducted, and such operations otherwise comply with the applicable rules of subpart F and proposed subpart K. Thus proposed § 91.501 would place fractional owners on an equal footing with other owners utilizing the exception-to-certification options currently available in § 91.501(b) or by exemption to § 91.501(b). Flights operated by a fractional ownership program manager for administrative purposes, such as training, ferrying, positioning, maintenance, or demonstration purposes without carrying passengers or cargo for compensation or hire, except as permitted for demonstration flights under Section 91.501(b)(3), would be permitted to be operated under subparts A through J of part 91, as applicable, rather than under subpart K of part 91.

Sections 91.509 and 135.167 Overwater Operations

The proven reliability of turbine engines provides safety justification for amending §§ 91.509 and 135.167 to allow pressurized turbine-powered aircraft which are operated for thirty minutes or no more than 100 nautical miles from the nearest shore, whichever is greater, above 25,000 feet to operate without life raft and related equipment requirements. A person operating a flight planned for an altitude above 25,000 feet may deviate below that altitude in the interest of safety without violating the requirements of these sections.

In reviewing the overwater equipment requirements of § 91.509, members of the FOARC noted that some FAA offices interpret the ''30 minutes or 100 nautical miles'' standard to mean that whichever measure is less is the one that applies. Given the speed of pressurized turbine-powered aircraft and the flight levels at which they operate, the difference between 30 minutes and 100 nautical miles could be substantial. The FOARC recommended that if an aircraft can operate at high speed and high altitude, they should be given the option of meeting either standard, i.e., typically the 30 minute standard, weather conditions permitting. Section 91.509 would be revised to make it clear that the additional overwater equipment requirements do not apply to pressurized turbine-powered aircraft that plan to operate at an altitude greater than 25,000 feet if the flight does not proceed ''more than 30 minutes or 100 nautical miles from the nearest shore, whichever is greater.''

The FOARC believed that the same requirement should apply to on-demand operations under § 135.167. Although the overwater equipment requirements for such operations apply when the flight will proceed more than 50 nautical miles from the nearest shore, they are often operated with equipment substantially similar to the equipment in the fractional aircraft programs. Accordingly, an exception is proposed for § 135.167 identical to that in the proposed revision to § 91.509.

Sections 91.1001 Through 91.1007 Defining Fractional Ownership

Since proposed subpart K would establish new regulatory requirements to fractional ownership programs, program managers and owners, it is important that these terms be clearly defined. Proposed §§ 91.1001 through 91.1007 would do so, relying in substantial part on industry guidelines developed early in 1999. If an aircraft ownership arrangement does not fit within these definitions, it may well fit within one or more of the existing operating models in part 91, subpart F, i.e., an interchange, joint ownership or a time share. In these circumstances proposed subpart K would not apply.

Proposed § 91.1001(b)(1) states five requirements for a fractional ownership program:

1. A designated program manager;
2. One or more owners per fractional ownership program aircraft, with at least one aircraft having multiple owners;

3. Possession of a fractional ownership interest in one or more program aircraft by each fractional owner consisting of a minimum fractional ownership interest of at least one-sixteenth (1/16) for a subsonic, fixed-wing or powered-lift fractional ownership program aircraft or at least one-thirty-second (1/32) for a rotorcraft fractional ownership program aircraft;

4. A dry lease aircraft exchange agreement among all the owners; and

5. Multi-year program agreements.

These five characteristics, when present in a program, distinguish a fractional ownership program from other arrangements that involve aircraft multiple ownership.

The core of the definition of a fractional ownership program is the concept of a ''minimum fractional ownership interest.'' In setting a minimum fractional ownership interest, and throughout proposed subpart K, the FOARC sought to prevent potential abuse by persons who might try to offer air charter transportation under the guise of a fractional ownership program. For example, it was noted that a 1/1000 interest in a used light piston single-engine airplane might be sold profitably for a very small dollar amount, entitling the purchaser thereof to an ''ownership'' interest equivalent to a few hours of occupied flight time in the aircraft, with pilot provided. The FOARC determined and the FAA agrees that aviation safety would be compromised if persons were permitted to offer what would amount to air charter services under proposed subpart K, thereby evading the important safety and supervision requirements of part 135 applicable to such service. Therefore, ownership interests that meet all the other criteria of fractional ownership but are less than the minimum ownership interest would not be eligible to operate under subpart K.

The FOARC concluded that a minimum fractional ownership interest of one sixteenth (1/16) of a subsonic, fixed-wing or powered-lift fractional ownership program aircraft, or one thirty-second (1/32) of a rotorcraft, would constitute a sufficient ownership interest to deter possible abuse.

In addition, the FOARC discussed the ownership of supersonic business aircraft. However, since no supersonic business aircraft exist today, the FOARC recommended that specific regulatory language addressing the operations of supersonic business aircraft not be developed until such aircraft are available.

As to rotorcraft, it was determined that abuse would be sufficiently deterred by setting the minimum fractional ownership interest at one thirty-second (1/32). Although rotorcraft offer unique vertical take-off and landing capabilities, require much smaller prepared landing and take-off surfaces, and are able to operate to and from unprepared sites more effectively than airplanes, the cruising speeds, range, and passenger capacity of business rotorcraft are small compared to those of comparably priced business airplanes. Moreover, while business airplanes that participate in fractional ownership programs are expected to operate frequently between airports separated by significant distances—often measured in thousands of miles—rotorcraft that participate in fractional ownership programs are not expected to operate outside of a range of, at most, a few hundred miles. In light of these factors, the FOARC determined that a smaller minimum fractional ownership interest would impose an equivalent burden on the ownership of rotorcraft as that imposed on airplane operations under subpart K.

Proposed § 91.1001(b)(6) would define fractional ownership program aircraft. A fractional ownership program aircraft would be an aircraft in which a fractional owner has a minimum ownership interest, as the term has been defined in § 91.1001(b)(3), and is included in a dry-lease aircraft exchange. Aircraft which are owned at least in part by a fractional ownership program manager meeting the definition of ''fractional owner'' under paragraph (b)(5) of proposed § 91.1001, and which meet the conditions set forth in paragraph (b)(6) of that section, would be considered to be fractional ownership program aircraft. In the situation where a fractional owner is operating an aircraft in a fractional ownership program managed by an affiliate (as discussed below) of the owner's program manager, ''fractional ownership program aircraft'' means the aircraft which is in the program managed by the affiliate of the owner's program manager and is being operated by the owner.

In at least one existing fractional ownership program, the multi-year program agreements permit a fractional owner not only to use the aircraft in the program which the owner has joined, but also aircraft in a different program which is managed by a manager affiliated with the owner's program manager. The program agreements make clear that for purposes of such flights the affiliate program manager has the flight-related responsibilities of the program manager. The FOARC members wanted to permit this type of operation under subpart K so long as an appropriate definition of ''affiliate of a program manager'' could be developed and agreed to. Proposed § 91.1001(b)(9) would define an ''affiliate of a program manager'' for the purposes of determining whether the owner's program and the program managed by the affiliate of the owner's program manager are related closely enough to permit the owners to use (i) the program management services provided by the affiliate of the owner's program manager, and (ii) aircraft in the program managed by the affiliate of the owner's program manager. The FOARC members were concerned about the possible consequences if fractional ownership programs could be franchised and the owners in the resulting franchise programs were allowed to use aircraft in any of the franchised programs. The FOARC members believed that there should be a sufficient common influence in the related programs to ensure that the programs adhere to similar safety practices. The FOARC members further desired to preclude the possibility that large networks of fractionally-owned aircraft could be established among unrelated programs where there is not a sufficient common influence to ensure that the programs are administered safely. In the FOARC's view, this common influence is most likely to be evidenced by a significant commitment by the manager of one program (or the manager's parent, affiliate or subsidiary) to the financing and/or strategic decision making of the other program or programs. The definition creates a presumption that where both a 40% equity interest and 40% of the voting power of a program manager is held by another program manager, or its parent, affiliate, or subsidiary, the companies are related closely enough to permit owners in each related program to use the aircraft in the other program or programs.

Because this definition creates only a presumption, the FAA would be free to find that there is a sufficient nexus between programs to justify owners in one program to use aircraft in another related program even when the equity or voting interest in a program manager owned by the other program manager (or its parent, affiliate, or subsidiary) is less than 40%. In such cases, the FAA would expect the program manager(s) to shoulder the burden of showing that a sufficient nexus existed between the programs to justify owners in one program using aircraft in another related program. Likewise, the FAA could find evidence that there is an insufficient nexus to justify owners in one program using aircraft in another related program

in cases where the 40% equity and voting interest requirement is met. In this case, the burden would be on the FAA to show that a sufficient nexus did not exist between the programs to justify owners in one program using aircraft in another related program.

The test for determination of an affiliate of a program manager under proposed § 91.1001(b)(9) should not be confused with other tests of corporate control or with control in the sense of operational control. For instance, under the § 91.1001(b)(9) test, more than one company may be in ''control'' of a program manager. So long as the appropriate common influence exists between the programs, the owners in each program may use the aircraft in the other related program or programs. Likewise, the 40% equity and voting interest requirements are unrelated to the operational control requirements applying to owners and program managers. The test applies only for purposes of defining an affiliate of a program manager and does not affect the determination of what entity is in operational control of a flight. When a fractional owner is operating an aircraft in a fractional ownership program managed by an affiliate of the owner's program manager, the references in proposed subpart K to the flight-related responsibilities of the program manager apply to the affiliate of the owner's program manager rather than to the owner's program manager. Thus, for that particular flight, it is the affiliate of the program manager that is responsible for carrying out the flight-related responsibilities of the program manager under subpart K. The FAA invites comments on the affiliate program concept and regulatory language, specifically,

(1) Whether the definition adequately defines an affiliate program,

(2) Whether the contractual multi-year program agreements and dry lease exchange arrangements are sufficiently detailed to ensure owners have legal possession, custody and use of an aircraft when using aircraft from an affiliate company, and

(3) Additional input to assist the FAA to develop guidance and oversight of this area.

Proposed § 91.1003 specifies the terms of the mandatory contract between the program fractional owners and the program manager. The contract must ensure that each owner has the right to inspect and to conduct audits of the program manager. This is the practice in most, if not all fractional ownership programs today. It is not the intention of proposed subsection 91.1003(b) to require a program manager to provide to the owner the manager's financial records or records pertaining to the confidential movements of other owners.

Proposed § 91.1005 prohibits a fractional owner from receiving any compensation other than that permitted by §§ 91.321 and 91.501. Proposed § 91.1005 also makes it clear that the total hours flown by a fractional owner may not exceed the total hours associated with that fractional owner's share of ownership, consistent with current industry practice. Any hours in excess of that ownership share must be flown under part 121 or 135.

The purpose of § 91.1005 is to prevent the use of sham fractional ownership programs to avoid the air carrier requirements of parts 121 and 135. A sham program would be one that only requires an owner to make a small capital outlay or pay unreasonably small fees in relation to the value of the aircraft that the owner actually will use in the program. For example, if an owner could buy into a program by purchasing a fractional interest in smaller aircraft with the intent of using only the program's larger aircraft, the program would be a sham and would not be considered a fractional ownership program under subpart K.

Proposed § 91.1007 requires a fractional owner to be notified in advance, when possible, that a charter aircraft will be substituted for a fractional ownership program aircraft on a flight. This reflects the current fractional ownership program practice.

Sections 91.1009 Through 91.1013 Clarification of Operational Control Issues

It is important to clarify the concept of ''operational control'' in the context of fractional ownership programs. The FAA in the past has held that when more than one entity has some involvement in the operation of an aircraft, the entity which has ''operational control'' is the ''operator'' for purposes of legal responsibility for the safe operation of the flight and compliance with the regulations with respect to the flight. The traditional criteria applied by the FAA in determining who has operational control have focused on which entity makes certain decisions related to the flight, particularly decisions that bear on the safety of the flight and thus require an adequate level of aviation expertise.

While the FOARC felt that it was important for the FAA to continue to hold the entity in operational control of a flight responsible for the safe operation of the flight and compliance with the regulations with respect to the flight, the FOARC also felt that traditional notions of ''operational control'' are not obviously useful in the situations where owners of business aircraft do not possess aviation safety-related expertise and thus contract with an expert to provide such expertise (as is often the case in fractional ownership programs as well as in the case of wholly-owned business aircraft).

It was the view of the FOARC that, in the context of fractional ownership programs, safety is best served by the FAA applying a definition of operational control specific to these programs, clarifying the regulatory compliance implications of operational control for all participants, and ensuring that those in operational control of fractional ownership program flights clearly understand and acknowledge the responsibilities attendant to that operational control.

Proposed § 91.1009 clarifies current law and policy by providing that the fractional owner is in operational control whenever the owner has directed that a fractional ownership program aircraft carry passengers or property designated by that owner and the aircraft is in fact carrying those passengers or property. This section requires, as a condition to the owner being considered to be in operational control, that the owner have the rights and be subject to the limitations set forth in proposed § 91.1003 through 91.1013. These proposed sections are intended to ensure that the owner: (1) Has the ability to obtain adequate information to determine that the program is being conducted safely, (2) does not engage in commercial operations without the appropriate authority, (3) has advance notice when a chartered aircraft is substituted for a fractional ownership program aircraft on a flight for the owner, and (4) is fully aware of the responsibilities and implications of the owner being in operational control.

The owner, as the entity in operational control, remains responsible for the safe operation of the flight and compliance with the regulations with respect to the flight under this definition. The FOARC concluded, in the context of fractional ownership programs, that safety is best served by placing additional responsibility for safety decisions on the expert fractional ownership program manager who is subject to direct FAA safety regulation under proposed subpart K. Under this proposal, the fractional ownership program manager is jointly and severally responsible with the owner for the safe operation of the flight and for

compliance with the Federal Aviation Regulations affecting that flight. Consequently, regulatory responsibility for the safe operation of a fractional ownership program aircraft is shared with equal and concurrent force, and with equal exposure to FAA enforcement, between the fractional owner operating the fractional ownership program aircraft and the fractional ownership program manager.

Proposed § 91.1011 specifies the regulatory compliance implications of fractional owners being in operational control. It provides that when a fractional owner is in operational control of a flight, that owner is responsible for compliance with all applicable regulations pertaining to that flight. The section acknowledges that the owner may delegate some or all of the tasks associated with regulatory compliance to the program manager and may rely on the program manager's expertise. Nevertheless, the section specifies that, in the event of such a delegation, the owner, as the entity in operational control, remains responsible for compliance. Since the program manager also has responsibilities for ensuring compliance under proposed subpart K and other proposed revisions to part 91, this regulatory structure provides to the FAA the option of taking enforcement action against the program manager, the owner in operational control of the pertinent flight, or both.

Proposed § 91.1013 requires the program manager to brief each fractional owner on the owner's operational control responsibilities, and requires the owner to review and sign an acknowledgement of fractional owner's operational control responsibilities. The acknowledgement must state that the owner is in operational control of any fractional ownership program aircraft being used to carry persons or property designated by the owner. It must further state that when the owner is in operational control, the owner is: (1) Responsible for compliance with the management specifications and all regulations applicable to the flight, even when the owner has contracted with the program manager to carry out tasks related to compliance, (2) exposed to FAA enforcement action for any noncompliance, and (3) exposed to significant liability risk in the event of any personal injury or death resulting from the flight. The acknowledgement form must further state that the owner has read, understands, and accepts the operational control responsibilities described in the acknowledgement, and understands that program flights over which the owner has operational control will be operated under part 91 rules rather than the part 121 or 135 rules that apply to commercial or air carrier operations. The acknowledgment also must state that the owner understands that the failure of either the program fractional owners or the program manager to comply with the regulations may result in enforcement action.

Sections 91.1014 Through 91.1035, 91.1047, 91.1109 Through 91.1115 and 135.21 Responsibility of Fractional Ownership Program Managers

One of the major concerns leading to formation of the FOARC was whether, and to what extent, fractional ownership program managers properly were subject to FAA surveillance and enforcement under the existing regulations when conducting program operations. The information developed by the FOARC indicated that most program managers agree that they should be subject to FAA surveillance and enforcement and voluntarily have adopted as standard practices systems and procedures that are intended to facilitate FAA surveillance and enforcement. The FOARC recommended that it would be prudent to conform part 91, subpart K to the existing industry practices and to the extent consistent with those practices, parts 119 and 135.

Proposed §§ 91.1014 and 91.1109 through 91.1115 would make it clear that the fractional ownership program manager, in addition to the owners, is responsible for the airworthiness and safe operation of fractional ownership program aircraft. Under the proposed sections, the program manager is subject to both the surveillance and enforcement authority of the FAA. This responsibility is not predicated on operational control, which remains with the owner. Rather, it is based on the fractional ownership program manager's status as a provider of certain program management services, the proper delivery of which is critical to aviation safety. The program manager's status in this regard is similar to that of a repair station.

Subpart K imposes on fractional ownership programs certain maintenance requirements, including requirements for initial and annual recurrent training of maintenance personnel. For purposes of complying with the initial and annual recurrent training requirements of § 91.1111, the FAA intends to permit on-the-job training, where appropriate.

The FOARC recommended that management specifications be issued to fractional ownership program managers. The issuance of management specifications that detail program managers' practices and procedures, and that state the program managers' authorized deviations and exemptions, would facilitate the oversight activities of the Flight Standards District Offices. The program manager, the fractional aircraft owners, and flight crew and ground and maintenance personnel would be responsible for compliance with the management specifications. The management specifications would include the registration number and serial number for each program aircraft. A current listing of names and addresses of each fractional owner must be available at the program manager's principal base of operations for FAA review. The management specifications must be available at the program manager's principal base of operations for owner and FAA review.

Accordingly, proposed § 91.1015 requires each fractional ownership program manager to hold management specifications and describes the content and application of the management specifications. The list of owners required by § 91.1015(a) may be considered proprietary. Section 91.1015(b) authorizes the program manager to keep this list at its principal base of operation or another location referenced in its management specifications. This list, in addition to the management specifications, must be made available for inspection by the Administrator.

Proposed §§ 91.1017 and 91.1019 describe the procedures for amending management specifications and for tests and inspections. The FAA intends to work with program managers and part 135 operators to develop procedures to allow expedited changes to management and operations specifications, such as adding aircraft that are substantially similar to aircraft currently approved for operation, through use of the Automated Operations Specification Subsystem.

Proposed § 91.1021 adds a requirement for the program manager to establish an internal safety reporting procedure and procedures to respond to aviation accidents or incidents.

Each fractional ownership program manager is required by proposed §§ 91.1023 and 91.1025 to create and maintain a ''program operating manual.'' Proposed § 91.1023 further requires each fractional ownership program aircraft to have aboard the program operating manual. A similar amendment of § 135.21 is proposed to require a manual setting forth the certificate holder's flight procedures and policies aboard each aircraft.

Recordkeeping requirements are the responsibility of the program manager under proposed § 91.1027. Proposed § 91.1027 would authorize program

managers that also hold a certificate to operate under part 121 or 135 to use records they maintain under those parts to satisfy the equivalent requirements and recordkeeping provisions of §§ 91.1027 and § 91.1113. Thus, program managers that hold an air carrier certificate or operating certificate would not be required to keep separate records for equivalent regulatory requirements to satisfy the independent obligations imposed by subpart K and part 121 or 135.

Proposed §§ 91.1029 through 91.1035 would require the program manager to establish an aircraft scheduling system to designate a pilot in command and second in command for each program flight, to provide all designated operating information to the pilot to carry aboard the aircraft and to ensure that a detailed pre-flight passenger briefing is conducted prior to the operation of a fractional ownership program aircraft on a program flight. Each pre-flight passenger briefing under proposed § 91.1035 must include the name of the program manager or other person operating that flight and whether the flight is a program flight or a commercial operation. The briefing requirements of this section are used in lieu of the briefing requirements of § 91.519 when the aircraft is operated in a fractional ownership operation.

Sections 91.1025, 91.1037, 135.23, 135.385 and 135.387 The ''60% Rule''

Section 135.385 prohibits an air carrier subject to that section from taking off for a destination airport unless the Airplane Flight Manual indicates that the airplane at normal loads is capable of a full stop landing at that airport within 60% of the effective length of the runway. There is no similar requirement in part 91 applicable to general aviation operations. As a consequence of the so-called ''60% rule,'' on-demand operators may not operate into many airports that are safely served by business jets under part 91.

The 60% rule reflects the inability to predict airplane landing performance that existed during the 1930s and 1940s. During this period, performance variations existed among airplanes of the same model produced by the same manufacturer, and these differences were often significant. Maintenance regulations and mechanic training relied extensively on an individual mechanic's capabilities, compared to today's development of approved airplane repair manuals. Replacement of parts and components occurred upon failure, and failures occurred more often when compared to today's operations. Modern pilot training is far more sophisticated, and emergency training is performed in simulators that have far greater capabilities than existed in previous decades. The physics of stopping an airplane are better understood today. Airport designs have been largely standardized, and pavement standards have been developed. Moreover, weather forecasts of wind or precipitation are far more accurate than in the past.

In the former environment, the Civil Aeronautics Board (CAB), which regulated all commercial operations at the time, felt it necessary to institute the 60% rule to compensate for the many unknown or unpredictable factors affecting airplane-landing distances. In 1958, the CAB was petitioned to modify the 60% rule. In issuing an update in July of 1958 to CAR SR–422, the CAB stated:

> Strong representation has been made to the Board to the effect that the numerical factors applicable to the aforementioned rules are too high and should be reduced pending further experience. The Board considers that it would not be in the public interest to reduce any of these factors until such time as further experience indicates that they are in fact overly conservative. Realizing, however, that the issues are of considerable importance in prescribing a practical level of performance, the Board stands ready to reconsider the relevant provisions of this regulation at such time as substantiating information is received.

No review of the 60% rule has been conducted in the intervening four decades.

In the interim, the FAA has continually improved its guidelines regarding the accuracy and reliability of published airplane performance data. First adopted in 1964, FAR 25.21, ''Airworthiness Standards: Transport Category Airplanes,'' states that each flight certification requirement must be demonstrated ''by systematic investigation of each probable combination of weight and center of gravity.'' Additional guidance is published in AC 25–7, ''Flight Test Guide For Certification Of Transport Category Airplanes.'' This Advisory Circular states that ''[w]here variation in the parameter on which a tolerance is allowed will have an effect on the results of the test, the results should be corrected to the most critical value of the parameter within the operating envelope being approved.''

With regard to determining landing distance for an Airplane Flight Manual (AFM), AC 25–7 also states, ''[m]ore (flight) tests will be necessary if the distribution of the data does not give sufficient confidence in the parametric correlation. Past experience has shown that 40 landings would establish a satisfactory confidence level without further analysis.''

The following table indicates some of the landing distance factors that contribute to safe aircraft operations and are required for aircraft certification under current FAA regulations but were not required when the FAA instituted the 60% rule.

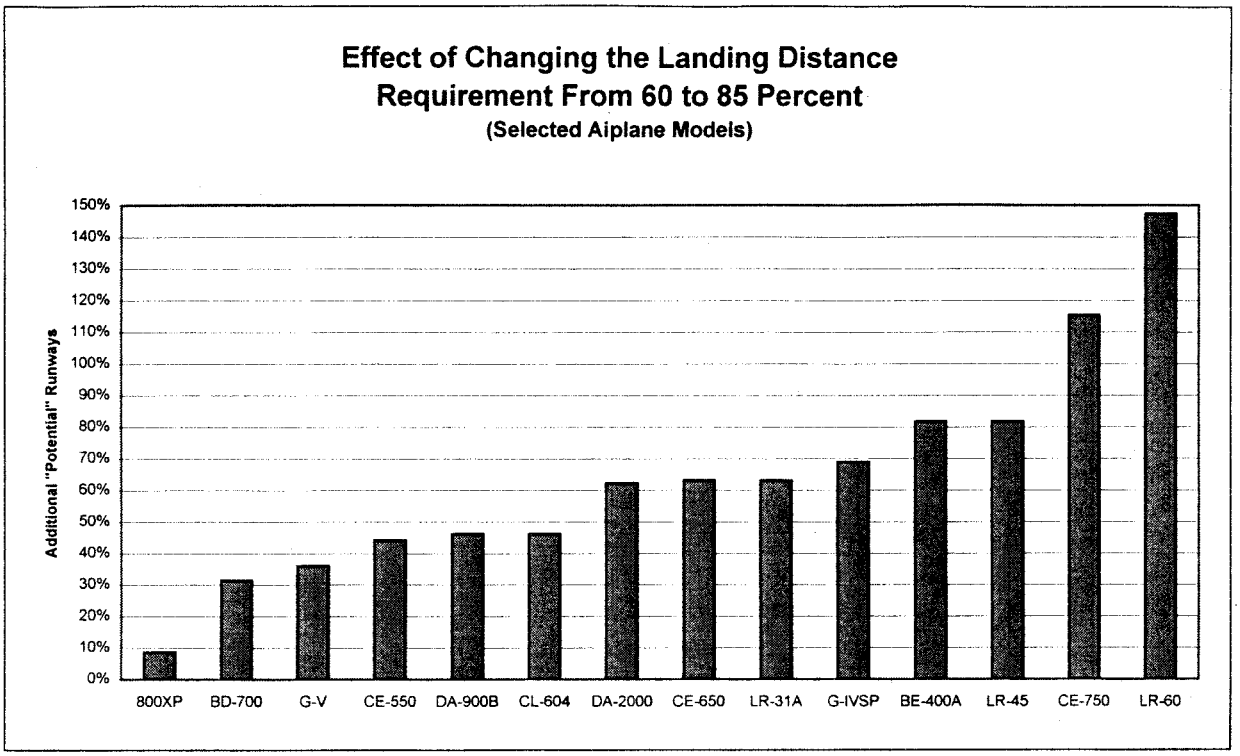
Manufacturer's requirements	Result	Added safety margin
Airborne Distance. Engines must be set to the high side of the flight idle trim band.	During landing at flight idle, engines will contribute the maximum amount of forward thrust when the throttles are in the flight idle position.	Actual landing distance will be shorter than calculated landing distance.
Airborne Distance. Steep approaches and high touchdown sink rates, formerly considered ''traditional'', are ''no longer considered acceptable''.	Actual glideslope must be within −2.5 degrees to −3.5 degrees. Touchdown sink rates must be 8 feet per second or lower.	Actual landing distance will be shorter than calculated landing distance.
Airborne Distance. If derived, data must show an upper bound to the Part 25 zero-wind airborne distances achieved in past certifications and minimum speed (V_{REF}) loss.	The only time a manufacturer may approximate landing distance using a standard (FAA approved) equation is when data from past certifications is consistent and ''clustered''.	Actual landing distance will be shorter than calculated landing distance.
Airborne Distance. If derived, touchdown speed is assumed to be V_{REF} −3 knots.	Most touchdowns are at V_{REF} −5 knots	Actual landing distance will be shorter than calculated landing distance.

Manufacturer's requirements	Result	Added safety margin
Airborne Distance. If a manufacturer includes data from steeper approaches and higher touchdown rates in a parametric analysis, the most the air distance (or speed) from 50 feet can be reduced is ten percent. (The max. allowed glideslope is −3.5 degrees and the max. touchdown rate is 8 feet per second.).	Somewhat steeper approaches over the threshold, or slightly higher touchdown rates, will reduce landing distances more than is predicted in the AFM.	Actual landing distance will be shorter than calculated landing distance.
Landing Distance. Wheel brake assemblies must be at the fully worn limit of their allowable wear range.	In practice, wheel brake assemblies are most likely to be above the fully worn limit.	Actual landing distance will be shorter than calculated landing distance.
Landing Time Delays. It is assumed that the pilot delays activating the first deceleration device (brakes etc.) until at least one second after touchdown.	This is a conservative estimate of pilot reaction time.	Actual landing distance will be shorter than calculated landing distance.
Landing Time Delays. It is assumed that the pilot delays activating the second deceleration device (brakes etc.) until at least one second after activating the first deceleration device.	This is a conservative estimate of pilot reaction time.	Actual landing distance will be shorter than calculated landing distance.

Business jets have operated in an identical environment as aircraft operated in part 135 on demand operations, but without the 60% rule, for many years. If the rule were necessary for this type of operation, business jets operated under part 91 should have a higher rate of runway overshoot events than on-demand operators under part 135. However, such a difference has not been observed. Aviation safety data indicate that the landing accident rates under part 91 and 135 during the previous twelve-year period were nearly identical. A report prepared by Robert E. Breiling Associates of Boca Raton, Florida concluded, ''it would appear that the 40% safety factor in present use for FAR 135 is excessive. A factor based on actual aircraft performance on contaminated runways with the inclusion of a 10% to 20% safety factor would be more appropriate.''

Since the 1940s, when the 60% rule was first instituted, there have been significant advances in the accuracy of aircraft performance data and substantial technological improvements in aircraft stopping-system engineering and design. Consequently, the FOARC recommended changing the landing distance limitations requirement of part 135 to 85% for eligible on-demand operators. Over forty years of operating experience indicates this proposed rule would provide an appropriate margin of safety and, additionally, would subject both fractional ownership aircraft operations and eligible on-demand air charter flights to the same requirements. Proposed §§ 91.1025, 91.1037, 135.23, 135.385 and 135.387 would accomplish this in two ways. First, the full stop landing distance would be increased to 85% of the effective runway length for both the destination and alternate airports, consistent with the recommendations of the FOARC. Second, a fractional ownership program manager or an eligible on-demand operator would be allowed to include a Destination Airport Analysis procedure in its operating manual. This procedure, which would be reviewed and approved by the FAA using standards identical to those imposed on on-demand operators under amended § 135.23, would allow the 85% stopping distance requirement to be exceeded if appropriate planning in the circumstances indicated that there would be no compromise of safety and an alternate airport is selected. The FAA invites comments on the criteria contained in §§ 135.23 and 91.1025 for approval of a destination airport analysis. These options would be available only to fractional ownership program managers, who do not have any runway stopping requirement today, and to eligible on-demand operators who meet the flight crew experience, pilot operating limitations and pairing requirements of proposed §§ 91.1053 and 91.1055.

These proposed changes would ensure that the current best practices of fractional ownership program managers continue, while applying those same best practices to on-demand operators with equivalent crew training and experience requirements. The result would be a substantial expansion of the opportunities for on-demand operators without any compromise of safety. The table below, prepared for the FOARC by the General Aviation Manufacturers Association (GAMA), shows the effect of changing the landing distance for popular business aircraft types.



The most critical impact of the proposed rule is at airports with a single-runway. The table below, also prepared by GAMA for the FOARC, presents examples of single-airport runways where the proposed rule would allow part 135 operations previously restricted by the 60% rule.

Example of single-runway airport	Runway length	Example of airplanes excluded solely by the 60% rule	Example of airplanes excluded solely by an 85% rule
Meigs Field, IL	3,899	BE–400A, BE–800XP, CE–550, CE–650, CE–750, CL–604, DA–900B, DA–2000, GIVSP, LR–31A, LR–45, LR–60.	Lear 60.
Bonifay, FL	4,014	BE–400A, CE–650, CE–750, DA–2000, GIVSP, LR–31A, LR–45, LR–60	None.
Los Angeles, CA (Whitman)	4,120	BE–400A, CE–650, CE–750, DA–2000, GIVSP, LR–45, LR–60	None.
Covington, GA	4,203	BE–400A, CE–750, DA–2000, GIVSP, LR–45, LR–60	None.
Hilton Head, SC	4,300	BE–400A, CE–750, G–IVSP, LR–45, LR–60	None.
Glaskow, KY	4,586	BE–400A, CE–750, LR–45, LR–60	None.
Washington Court House, OH	5,100	LR–60	None.

Sections 91.1039, 135.1 and 135.225 IFR Takeoff, Approach and Landing Minimums

IFR Destination Airport Weather Reporting

Section 135.225(a) prohibits an air carrier subject to that section from initiating an instrument approach at a destination airport unless that airport has a weather reporting facility on the field. Part 91 does not impose a similar restriction on general aviation aircraft. The majority of U.S. airports used by general aviation aircraft do not have on-field weather reporting facilities, relying instead on the facilities at nearby airports.

The FAA has considered several petitions for exemption from the requirement of § 135.225(a). In most cases these petitions were denied, in part, because the petitioners failed to identify how their circumstances were different from the general class of regulated persons in order to justify relief by exemption. In a pending petition for rulemaking, the National Air Transportation Association, on behalf of its part 135 on-demand air charter membership, has asked for relief from the requirement subject to certain operational limitations.

Following extensive discussion of the regulation, the FOARC concluded that the public can best be served, and an equivalent level of safety maintained, by permitting an alternative means of compliance with the destination airport weather reporting facility requirements under part 135, and applying the same provision in part 91, subpart K. This alternative requires the destination airport to have approved weather reporting or, if weather reporting is not available at the destination airport, then an alternate airport must be selected that does have weather reporting. Both the destination and the alternate airport, if required, must have a current local altimeter setting or a current alternate altimeter setting provided by the facility designated on the approach chart for that airport. Fractional ownership program aircraft operated under part 91 have successfully and safely operated under conditions and circumstances similar to those experienced by part 135

operators. The FOARC examined available safety information, finding no evidence that safety has been compromised in part 91 fractional operations when an approved weather reporting facility is not available at a destination airport.

The FAA is proposing that ''eligible on-demand charter operators'' be permitted to use an alternative means of compliance with the weather reporting requirement. The alternative means of compliance requires a weather report from a weather reporting facility at either the destination or an alternate airport and a current local altimeter setting for the destination and alternate airport. To ensure an equivalent level of safety, only ''eligible on-demand operators,'' as defined in proposed § 135.1(b), may use this alternative means of compliance. ''Eligible on-demand operators'' would be those which meet the flight crew experience, pilot operating limitations and pairing requirements of proposed §§ 91.1053 and 91.1055.

An alternative means of compliance with § 135.225(a) would benefit the public in that numerous communities would be able to gain access to air transportation via air charter operations to and from local airports that presently do not have an approved weather reporting facility. The benefits of air charter include emergency medical transportation, disaster relief, transportation of critical materials and personnel, and various economic benefits.

IFR Takeoff Minimums

Currently, operators under part 91 may take off with zero visibility and ceiling. The best practices of many corporate operators have shown that a visibility requirement of approximately 600 feet, as determined by the pilot in command, provides a practical method for improving take off safety. Pilots can determine runway visibility by taxiing the length of the runway and using runway markings and lights as distance references.

Sections 91.1041 and 135.145 Aircraft Proving Tests

The FOARC recommended that when a fractional ownership program first includes in its fleet an aircraft for which two pilots are required under the type certification requirements, or when such a program first includes in its fleet a turbojet airplane, a 25-hour proving test requirement similar to the one in existing § 135.145 should apply. However, the FOARC noted that § 135.145(a) has been interpreted by the FAA to require proving tests whenever a new type of aircraft is added, even if that aircraft type is similar to existing aircraft in the operator's fleet. For several reasons, FOARC believed that the current proving test requirements of § 135.145, as interpreted, are excessive, and that a narrowing of these requirements would not adversely affect aviation safety.

First, the demonstrated historical safety of business aviation operations under part 91, which does not require proving tests, indicates that new aircraft types may be safely introduced in some circumstances without proving tests. Further, with respect to more complex types of aircraft utilization, e.g., those involving more complex systems of aircraft release and aircraft and personnel scheduling, the value of proving tests is primarily to demonstrate that satisfactory support systems are in place to facilitate the safe operation of the aircraft. The FOARC observed, however, that these support systems largely function independently of the aircraft make or design and do not require additional proving tests each time a different aircraft make or dissimilar aircraft design is introduced. Finally, the FOARC noted that the FAA retains its authority to inspect many aspects of early operations of new types of aircraft even when proving tests are not required, and that this broad authority applies to both simple and complex types of aircraft utilization.

For these reasons, the FOARC recommended that proving tests be required for fractional ownership programs only for the initial operations of aircraft that fundamentally differ from aircraft already in a program's fleet. Recognizing that these reasons applied equally to part 135 operations, the FOARC recommended applying the narrowed proving test requirements to both fractional ownership program operations and part 135 operations. Accordingly, under proposed § 91.1041 and proposed amendment to § 135.145(a), proving tests would be required both for fractional ownership program aircraft and for part 135 aircraft only before the initial use of either an aircraft for which two pilots are required under the aircraft type certification requirements or a turbojet powered airplane.

Section 91.1045 Additional Equipment Requirements

The FOARC recommended that a fractional ownership program aircraft on a program flight must be equipped with a cockpit voice recorder, flight recorder, ground proximity warning system, terrain awareness warning system, airborne thunderstorm detection equipment or airborne weather radar, and a traffic alert and collision avoidance system to the extent that such equipment would be required if that aircraft were operating under part 121 or 135. This conforms to the existing best practices of fractional ownership program managers and is consistent with maintaining an equivalent level of safety. Proposed § 91.1045 would extend these requirements to fractional ownership program aircraft, with the same accompanying applicability requirements as to size and type of aircraft currently applied to aircraft operated under part 121 or 135.

Sections 91.1047, 135.251 and 135.255 Drug and Alcohol Misuse Programs and Required Maintenance

Proposed § 91.1047(a) requires fractional ownership program managers to implement drug and alcohol misuse education programs for flight crew, flight instructors, flight attendants, and maintenance personnel who are the direct employees of the program manager. Proposed § 91.1047(b) requires fractional ownership program managers who employ flight crew, flight instructor, flight attendants, or maintenance personnel indirectly, through contractors, to verify that each indirect employee has completed a drug and alcohol misuse education program.

Although the FOARC did not support federally mandated testing programs for fractional ownership programs, the FOARC recognized the widespread voluntary implementation by industry of company testing programs. The FOARC unanimously recommended that fractional ownership program managers be required to disclose to owners and prospective owners the scope of the program manager's company drug and alcohol testing program, if any, and to compare it with the scope of federally mandated programs for air carriers. The FOARC believes that this disclosure requirement is necessary to permit the public to make educated decisions among the various air transportation and purchase options available in the marketplace. The FOARC stated that its intent was that this disclosure requirement, regarding prospective owners, would be satisfied if the required detailed disclosure is provided to a prospective owner sufficiently in advance of a share purchase to permit meaningful review.

Although proposed subpart K does not contain a federally mandated alcohol or drug testing requirement, nothing in proposed subpart K is intended to prevent a fractional ownership program manager from voluntarily implementing a company

drug or alcohol testing program, consistent with applicable federal and state law that is separate and distinct from a federally mandated program required by Appendices I and J to part 121. Fractional ownership program managers can satisfy the requirements of § 91.1047(a) and (b) by implementing drug and alcohol misuse and education programs modeled on air carrier programs, or by developing their own company programs. However, they cannot hold themselves as testing under the authority of the federally mandated drug and alcohol program (e.g., they cannot advise individuals that the company program is federally mandated nor can they use the federal drug and alcohol custody and control forms). The requirements of § 91.1047(a) and (b) are satisfied if the subject employee has completed the training required under an air carrier drug and alcohol program, regardless of whether that program is operated by the fractional ownership program manager, an affiliated or related company, a subcontractor of the fractional ownership program manager or an unrelated company.

During the course of the FOARC's deliberations on this subject, representatives of on-demand operators pointed out an issue in the comparable part 135 requirements. When emergency maintenance is required, such as a tire change, existing part 135 does not allow such maintenance to be performed at an airport that does not have available a maintenance provider properly enrolled and subject to the provisions of an FAA-approved drug and alcohol misuse program. Accordingly, the FOARC recommended that the drug and alcohol misuse program requirements in both part 91, subpart K and part 135 should provide an exception for emergency maintenance, provided that the FAA is advised in writing within 10 days after such an event. The emergency maintenance exception is limited to maintenance that is not scheduled and is made necessary by an aircraft condition that is not discovered prior to the departure for that location. Further, the airport must be one at which there are no available maintenance personnel subject to the drug and alcohol testing requirements of Appendices I and J of part 121. Finally, the part 135 exception would apply only to on-demand charter flights, flights that operate on a non-scheduled basis to diverse airports. The added requirement that all such emergency maintenance be reported to the Drug Abatement Program Division within ten days of its occurrence discourages abuse of this exception. This exception is set forth in proposed §§ 91.1047(d), 135.251(c) and 135.255(c).

Sections 91.1049 Through 91.1107, 135.291, 135.321, 135.324, and 142.1 Personnel Requirements; Flight, Duty and Rest Time Requirements; and Testing and Training

The requirements relating to the qualifications, testing and training of crewmembers and flight, duty and rest time received considerable attention from the FOARC. Using previously developed industry guidelines and best practices as a starting point the FOARC recommended that proposed subpart K should include a comprehensive set of requirements intended to ensure that fractional ownership program managers continue to maintain a high level of safety. Those requirements are set forth in proposed §§ 91.1049 through 91.1107. These sections establish new requirements for part 91 fractional ownership operations and reflect the unique characteristics of those operations.

Proposed § 91.1049(b) and (d) would require each program manager to staff, at a minimum, with three pilots per fractional ownership program aircraft and to operate with at least two qualified pilots on a flight when passengers are onboard. Proposed § 91.1053(a) would require that each pilot of a program aircraft holds, in addition to applicable type ratings, an airline transport pilot rating (for multi-engine turbine-powered fixed-wing or powered lift aircraft) or a commercial pilot rating (for all other aircraft). The three pilots per aircraft staffing requirement, the two pilots per aircraft operating requirement and the ratings requirement are based on the best practices of business aviation and are in substantial part responsible for the excellent safety record of that segment of general aviation. These requirements ensure that fully qualified and rested crews always are available and are onboard every passenger flight.

The FOARC recognized that these requirements could impose an unnecessary burden on some operators of smaller equipment. Accordingly, proposed § 91.1049(b) and (d) would allow the Administrator to make exceptions, as necessary, and proposed § 91.1053(b) would allow the Administrator to grant deviations based on the size and scope of the operation or the type of aircraft operated. The intent of these provisions is to retain a high safety standard but to permit reasonable exceptions as justified by the facts of individual situations.

Proposed § 91.1051 would require a fractional ownership program pilot safety background check.

Proposed § 91.1055 would establish operating limitations and pairing requirements. For example, a second in command with fewer than 100 hours of flight time flying for the program manager in that type of aircraft could not make a takeoff or landing in the designated situations where safety might be compromised.

Proposed § 91.1057 through 91.1061 would establish flight, duty and rest time requirements for pilots flying fractional ownership program aircraft on program flights. A comprehensive set of flight, duty and rest time requirements is proposed by the FOARC. The FOARC believes that the proposed flight crew duty and rest requirements are adequate to prevent undue fatigue, ensure the safety of fractional ownership program aircraft operations, and provide for these operations a degree of rest equivalent to or greater than that provided under regulations applicable to air carriers. For example, by defining standby status as a type of duty, proposed § 91.1057 establishes a requirement that exceeds the requirements imposed on air carriers under either part 121 or part 135. Similarly, proposed § 91.1057 would not only define reserve status, but would also require pilot acceptance of reserve status and require a minimum of ten hours of uninterrupted rest prior to entering that reserve status. Again, these provisions exceed the requirements currently imposed on air carriers.

The FOARC believes that the requirements of proposed § 91.1059 also equal or exceed virtually all air carrier requirements. The sole exception is where flight time exceeds ten hours, with total duty time less than sixteen hours. In this case, part 135 would require sixteen hours of rest, while proposed § 91.1059 would require a rest period equal to the total hours on duty. The FOARC believed that the stringent requirements that, in many cases, exceeded those imposed on air carriers created, in the context of the fractional ownership operating environment, a level of safety sufficient to justify the regulations.

The duty and rest regulations proposed by the FOARC in this NPRM apply only in the context of fractional ownership programs.

The proposed limitations are displayed in chart form consistent with the concept of ''plain language'' regulation. Because of concerns about Circadian rhythm patterns, minimum rest periods are established for east/west

flights that cross five or more time zones.

Proposed § 91.1057:

(1) Defines a duty period,

(2) Addresses ''Multi-time Zone'' flying,

(3) Defines ''Standby'' status as duty,

(4) Defines ''Reserve Status'' as not being duty but requires pilot acceptance and a minimum of 10 hours uninterrupted rest prior to entering reserve status,

(5) Defines ''Extension of Normal Duty'' as an increase in the period of duty due to circumstances beyond the control of the program manager or flight crewmember (such as adverse weather) that are not known at the time of departure and that prevent the flightcrew from reaching the destination within the planned flight time,

(6) Defines ''Planned Expanded Duty'' as the planned maximum flight and duty time and minimum rest that may be scheduled for long-range aircraft capable of exceeding 10 hours of flight unless the flightcrew is augmented by a third pilot,

(7) Restricts a program manager from assigning duty during a rest period,

(8) Requires that ''time spent in transportation not local in nature'' not be part of any rest period,

(9) Requires a minimum of 10 consecutive hours of rest during the 24-hour period that precedes that planned completion time of a duty assignment, and

(10) Requires 13 rest periods in each calendar quarter.

Since the FOARC presented its proposal to the FAA, a great deal of thinking has gone on in the aviation industry and the FAA regarding the flight and duty time issue. For example, a part 135 on-demand air charter industry task force has developed a concept paper proposing a new flight and duty time regulatory structure for that segment of the industry. The FAA is also considering several different approaches.

One approach may be that part 91, subpart K flight, duty and rest requirements would be governed by the same flight, duty and rest rules that the part 135 on demand industry has to meet, i.e., sections 135.267 and 135.269.

Another approach might be to establish different flight, duty and rest standards for part 91, subpart K operators than the standards that would apply to the part 135 on demand industry.

The FAA is open to different ideas regarding how to structure the flight and duty time portion of the proposed rule, and therefore solicits comments not only on the flight, duty and rest rules proposed in the NPRM, but also other possible regulatory structures, such as the one developed by the part 135 on-demand air charter industry task force. The FAA is presenting this proposal as it was proposed by the FOARC. The FAA may decide to adopt this proposal, substantially revise the proposal, or propose a completely new approach in a subsequent rulemaking. The FAA invites comments on the following provisions of this proposal:

(1) Whether this proposal is appropriate for a single pilot operation permitted under the deviation provision contained in proposed section 91.1049.

(2) Whether the FAA would be justified in promulgating different flight, duty, and rest requirements for this segment of the industry as compared to the requirements that apply to those operators subject to the requirements of 14 CFR parts 121 and 135.

(3) Whether the reserve status definition contained in this proposal is adequate and would provide sufficient opportunity for rest outside of a flight crewmember's normal sleep cycle before that person is called to perform a flight assignment that could extend up to the proposed duty time limits in this proposal and whether this proposal should even contain a reserve status definition.

(4) Whether duty limitations and rest requirements should be provided for flight attendants.

Proposed §§ 91.1063 through 91.1107 set forth the testing and training requirements for fractional ownership program flight crews. The requirements reflect the existing best practices of fractional ownership program managers and are tailored to reflect certain training and testing requirements of part 135. If authorized by the Administrator, a program manager may use the applicable training and testing requirements of subparts N and O of part 121. This reflects a similar provision currently available in part 135. Many program managers are also certificated as air carriers, and the same pilots and aircraft are used to support both operations. Where the training and testing program elements are the same for both the fractional program and a part 121 or 135 operation, the program manager may be authorized to use the applicable training and testing provisions of the part 121 or 135 program to meet the training and testing requirements of subpart K. Where there are differences in the training and testing provisions of these programs, the flight crewmember must be trained and tested with respect to those differences. Similarly, where the training and testing program elements are the same for different fractional programs, the fractional ownership program manager may be authorized to use the applicable training and testing provisions of the other approved fractional training program to meet the training and testing requirements of subpart K, so long as the flight crewmember is trained and tested with respect to those differences.

The requirement in section 91.1073 to conduct annually at least one ''flight training session'' in an approved simulator may be satisfied by conducting the flight training portion of any training session otherwise required by subpart K of part 91 in an approved simulator. There would be no specific amount of simulator time necessary to satisfy this requirement.

Minor corrections were made in sections 135.291, 135.321 and 135.324 to change the term ''provide'' to ''conduct'', in reference to the conduct of training by part 142 training centers. Sections 91.1063 and 91.1075 permit training center personnel authorized under part 142 to conduct training, testing, and checking for fractional ownership programs. Conforming changes were made to section 142.1.

14 CFR Part 119

Section 119.1 and 125.1 Applicability

Section 119.1 and 125.1 would be amended to include a reference to part 91, subpart K to make it clear that parts 119 and 125 are not applicable to administrative flights conducted by the program manager or flights conducted by fractional owners using fractional ownership program aircraft. This would make it clear that operations of fractional ownership program aircraft having more than 20 seats or a maximum payload capacity of 6,000 pounds or more may be conducted under part 91, subpart K without the need for part 125 certification or a deviation from part 125, which is warranted based on the equivalent level of safety provided in subpart K for aircraft utilized in fractional ownership programs.

14 CFR Part 135

Section 135.247 Pilot Qualifications: Recent Experience

On April 30, 1999, the FAA amended § 61.57 to provide an alternate means of compliance for pilots of type-rated aircraft to maintain night recency of experience. The FOARC recommended that due to the similar nature of operations and aircraft used, pilots used for on-demand part 135 operations also should be able to maintain night recency of experience using this alternate means of compliance.

Paperwork Reduction Act

The proposed amendment to 14 CFR part 91 contains information collection requirements. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the information collection requirements associated with this rule are being submitted to the Office of Management and Budget (OMB) for review. Following is a summary of the information requirement that was sent to OMB.

This rule proposes new regulations governing fractional ownership operations and revisions to certain sections of part 135 on demand operations. This proposed rule would require fractional ownership aircraft program managers, aircraft owners, and certain air carriers to provide information to determine if they are operating in accordance with the minimum safety standards of these proposed regulations. The burden is required for application for operating authority, pilot record keeping, management specifications, contractual requirements, manual and training program development and approvals, and other reporting and record keeping items. The total paperwork burden is estimated at approximately 178,400 hours annually.

The FAA considers comments by the public on the proposed collection of information in order to:

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

b. Evaluate the accuracy of the agency' 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 on the proposed information collection requirements should be submitted to the rulemaking docket at the address indicated in the **ADDRESSES** section of this notice.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), 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 number for this information collection will be published in the **Federal Register** after it is approved by the Office of Management and Budget.

Regulatory Evaluation Summary

Overview

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the Federal Aviation Administration (FAA) has determined that the proposed rule (1) has benefits that do justify its costs, is significant as defined in the Executive Order, and is significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not constitute a barrier to international trade; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses are available in the docket and are summarized below.

Background

The FAA proposes to develop new regulations for fractional aircraft ownership programs. The proposed rule, if adopted, would create a new subpart K within part 91 of Title 14, Code of Federal Regulations (14 CFR) and make significant changes to 14 CFR part 135. The proposed rule would establish new requirements and revisions in a variety of areas, including crew training, pilot qualifications, pilot rest, flight time and duty time limits, landing distance performance, operating limitations, program operating manuals, and administrative requirements. The codification of rules under part 91, subpart K for this segment of aviation, which previously had been regulated like corporate aviation, is in response to a significant increase in the number of fractional aircraft ownership operations and some concerns pertaining to who has responsibility for operational control. The proposed requirements are based primarily on corporate aviation ''best practices.'' Many of these practices, while not currently mandated by part 91 regulations, are used by most fractional aircraft ownership program entities.

Except for the statutory amendment relating to management specifications, discussed above, the proposed rule is consistent with the FAA's authority to regulate fractional aircraft ownership programs under Title 49 of the United States Code. Exercise of this authority, as implemented by the proposed regulation, is intended to regulate and ensure aviation safety. Specifically, the FAA is committed to providing an aerospace system that efficiently meets the needs of users.

The proposed rule is expected to impose a total estimated cost of approximately $22.6 million (undiscounted) in 1999 dollars on fractional operations and the FAA over the 15-year period from 2002 to 2016. Fractional aircraft ownership operations are expected to incur approximately 91 percent of these total costs, or $20.5 million (undiscounted), complying with the regulatory requirements. Only eligible fractional aircraft ownership program managers and the fractional aircraft owners (fractional aircraft ownership entities) who would be subject to the proposed part 91, subpart K requirements would incur compliance costs. The FAA is expected to incur the remaining 9 percent of the total estimated cost, or approximately $2.1 million (undiscounted), administering the proposed rule.

Fractional Aircraft Ownership Operations Compliance Costs

Certain sections of the proposed rule are expected to impose compliance costs on fractional aircraft ownership operations. These compliance costs are summarized below.

Section 91.519, Passenger Briefing, and Section 91.1035, Passenger Awareness

A fractional aircraft ownership program entity operating under part 91, subpart K would incur costs of $100 for every aircraft to comply with the proposed requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations collectively would incur compliance costs of approximately $61,000.

Section 91.1003, Management Contract Between Owner and Program Manager

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs represented by attorney fees of $500 and mailing expenses of $20 for each shareholder to comply with the requirement of the proposed rule. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations (operating under part 91, subpart K) collectively would incur compliance costs of approximately $143,000.

Section 91.1015, Management Specifications

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $120,000 in the first year of operation and $6,000 annually in subsequent years to comply with this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively would incur compliance costs of approximately $2.1 million.

Section 91.1017, Amending Program Manager's Management Specifications

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $150 annually to comply with this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively would incur compliance costs of approximately $19,400.

Section 91.1019, Conducting Tests and Inspections

A fractional aircraft ownership program entity operating under part 91, subpart K would incur recordkeeping costs to comply with this requirement. These costs are captured in § 91.1027. Additional costs to accommodate an inspection or test would be negligible and are estimated to be zero.

Section 91.1023, Program Operating Manual Requirements

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $10,000 in the first year of operation only. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would incur compliance costs of $120,000.

Section 91.1027, Recordkeeping [1]

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $5,000 in the first year of operation only. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would incur compliance costs of $60,000.

Section 91.1033, Operating Information Required

A fractional aircraft ownership program entity operating under part 91, subpart K would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

Section 91.1037, Large Transport Category Airplanes: Turbine Engine Powered: Limitations: Destination and Alternate Airports

There are insufficient data to estimate the opportunities available to fractional aircraft ownership program entities and the associated positive impact on revenues. The FAA solicits information to resolve this matter.

Section 91.1039, IFR Takeoff, Approach, and Landing Minimums

A fractional aircraft ownership program entity operating under part 91, subpart K would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

Section 91.1041, Aircraft Proving Tests [2]

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $9,000 for proving tests per aircraft. One-third of each entities existing fleet in the first year of operation and one-third of all new aircraft acquired in subsequent years of operation would require proving tests. (The number of new aircraft in subsequent years of operation is the difference between the subject year and the previous year.) Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would incur compliance costs of approximately $1.6 million.

Section 91.1045, Additional Equipment Requirements

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $150,000 for 30 percent of the year 2002 fleet only, as subsequent aircraft would be appropriately equipped voluntarily by the manufacturer consistent with regulatory requirements and evolving technology. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively would incur compliance costs of approximately $13.9 million.

Section 91.1047, Drug and Alcohol Misuse Program

A fractional aircraft ownership program entity operating under part 91, subpart K would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

Section 91.1051, Pilot Safety Background Check

A fractional aircraft ownership program entity operating under part 91, subpart K would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

Section 91.1057, Flight, Duty, and Rest Time Requirements

A fractional aircraft ownership program entity operating under part 91, subpart K would incur recordkeeping costs to comply with this requirement. These costs are captured in the analysis of § 91.1027.

Section 91.1061, Augmented Flight Crews

A fractional aircraft ownership program entity operating under part 91, subpart K would incur recordkeeping costs to comply with this requirement. These costs are captured in the analysis of § 91.1027.[3]

[1] Captures recordkeeping compliance costs attributable to §§ 91.1057 and 91.1061.

[2] Estimated by Phaneuf Associates Incorporated based on information developed by the Federal Aviation Administration, Office of Aviation Policy and Plans contained in the report title Final Regulatory Evaluation and International Trade Impact Assessment, Commuter Operations and General Certification and Operations Requirements, Final Rule (14 CFR Parts 119, 121, 125, 127, and 135), October 17, 1995.

[3] Operating costs associated with augmenting flight crews, such as salaries, training, drug and alcohol misuse program, and other administrative program costs are captured under the specific requirements addressing these areas.

Section 91.1063 Through 91.1107, Various Training

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of $200,000 in the first year of operation only. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would incur compliance costs of $2.4 million.

Section 91.1115, Minimum Equipment Lists and Letters of Authorization

A fractional aircraft ownership program entity operating under part 91, subpart K would incur costs of $5,000 in the first year of operation only to comply with this requirement. Negligible compliance costs would be incurred in subsequent years of operation and are estimated as to be zero. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations collectively would incur compliance costs of $60,000.

Section 135.21, Operating Requirements: Commuter and On-Demand Operations: Applicability

A fractional aircraft ownership program entity operating under part 135 would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

Section 135.23, Operating Requirements: Commuter and On-Demand Operations: Applicability

There are insufficient data to estimate the cost to a fractional aircraft ownership program entity to comply with this requirement. The FAA solicits information to resolve this matter.

Federal Aviation Administration Costs

The current FAA workforce would be sufficient to perform the monitoring and surveillance activities associated with administering the requirements of the proposed rule. However, the FAA would need to develop a training course and associated instructional materials to educate its inspectors and supervisors in their responsibilities to administer the proposed rule. Accordingly, the FAA estimates that it would incur $700,000 in the first year to appropriately train its workforce and would incur $50,000 in subsequent years for refresher training. Additionally, the FAA would incur $653,000 in the first year to prepare and implement management specifications for the requirements in the proposed rule. Over the 15-year period from 2002 to 2016, the FAA would incur costs of approximately $2.1 million to administer the requirements of the proposed rule.

Benefits

Most fractional aircraft ownership program operations today are conducted in accordance with industry best practices that exceed part 91 requirements. It is the consensus of the FAA and fractional aircraft ownership program entities that these practices have resulted in an excellent safety record. The FAA has determined that the proposed rule is necessary to maintain the level of safety of these operations. The FAA has further determined that the preservation of the current safety levels justifies the costs of this rule.

Other Impacts of the Proposed Rule

Cost savings and revenue-increasing business opportunities that may be realized by fractional aircraft ownership program entities and on-demand air charter operations as a result of the proposed rule. These impacts are summarized below.

Section 61.57, Exceptions, and Section 135.247, Pilot Qualifications: Recent Experience

A fractional aircraft ownership program entity operating under either part 91, subpart K or part 135 would realize annual cost savings of $3,000 per pilot as a result of complying with the proposed requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would realize cost savings of approximately $149.5 million.

Section 91.509, Survival Equipment for Over-Water Operations, and Section 135.167, Emergency Equipment: Extended Over-Water Operations

A fractional aircraft ownership program entity operating under either part 91, subpart K or part 135 would realize cost savings of approximately $3,500 per trip. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations collectively would realize cost savings of $252.6 million.

Section 135.145, Aircraft Proving Tests

A fractional aircraft ownership program entity operating under part 135 would realize cost savings of $35,000 per proving test complying with this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (under part 135) collectively would realize cost savings of approximately $9.4 million.

Section 135.225, IFR: Takeoff, Approach, and Landing

A fractional aircraft ownership program entity operating under part 135 would realize $35,000 annually in revenue as a result of this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (operating under part 135) collectively would realize approximately $1.5 million in revenue.

Section 135.251, Testing for Prohibited Drugs

This proposal would represent a narrowly defined exception and is expected to be exercised only occasionally. Accordingly, there are insufficient data to estimate the potential additions to fractional aircraft ownership program revenue that may result from this section of the proposed rule. The FAA solicits information to resolve this matter.

Section 135.255, Testing for Alcohol

This proposal would represent a narrowly defined exception and is expected to be exercised only occasionally. Accordingly, there are insufficient data to estimate the potential additions to fractional aircraft ownership program revenue that may result from this section of the proposed rule. The FAA solicits information to resolve this matter.

Section 135.385, Large Category Airplanes: Turbine Engine Powered: Landing Limitations: Destination Airports, and Section 135.387, Large Category Airplanes: Turbine Engine Powered: Landing Limitations: Alternate Airports

A fractional aircraft ownership program entity operating under part 135 would realize $40,000 annually in increased revenues as a result of this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations collectively would realize approximately $1.7 million in revenue.

Summary of Costs and Benefits

The total costs of the proposed rule are approximately $22.6 million (undiscounted 1999 dollars). Fractional aircraft ownership program entities would incur approximately 91 percent of these costs, while the FAA would incur approximately 9 percent of the total costs. Fractional aircraft ownership program entities would realize approximately $413 million in cost savings and $1.7 million in potential additional revenue. The public is expected to benefit from enhanced aviation safety directly attributable to the proposed rule. These costs are summarized in Table S–1.

TABLE S–1.—SUMMARY OF COSTS AND BENEFITS
[In 1999 Dollars]

Category	Undiscounted	Discounted [a]
Fractional Aircraft Ownership Program Operations Compliance Costs for Entities Operating Under:		
Part 91, subpart K	$20,514,870	$17,756,346
Part 135	0	0
Total	20,514,870	1,673,153
FAA Administrative Costs	2,053,000	1,673,153
Total Costs	22,567,870	19,429,499
Potential Costs Savings to Fractional Aircraft Ownership Program Entities Operating Under:		
Part 91, subpart K	116,286,000	66,389,038
Part 135	296,676,000	171,104,030
Total	412,962,000	237,493,068
Potential Revenue Opportunities to Fractional Aircraft Ownership Program Entities Operating Under:		
Part 91, subpart K	0	0
Part 135	1,720,000	975,551
Total	1,720,000	975,551

[a] Discounted at 7 percent over a 15-year period from 2002 to 2016.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the proposed rule would potentially impact 12 small businesses, and for the purposes of this analysis, has assumed all these firms would operate under subpart K of part 91, imposing on an entity average compliance costs of approximately $1.7 million over the 15-year period (in 1999 dollars). The annualized compliance cost to each small business would be approximately $157,000 (in 1999 dollars) which the current operators have stated would be voluntarily incurred. Furthermore, 6 of these 12 entities would be new entrants. The FAA has determined that the proposed rule would potentially impose on each new (small business) entrant an average compliance cost of approximately $655,100 over the 15-year period (in 1999 dollars). The annualized compliance cost to each new entrant is approximately $69,500 (in 1999 dollars). The FAA does not have information on the revenues of these small entrants but based on information about one of the current operators, the FAA estimates that a program aircraft generates approximately $4.6 million in revenues. If a new entrant has two aircraft, the cost that this proposed rule would impose on it is less than one percent of the approximate revenues generated by those two aircraft. Hence, the FAA has determined that the estimated compliance costs expected to be incurred by existing fractional aircraft ownership programs and new entrants over the 15-year period would be marginal. Therefore, the proposed rule would not result in a significant economic impact to a substantial number of small entities. The FAA invites comments on the validity of all data, assumptions, and assertions, and any related potential impacts.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would impose the same costs on domestic entities and on international entities and thus has a neutral trade impact.

Unfunded Mandates Act of 1995 Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice

of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulations proposed herein 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. Therefore, in accordance with Executive Order 13132, dated August 4, 1999, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Compatibility With ICAO Standards

In keeping with the U.S. obligation under the Convention of International Civil Aviation, it is the FAA's policy to comply with the Standards and Recommended Practices of the International Civil Aviation Organization (ICAO) to the maximum extent practicable. ICAO does not specifically address fractional ownership. However, in view of the FAA's conclusion that fractional ownership program operations conducted in conformity with proposed subpart K of 14 CFR part 91 are general aviation activities, this proposed rule is not expected to conflict with ICAO international standards applicable to international general aviation operations.

Environmental Analysis

FAA Order 1050.1D defines the FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with the FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 13

Administrative practice and procedure, Investigations, Law enforcement, Penalties.

14 CFR Part 61

Aircraft, Airmen, Recreation and recreation areas, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Airplanes, Airworthiness, Airmen, Rotorcraft, Aviation safety, Safety.

14 CFR Part 142

Training center.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 13, 61, 91, 119, 125, 135 and 142 of Title 14, Code of Federal Regulations (14 CFR parts 13, 61, 91, 119, 125, 135, and 142) as follows:

PART 13—INVESTIGATION AND ENFORCEMENT PROCEDURES

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

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

2. Amend § 13.19 by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and revising them, and by adding a new paragraph (c) to read as follows:

§ 13.19 Certificate and management specifications action.

* * * * *

(c) If, as a result of any inspection, examination, or other investigation of a fractional ownership program manager managing a fractional ownership program operating under the authority of subpart K of part 91 of this chapter, the Administrator determines that the public interest and safety in air commerce requires it, the Administrator may issue an order suspending or revoking all or part of the management specifications previously issued to the program manager under subpart K of part 91 of this chapter. This authority is also exercised by the Chief Counsel; the Assistant Chief Counsel, Enforcement; the Assistant Chief Counsel, Regulations; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; each Regional Counsel; and the Aeronautical Center Counsel.

(d)(1) Before issuing an order under paragraph (b) or (c) of this section, the Chief Counsel; the Assistant Chief Counsel, Enforcement; the Assistant Chief Counsel, Regulations; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; each Regional Counsel; or the Aeronautical Center Counsel advises the certificate holder or management specifications holder of the charges or other reasons upon which the Administrator bases the proposed action and, except in an emergency, allows the holder to answer any charges and to be heard as to why the certificate should not be amended, suspended, or revoked, or in the case of management specifications, why the management specifications should not be suspended or revoked. The holder may, by checking the appropriate box on the form that is sent to the holder with the notice of proposed certificate action, elect to—

(i) Admit the charges and surrender his or her certificate or management specifications;

(ii) Answer the charges in writing;

(iii) Request that an order be issued in accordance with the notice of proposed certificate action or notice of proposed management specifications action so that the certificate holder may appeal to the National Transportation Safety Board, if the charges concerning a matter under Title VI of the FA Act;

(iv) Request an opportunity to be heard in an informal conference with the FAA counsel; or

(v) Request a hearing in accordance with Subpart D of this part if the charges concern a matter under Title V of the FA Act.

(2) Except as provided in § 13.35(b), unless the certificate holder or

management specifications holder returns the form and, where required, an answer or motion, with a postmark of not later than 15 days after the date of receipt of the notice, the order of the Administrator is issued as proposed. If the certificate holder or management specifications holder has requested an informal conference with the FAA counsel and the charges concern a matter under Title V of the FA Act, the holder may after that conference also request a formal hearing in writing with a postmark of not later than 10 days after the close of the conference. After considering any information submitted by the certificate holder or management specifications holder, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Regional Counsel concerned, or the Aeronautical Center Counsel (as to matters under Title V of the FA Act) issues the order of the Administrator, except that if the holder has made a valid request for a formal hearing on a matter under Title V of the FA Act initially or after an informal conference, Subpart D of this part governs further proceedings.

(e) Any person whose certificate or management specifications is affected by an order issued under this section may appeal to the National Transportation Safety Board. If the certificate holder or management specifications holder files an appeal with the Board, the Administrator's order is stayed unless the Administrator advises the Board that an emergency exists and safety in air commerce requires that the order become effective immediately. If the Board is so advised, the order remains effective and the Board shall finally dispose of the appeal within 60 days after the date of the advice. This paragraph does not apply to any person whose Certificate of Aircraft Registration is affected by an order issued under this section.

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

3. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

4. Amend § 61.57 by revising paragraph (e)(3) as follows:

Subpart A—General

§ 61.57(e) Exceptions.

* * * * *

(3) Paragraph (b) of this section does not apply to a pilot in command of a turbine-powered airplane that requires more than one pilot crewmember, provided that pilot has complied with the requirements of paragraph (e)(3)(i) or (ii) of this section:

(i) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) That pilot has accomplished and logged at least 3 takeoffs and 3 landings to a full stop, as the sole manipulator of the flight controls, in a turbine-powered airplane that requires more than one pilot crewmember. The pilot must have performed the takeoffs and landings during the period beginning 1 hour after sunset and ending 1 hour before sunrise within the preceding 6 calendar months prior to the month of the flight.

(ii) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) Within the preceding 12 calendar months prior to the month of the flight, the pilot must have completed a training program that is approved under part 142 of this chapter. The approved training program must have required and the pilot must have performed, at least 6 takeoffs and 6 landings to a full stop as the sole manipulator of the controls in a flight simulator that is representative of a turbine-powered airplane that requires more than one pilot crewmember. The flight simulator's visual system must have been adjusted to represent the period beginning 1 hour after sunset and ending 1 hour before sunrise.

PART 91—GENERAL OPERATING AND FLIGHT RULES

5. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

6. Amend § 91.415 by revising paragraphs (a) and (c) as follows:

Subpart E—Maintenance, Preventive Maintenance, and Alterations

§ 91.415 Changes to aircraft inspection programs.

(a) Whenever the Administrator finds that revisions to an approved aircraft inspection program under § 91.409(f)(4) or § 91.1109 are necessary for the continued adequacy of the program, the owner or operator shall, after notification by the Administrator, make any changes in the program found to be necessary by the Administrator.

* * * * *

(c) The petition must be filed with the Director, Flight Standards Service within 30 days after the certificate holder or fractional ownership program manager receives the notice.

* * * * *

Subpart F—Large and Turbine-Powered Multiengine Airplanes and Fractional Ownership Program Aircraft

7. Amend § 91.501 by revising paragraph (a), republishing the introductory text of paragraph (b) and adding paragraph (b)(10) to read as follows:

§ 91.501 Applicability.

(a) This subpart prescribes operating rules, in addition to those prescribed in other subparts of this part, governing the operation of large airplanes of U.S. registry, turbojet-powered multiengine civil airplanes of U.S. registry, and fractional ownership program aircraft of U.S. registry that are operating under subpart K of this part in operations not involving common carriage. The operating rules in this subpart do not apply to those aircraft when they are required to be operated under parts 121,

125, 129, 135, and 137 of this chapter. (Section 91.409 prescribes an inspection program for large and for turbine-powered (turbojet and turboprop) multiengine airplanes and turbine-powered rotorcraft of U.S. registry when they are operated under this part or part 129 or 137.)

(b) Operations that may be conducted under the rules in this subpart instead of those in parts 121, 129, 135, and 137 of this chapter when common carriage is not involved, include—

* * * * *

(10) Any operation identified in paragraphs (b)(1) through (b)(9) of this section when conducted—

(i) By a fractional ownership program manager, or

(ii) By a fractional owner in a fractional ownership program aircraft operated under subpart K of this part.

* * * * *

8. Amend § 91.509 by revising paragraphs (b) introductory text, (c), (d) and (e) and adding paragraph (f) to read as follows:

§ 91.509 Survival equipment for overwater operations.

* * * * *

(b) Except as provided in paragraph (c) of this section, no person may take off an airplane for flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore unless it has on board the following survival equipment:

* * * * *

(c) For a pressurized turbine-powered aircraft operating at an altitude greater than 25,000 feet, a person may elect not to comply with the equipment requirements in § 91.509(b)(2) through (5) of this part provided that the flight does not proceed more than 30 minutes or 100 nautical miles from the nearest shore, whichever is greater.

(d) The required liferafts, life preservers, and signaling devices must be installed in conspicuously marked locations and easily accessible in the event of a ditching without appreciable time for preparatory procedures.

(e) A survival kit, appropriately equipped for the route to be flown, must be attached to each required liferaft.

(f) As used in this section, the term shore means that area of the land adjacent to the water which is above the high water mark and excludes land areas which are intermittently under water.

9. Amend § 91.519 by adding paragraph (d) as follows:

§ 91.519 Passenger briefing.

* * * * *

(d) For operations under subpart K of this part, the passenger briefing requirements of § 91.1035 apply.

10. Add subpart K to part 91 of title 14 Code of Federal Regulations to read as follows:

Subpart K—Fractional Ownership Operations

Sec.

91.1001 Applicability.
91.1003 Management contract between owner and program manager.
91.1005 Owner's use of program aircraft.
91.1007 Advance notice of non-program aircraft substitution.
91.1009 Clarification of when owner is in operational control.
91.1011 Implications of owner being in operational control.
91.1013 Owner's understanding and acknowledgement of operational control responsibilities.
91.1014 Manager's responsibility for ensuring compliance.
91.1015 Management specifications.
91.1017 Amending program manager's management specifications.
91.1019 Conducting tests and inspections.
91.1021 Internal safety reporting.
91.1023 Program operating manual requirements.
91.1025 Program operating manual contents.
91.1027 Recordkeeping.
91.1029 Flight scheduling and locating requirements.
91.1031 Pilot in command or second in command: Designation required.
91.1033 Operating information required.
91.1035 Passenger awareness.
91.1037 Large transport category aircraft: Turbine engine powered; limitations; destination airports and alternate airports.
91.1039 IFR takeoff, approach and landing minimums.
91.1041 Aircraft proving tests.
91.1043 [Reserved].
91.1045 Additional equipment requirements.
91.1047 Drug and alcohol misuse program.
91.1049 Personnel.
91.1051 Pilot safety background check.
91.1053 Flight crew experience.
91.1055 Pilot operating limitations and pairing requirement.
91.1057 Flight, duty and rest time requirements.
91.1059 Flight time limitations and rest requirements: One or two pilot crews.
91.1061 Augmented flight crews.
91.1063 Testing and training: Applicability and terms used.
91.1065 Initial and recurrent pilot testing requirements.
91.1067 Initial and recurrent flight attendant crewmember testing requirements.
91.1069 Flight crew: Instrument proficiency check requirements.
91.1071 Crewmember: Tests and checks, grace provisions, training to accepted standards.
91.1073 Training program: General.
91.1075 Training program: Special rules.
91.1077 Training program and revision: Initial and final approval.
91.1079 Training program: Curriculum.
91.1081 Crewmember training requirements.
91.1083 Crewmember emergency training.
91.1085 Hazardous materials recognition training.
91.1087 Approval of aircraft simulators and other training devices.
91.1089 Qualifications: Check pilot (aircraft) and check pilot (simulator).
91.1091 Qualifications: Flight instructors (aircraft) and flight instructors (simulator).
91.1093 Initial and transition training and checking: Check pilot (aircraft), check pilot (simulator).
91.1095 Initial and transition training and checking: Flight instructors (aircraft), flight instructors (simulator).
91.1097 Pilot and flight attendant crewmember training programs.
91.1099 Crewmember initial and recurrent training requirements.
91.1101 Pilots: Initial, transition, and upgrade ground training.
91.1103 Pilots: Initial, transition, upgrade, and differences flight training.
91.1105 Flight attendants: Initial and transition ground training.
91.1107 Recurrent training.
91.1109 Aircraft maintenance: Inspection program.
91.1111 Maintenance training.
91.1113 Maintenance recordkeeping.
91.1115 Minimum equipment lists and letters of authorization.

§ 91.1001 Applicability.

(a) This subpart prescribes rules, in addition to those prescribed in other subparts of this part, governing—

(1) The operation of a fractional ownership program aircraft in a fractional ownership program; and

(2) The operation by a fractional owner of a program aircraft included in a fractional ownership program managed by an affiliate of the manager of the program to which the owner belongs.

(b) As used in this part—

(1) A *fractional ownership program or program* means any system of aircraft exchange involving two or more airworthy aircraft that consists of all of the following elements:

(i) The provision for fractional ownership program management services by a single fractional ownership program manager on behalf of the fractional owners;

(ii) One or more fractional owners per program aircraft, with at least one program aircraft having more than one owner;

(iii) Possession of at least a minimum fractional ownership interest in one or more program aircraft by each fractional owner;

(iv) A dry-lease aircraft exchange arrangement among all of the fractional owners; and

(v) Multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

(2) A *dry-lease aircraft exchange* means an arrangement, documented by the written program agreements, under which the program aircraft are available, on an as needed basis without crew, to each fractional owner.

(3) A *fractional ownership interest* means the ownership of an interest or holding of a multi-year leasehold interest and/or a multi-year leasehold interest that is convertible into an ownership interest in a program aircraft.

(4) A *minimum fractional ownership interest* means—

(i) A fractional ownership interest equal to, or greater than, one-sixteenth (1/16) of at least one subsonic, fixed-wing or powered-lift program aircraft; or

(ii) A fractional ownership interest equal to, or greater than, one-thirty-second (1/32) of at least one rotorcraft program aircraft.

(5) A *fractional owner* or *owner* means an individual or entity which possesses a minimum fractional ownership interest in a program aircraft and which has entered into the applicable program agreements; provided, however, that in the case of the flight operations described in paragraph (b)(6)(ii) of this section, and solely for purposes of requirements pertaining to those flight operations, the fractional owner operating the aircraft shall be deemed to be a fractional owner in the program managed by the affiliate.

(6) A *fractional ownership program aircraft* or *program aircraft* means:

(i) An aircraft in which a fractional owner has a minimal fractional ownership interest and which has been included in the dry-lease aircraft exchange pursuant to the program agreements, or

(ii) In the case of a fractional owner from one program operating an aircraft in a different fractional ownership program managed by an affiliate of the operating owner's program manager, the aircraft being operated by the fractional owner, so long as the aircraft is:

(A) Included in the fractional ownership program managed by the affiliate of the operating owner's program manager, and

(B) included in the operating owner's program's dry-lease aircraft exchange pursuant to the program agreements of the operating owner's program.

(7) *Fractional ownership program management services* or *program management services* mean administrative and aviation support services furnished in accordance with the applicable requirements of this subpart or offered by the program manager to the fractional owners, including, at a minimum, the establishment and implementation of program safety guidelines, and the coordination of the following:

(i) The scheduling of the program aircraft and crews;

(ii) Program aircraft maintenance;

(iii) Crew training for crews employed, furnished or contracted by the program manager or the fractional owner;

(iv) Satisfaction of recordkeeping requirements; and

(v) Development and use of a program operations manual and maintenance program manual.

(8) *A fractional ownership program manager* or *program manager* means the entity that offers fractional ownership program management services to fractional owners, and is designated in the multi-year program agreements referenced in paragraph (b)(1)(v) of this section to fulfill the requirements of this chapter applicable to the manager of the program containing the aircraft being flown. When a fractional owner is operating an aircraft in a fractional ownership program managed by an affiliate of the owner's program manager, the references in this subpart to the flight-related responsibilities of the program manager apply, with respect to that particular flight, to the affiliate of the owner's program manager rather than to the owner's program manager.

(9) *Affiliate of a program manager* means a manager which, directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, another program manager. The holding of at least forty percent (40%) of the equity and forty percent (40%) of the voting power of an entity shall be presumed to constitute control for purposes of determining an affiliation under this subpart.

§ 91.1003 Management contract between owner and program manager.

Each owner shall have a contract with the program manager that—

(a) Requires the program manager to ensure that the program conforms to all applicable requirements of this chapter.

(b) Provides the owner the right to inspect, or have a designee of the owner inspect, the records of the program manager pertaining to the operational safety of the program, including all program log books and maintenance records.

(c) Provides the owner the reasonable right to audit, or have a designee of the owner audit, the operational safety aspects of the program, including all program log books and maintenance records.

(d) Designates the program manager as the owner's agent solely to receive service of notices pertaining to the program that the FAA seeks to provide to owners and authorizes the FAA to send such notices to the program manager solely in its capacity as the agent of the owner for such service.

§ 91.1005 Owner's use of program aircraft.

(a) Except as provided in paragraph (b) of this section, no owner may engage in the carriage of persons or property as a common carrier for compensation or hire using program aircraft unless the owner possesses an appropriate FAA air carrier or operating certificate and appropriate economic authority from the Department of Transportation, and such operations are conducted under part 121 or 135 of this Title, as applicable.

(b) Notwithstanding any other requirement of this subpart, an owner may receive compensation as is permitted by § 91.321 or § 91.501 for the owner's operation of a program aircraft.

(c) During the term of the multi-year program agreements under which a fractional owner has obtained a minimum fractional ownership interest in a program aircraft, the flight hours used during that term by the owner on program aircraft shall not exceed the total hours associated with the fractional owner's share of ownership.

§ 91.1007 Advance notice of non-program aircraft substitution.

The program manager shall make an effort to notify a fractional owner prior to the flight when a non-program aircraft is substituted for a program aircraft for the use of the fractional owner. Notification shall include the name of the person providing the non-program aircraft.

§ 91.1009 Clarification of when owner is in operational control.

(a) The owner is in operational control of a program flight when the owner—

(1) Has the rights and is subject to the limitations set forth in §§ 91.1003 through 91.1013;

(2) Has directed that a program aircraft carry passengers or property designated by that owner; and

(3) The aircraft is carrying those passengers or property.

(b) The owner is not in operational control of a flight in the following circumstances:

(1) A program aircraft is used for a flight for administrative purposes such as demonstration, positioning, ferrying, maintenance, or crew training, and no passengers or property designated by such owner are being carried; or

(2) The aircraft being used for the flight is being operated under part 121 or 135 of this chapter.

§ 91.1011 Implications of owner being in operational control.

Each owner in operational control of a program flight shall be responsible for complying with all applicable requirements of this chapter, including those related to airworthiness and operations in connection with the flight. Each owner may delegate some or all of the performance of the tasks associated with carrying out this responsibility to the program manager, and may rely on the program manager for aviation expertise and program management services. When the owner delegates performance of tasks to the program manager or relies on the program manager's expertise, the owner and the program manager shall be responsible to the FAA for compliance.

§ 91.1013 Owner's understanding and acknowledgement of operational control responsibilities.

(a) Upon the signing of an initial program management services contract, or a renewal or extension of a program management services contract, the program manager shall brief the owner on the owner's operational control responsibilities, and the owner shall review and sign an acknowledgement of the fractional owner's operational control responsibilities. The acknowledgement shall be included with the program management services contract. The acknowledgement shall state that the owner is in operational control of the aircraft used and is aware of that person's operational control responsibilities in the program when the operation of a program aircraft for the owner will be conducted as a non-commercial operation under part 91.

(1) The acknowledgement also shall state that:

(i) The owner has responsibility for compliance with the management specifications and all applicable regulations;

(ii) The owner may be exposed to enforcement actions for any noncompliance; and

(iii) The owner may be exposed to significant liability risk in the event of a flight-related occurrence that causes personal injury or property damage.

(2) The owner's signature on the acknowledgement will serve as the owner's affirmation that the owner has read, understands, and accepts the operational control responsibilities described in the acknowledgement.

(b) Each program manager shall ensure that the owner and owner's representatives have access to the acknowledgements for such owner's program aircraft. Each program manager shall ensure that the FAA has access to the acknowledgements for all program aircraft.

§ 91.1014 Manager's responsibility for ensuring compliance.

The fractional ownership program manager shall ensure that its program management services are sufficient to ensure owner compliance with all applicable sections of this part in program operations where a fractional owner has operational control.

§ 91.1015 Management specifications.

(a) Each person conducting operations under this subpart or furnishing fractional ownership program management services to fractional owners shall do so in accordance with management specifications issued by the Administrator to the fractional ownership program manager under this subpart. Management specifications shall include:

(1) The current list of all fractional owners and types of aircraft, registration markings and serial numbers;

(2) The authorizations, limitations, and certain procedures under which these operations are to be conducted,

(3) Certain other procedures under which each class and size of aircraft is to be operated;

(4) Authorization for an inspection program approved under § 91.1109, including the type of aircraft, the registration markings and serial numbers of each aircraft to be operated under the program. No person may conduct any program operation using any aircraft not listed.

(5) Time limitations, or standards for determining time limitations, for overhauls, inspections, and checks for airframes, engines, propellers, rotors, appliances, and emergency equipment of aircraft.

(6) The specific location of the program manager's principal base of operations and, if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the program manager and the name and mailing address of the program manager's agent for service;

(7) Other business names the program manager may use;

(8) Authorization for the method of controlling weight and balance of aircraft;

(9) Any authorized deviation and exemption granted from any requirement of this chapter; and

(10) Any other information the Administrator determines is necessary.

(b) The program manager may keep the current list of all fractional owners required by paragraph (a)(1) of this section, at its principal base of operation or other location approved by the Administrator and referenced in its management specifications. Each program manager shall make this list of owners available for inspection by the Administrator.

(c) Management specifications issued under this subpart are effective unless—

(1) The management specifications are amended as provided in § 91.1017 of this part; or

(2) The Administrator suspends or revokes the management specifications, in which case, the provisions of § 13.19 shall apply.

(d) At least 30 days before it proposes to establish or change the location of its principal base of operations, its main operations base, or its main maintenance base, a program manager must provide written notification to the Flight Standards District Office which issued the program manager's management specifications.

(e) Each program manager shall maintain a complete and separate set of its management specifications at its principal base of operations, or at a place approved by the Administrator, and shall make its management specifications available for inspection by the Administrator and the fractional owner(s) to whom the program manager furnishes its services for review and audit.

(f) Each program manager shall insert pertinent excerpts of its management specifications, or references thereto, in its program manual and shall—

(1) Clearly identify each such excerpt as a part of its management specifications; and

(2) State that compliance with each management specifications requirement is mandatory.

(g) Each program manager shall keep each of its employees and other persons who perform duties material to its operations informed of the provisions of its management specifications that apply to that employee's or person's duties and responsibilities.

§ 91.1017 Amending program manager's management specifications.

(a) The Administrator may amend any management specifications issued under this subpart if—

(1) The Administrator determines that safety and the public interest require the amendment of any management specifications; or

(2) The program manager applies for the amendment of any management specifications, and the Administrator determines that safety and the public interest allows the amendment.

(b) Except as provided in paragraph (e) of this section, when the Administrator initiates an amendment of a program manager's management specifications, the following procedure applies:

(1) The Flight Standards District Office that issued the program manager's management specifications shall notify the program manager in writing of the proposed amendment.

(2) The Flight Standards District Office which issued the program manager's management specifications shall set a reasonable period (but not less than 7 days) within which the program manager may submit written information, views, and arguments on the amendment.

(3) After considering all material presented, the Flight Standards District Office that issued the program manager's management specifications shall notify the program manager of—

(i) The adoption of the proposed amendment,

(ii) The partial adoption of the proposed amendment, or

(iii) The withdrawal of the proposed amendment.

(4) If the Flight Standards District Office which issued the program manager's management specifications issues an amendment of the management specifications, it becomes effective not less than 30 days after the program manager receives notice of it unless—

(i) The Flight Standards District Office which issued the program manager's management specifications finds under paragraph (e) of this section that there is an emergency requiring immediate action with respect to safety; or

(ii) The program manager petitions for reconsideration of the amendment under paragraph (d) of this section.

(c) When the program manager applies for an amendment to its management specifications, the following procedure applies:

(1) The program manager must file an application to amend its management specifications—

(i) At least 90 days before the date proposed by the applicant for the amendment to become effective, unless a shorter time is approved, in cases of mergers; acquisitions of operational assets that require an additional showing of safety (e.g., proving tests); resumption of operations following a suspension of operations as a result of bankruptcy actions.

(ii) At least 15 days before the date proposed by the applicant for the amendment to become effective in all other cases.

(2) The application must be submitted to the Flight Standards District Office that issued the program manager's management specifications in a form and manner prescribed by the Administrator.

(3) After considering all material presented, the Flight Standards District Office that issued the program manager's management specifications shall notify the program manager of—

(i) The adoption of the applied for amendment;

(ii) The partial adoption of the applied for amendment; or

(iii) The denial of the applied for amendment. The program manager may petition for reconsideration of a denial under paragraph (d) of this section.

(4) If the Flight Standards District Office which issued the program manager's management specifications approves the amendment, following coordination with the program manager regarding its implementation, the amendment is effective on the date the Administrator approves it.

(d) When a program manager seeks reconsideration of a decision of the Flight Standards District Office that issued the program manager's management specifications concerning the amendment of management specifications, the following procedure applies:

(1) The program manager must petition for reconsideration of that decision within 30 days of the date that the program manager receives a notice of denial of the amendment of its management specifications, or of the date it receives notice of an FAA-initiated amendment of its management specifications, whichever circumstance applies.

(2) The program manager must address its petition to the Director, Flight Standards Service.

(3) A petition for reconsideration, if filed within the 30-day period, suspends the effectiveness of any amendment issued by the Flight Standards District Office which issued the program manager's management specifications unless that District Office has found, under paragraph (e) of this section, that an emergency exists requiring immediate action with respect to safety.

(4) If a petition for reconsideration is not filed within 30 days, the procedures of paragraph (c) of this section apply.

(e) If the Flight Standards District Office which issued the program manager's management specifications finds that an emergency exists requiring immediate action with respect to safety that makes the procedures set out in this section impracticable or contrary to the public interest—

(1) The District Office amends the management specifications and makes the amendment effective on the day the program manager receives notice of it; and

(2) In the notice to the program manager, the District Office shall articulate the reasons for its finding that an emergency exists requiring immediate action with respect to safety or that makes it impracticable or contrary to the public interest to stay the effectiveness of the amendment.

§ 91.1019 Conducting tests and inspections.

(a) At any time or place, the Administrator may conduct an inspection or test, other than enroute inspections, to determine whether a program manager under this subpart is complying with title 49 of the United States Code, applicable regulations, and the program manager's management specifications.

(b) The program manager must—

(1) Make available to the Administrator at the program manager's principal base of operations the program manager's management specifications; and

(2) Allow the Administrator to make any test or inspection, other than enroute inspections, to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the program manager who is responsible for maintaining the program manager's records must make those records available to the Administrator.

(d) The Administrator may determine a program manager's continued eligibility to hold its management specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any program manager to make available to the Administrator upon request, the management specifications, or any required record, document, or report is grounds for suspension of all or any part of the program manager's management specifications.

§ 91.1021 Internal safety reporting.

(a) Each program manager shall establish an internal anonymous safety reporting procedure that fosters an environment of safety without any potential for retribution.

(b) Each program manager shall establish procedures to respond to an aviation incident/accident.

§ 91.1023 Program operating manual requirements.

(a) Each program manager shall prepare and keep current a program operating manual setting forth procedures and policies acceptable to the Administrator. This manual shall be used by each program manager's management, flight, ground, and maintenance personnel in conducting its operations. However, the Administrator may authorize a deviation from this paragraph if the Administrator finds that, because of the limited size of the operation, part of the manual is not necessary for guidance of management, flight, ground, or maintenance personnel.

(b) Each program manager shall maintain at least one copy of the manual at its principal base of operations.

(c) No manual may be contrary to any applicable U.S. regulations, foreign regulations applicable to the program operations in foreign countries, or the program manager's management specifications.

(d) A copy of the manual, or appropriate portions of the manual (and changes and additions) shall be made available to maintenance and ground operations personnel by the program manager and furnished to—

(1) Its flight crewmembers; and

(2) Representatives of the Administrator assigned to the program manager.

(e) Each employee of the program manager to whom a manual or appropriate portions of it are furnished under paragraph (d)(1) of this section shall keep it up to date with the changes and additions furnished to them.

(f) Except as provided in paragraph (h) of this section, the appropriate parts of the manual shall be carried on each aircraft when away from the principal operations base. The appropriate parts must be available for use by ground or flight personnel.

(g) For the purpose of complying with paragraph (d) of this section, a program manager may furnish the persons listed therein with all or part of its manual in printed form or other form, acceptable to the Administrator, that is retrievable in the English language. If the program manager furnishes all or part of the manual in other than printed form, it shall ensure there is a compatible reading device available to those persons that provides a legible image of the maintenance information and instructions, or a system that is able to retrieve the maintenance information and instructions in the English language.

(h) If aircraft inspections or maintenance are conducted at specified stations where the approved inspection program operations manual is available, the program manager is not required to ensure that the program operating manual is carried aboard the aircraft enroute to those stations.

§ 91.1025 Program operating manual contents.

Each program operating manual must have the date of the last revision on each revised page. Unless otherwise authorized by the Administrator, the manual shall include the following:

(a) Procedures for ensuring compliance with aircraft weight and balance limitations;

(b) Copies of the program manager's management specifications or appropriate extracted information, including area of operations authorized, category and class of aircraft authorized, crew complements, and types of operations authorized;

(c) Procedures for complying with accident notification requirements;

(d) Procedures for ensuring that the pilot in command knows that required airworthiness inspections have been made and that the aircraft has been approved for return to service in compliance with applicable maintenance requirements;

(e) Procedures for reporting and recording mechanical irregularities that come to the attention of the pilot in command before, during, and after completion of a flight;

(f) Procedures to be followed by the pilot in command for determining that mechanical irregularities or defects reported for previous flights have been corrected or that correction of certain mechanical irregularities or defects have been deferred;

(g) Procedures to be followed by the pilot in command to obtain maintenance, preventive maintenance, and servicing of the aircraft at a place where previous arrangements have not been made by the program manager or owner, when the pilot is authorized to so act for the operator;

(h) Procedures under § 91.213 for the release of, and continuation of flight if any item of equipment required for the particular type of operation becomes inoperative or unserviceable en route;

(i) Procedures for refueling aircraft, eliminating fuel contamination, protecting from fire (including electrostatic protection), and supervising and protecting passengers during refueling;

(j) Procedures to be followed by the pilot in command in the briefing under § 91.1035.

(k) Procedures for ensuring compliance with emergency procedures, including a list of the functions assigned each category of required crewmembers in connection with an emergency and emergency evacuation duties;

(l) The approved aircraft inspection program, when applicable;

(m) Procedures for the evacuation of persons who may need the assistance of another person to move expeditiously to an exit if an emergency occurs;

(n) Procedures for performance planning that take into account take off, landing and enroute conditions;

(o) At the program manager's election for reduced runway operating length requirements under § 91.1037, an approved Destination Airport Analysis establishing procedures for establishing runway safety margins at destination airports beyond those otherwise permitted by § 91.1037, taking into account the following factors as supported by published aircraft performance data supplied by the aircraft manufacturer for the appropriate runway conditions—

(1) Pilot qualifications and experience;

(2) Aircraft performance data to include normal, abnormal and emergency procedures as supplied by the aircraft manufacturer;

(3) Airport facilities and topography;

(4) Runway conditions (including contamination);

(5) Airport or area weather reporting;

(6) Appropriate additional runway safety margins, if required; and

(7) Other criteria that affect aircraft performance.

(p) A suitable system (which may include a coded or electronic system) that provides for preservation and retrieval of maintenance recordkeeping information required by § 91.1113 in a manner acceptable to the Administrator that provides—

(1) A description (or reference to date acceptable to the Administrator) of the work performed:

(2) The name of the person performing the work if the work is performed by a person outside the organization of the program manager; and

(3) The name or other positive identification of the individual approving the work.

(q) Flight locating and scheduling procedures; and

(r) Other procedures and policy instructions regarding program operations that are issued by the program manager or required by the Administrator.

§ 91.1027 Recordkeeping.

(a) Each program manager shall keep at its principal business office or at other places approved by the Administrator, and shall make available for inspection by the Administrator the following:

(1) The program manager's management specifications;

(2) A current list of the aircraft used or available for use in operations under this subpart, the operations for which each is equipped (e.g., MNPS, RNP5/10, RVSM, etc.), and the owners of each aircraft;

(3) An individual record of each pilot used in operations under this subpart, including the following information:

(i) The full name of the pilot.

(ii) The pilot certificate (by type and number) and ratings that the pilot holds.

(iii) The pilot's aeronautical experience in sufficient detail to determine the pilot's qualifications to pilot aircraft in operations under this subpart.

(iv) The pilot's current duties and the date of the pilot's assignment to those duties.

(v) The effective date and class of the medical certificate that the pilot holds.

(vi) The date and result of each of the initial and recurrent competency tests and proficiency checks required by this subpart and the type of aircraft flown during that test or check.

(vii) The pilot's flight time in sufficient detail to determine compliance with the flight time limitations of this subpart.

(viii) The pilot's check pilot authorization, if any.

(ix) Any action taken concerning the pilot's release from employment for physical or professional disqualification.

(x) The date of the completion of the initial phase and each recurrent phase of the training required by this subpart; and

(4) An individual record for each flight attendant used in operations under this subpart, including the following information:

(i) The full name of the flight attendant, and

(ii) The date and result of training required by § 91.1063, as applicable.

(b) Each program manager must keep each record required by paragraph (a)(2) of this section for at least 6 months, and must keep each record required by paragraphs (a)(3) and (a)(4) of this section for at least 12 months. When an employee is no longer employed or affiliated with the program manager or fractional owner, each record required by paragraphs (a)(3) and (a)(4) of this section shall be retained for at least 12 months.

(c) Each program manager shall be responsible for the preparation and accuracy of a load manifest in duplicate containing information concerning the loading of the aircraft. The manifest shall be prepared before each takeoff and shall include—

(1) The number of passengers;

(2) The total weight of the loaded aircraft;

(3) The maximum allowable takeoff weight for that flight;

(4) The center of gravity limits;

(5) The center of gravity of the loaded aircraft, except that the actual center of gravity need not be computed if the aircraft is loaded according to a loading schedule or other approved method that ensures that the center of gravity of the loaded aircraft is within approved limits. In those cases, an entry shall be made on the manifest indicating that the center of gravity is within limits according to a loading schedule or other approved method;

(6) The registration number of the aircraft or flight number;

(7) The origin and destination; and

(8) Identification of crewmembers and their crew position assignments.

(d) The pilot in command of the aircraft for which a load manifest must be prepared shall carry a copy of the completed load manifest in the aircraft to its destination. The program manager shall keep copies of completed load manifest for at least 30 days at its principal operations base, or at another location used by it and approved by the Administrator.

(e) Each program manager shall be responsible for providing a written document that states the name of the entity having operational control on that flight and the part of this chapter under which the flight is operated. The pilot in command of the aircraft shall carry a copy of the document in the aircraft to its destination. The program manager shall keep a copy of the document for at least 30 days at its principal operations base, or at another location used by it and approved by the Administrator.

(f) Records may be kept either in paper or other form acceptable to the Administrator.

(g) Program managers that are also certificated to operate under part 121 or 135 may satisfy the recordkeeping requirements of this section and of § 91.1113 with records maintained to fulfil equivalent obligations under part 121 or 135.

§ 91.1029 Flight scheduling and locating requirements.

(a) Each program manager shall establish and use a system to schedule and release program aircraft.

(b) Except as provided in paragraph (d) of this section, each program manager shall have procedures established for locating each flight, for which a flight plan is not filed, that—

(1) Provide the program manager with at least the information required to be included in a VFR flight plan;

(2) Provide for timely notification of an FAA facility or search and rescue facility, if an aircraft is overdue or missing; and

(3) Provide the program manager with the location, date, and estimated time for reestablishing radio or telephone communications, if the flight will operate in an area where communications cannot be maintained.

(c) Flight locating information shall be retained at the program manager's principal base of operations, or at other places designated by the program manager in the flight locating procedures, until the completion of the flight.

(d) The flight locating requirements of paragraph (b) of this section shall not apply to a flight for which a FAA flight plan has been filed and the flight plan is canceled within 25 nautical miles of the destination airport.

§ 91.1031 Pilot in command or second in command: Designation required.

(a) Each program manager shall designate a—

(1) Pilot in command for each program flight; and

(2) Second in command for each program flight requiring two pilots.

(b) The pilot in command, as designated by the program manager, shall remain the pilot in command at all times during that flight.

§ 91.1033 Operating information required.

(a) Each program manager shall, for all program operations, provide the following materials, in current and appropriate form, accessible to the pilot at the pilot station, and the pilot shall use them—

(1) A cockpit checklist;

(2) For multiengine aircraft or for aircraft with retractable landing gear, an emergency cockpit checklist containing the procedures required by paragraph (c) of this section, as appropriate;

(3) At least one set of pertinent aeronautical charts; and

(4) For IFR operations, at least one set of pertinent navigational enroute, terminal area, and approach and letdown charts.

(b) Each cockpit checklist required by paragraph (a)(1) of this section shall contain the following procedures:

(1) Before starting engines;

(2) Before takeoff;

(3) Cruise;
(4) Before landing;
(5) After landing; and
(6) Stopping engines.

(c) Each emergency cockpit checklist required by paragraph (a)(2) of this section must contain the following procedures, as appropriate:

(1) Emergency operation of fuel, hydraulic, electrical, and mechanical systems.

(2) Emergency operation of instruments and controls.

(3) Engine inoperative procedures.

(4) Any other emergency procedures necessary for safety.

§ 91.1035 Passenger awareness.

(a) Prior to each takeoff the pilot in command of an aircraft carrying passengers on a program flight, shall ensure that all passengers have been orally briefed on—

(1) Smoking: Each passenger shall be briefed on when, where, and under what conditions smoking is prohibited. This briefing shall include a statement, as appropriate, that the regulations require passenger compliance with lighted passenger information signs and no smoking placards, prohibit smoking in lavatories, and require compliance with crewmember instructions with regard to these items;

(2) Use of safety belts, shoulder harnesses, and child restraint systems: Each passenger shall be briefed on when, where and under what conditions it is necessary to have his or her safety belt and, if installed, his or her shoulder harness fastened about him or her, and if a child is being transported, the appropriate use of child restraint systems, if available. This briefing shall include a statement, as appropriate, that the regulations require passenger compliance with the lighted passenger information sign and/or crewmember instructions with regard to these items;

(3) The placement of seat backs in an upright position before takeoff and landing;

(4) Location and means for opening the passenger entry door and emergency exits;

(5) Location of survival equipment;

(6) Ditching procedures and the use of flotation equipment required under § 91.509 for a flight over water;

(7) The normal and emergency use of oxygen installed in the aircraft; and

(8) Location and operation of fire extinguishers.

(b) Prior to each takeoff, the pilot in command of an aircraft carrying passengers on a program flight shall ensure that each person who may need the assistance of another person to move expeditiously to an exit if an emergency occurs and that person's attendant, if any, has received a briefing as to the procedures to be followed if an evacuation occurs. This paragraph does not apply to a person who has been given a briefing before a previous leg of a flight in the same aircraft.

(c) Prior to each takeoff, the pilot in command shall advise the passengers of the name of the entity in operational control of the flight and whether the flight is conducted as a program flight or a commercial operation under part 121 or 135 of the regulations.

(d) The oral briefing required by paragraphs (a), (b), and (c) of this section shall be given by the pilot in command or another crewmember.

(e) The oral briefing required by paragraph (a) of this section may be delivered by means of an approved recording playback device that is audible to each passenger under normal noise levels.

(f) The oral briefing required by paragraph (a) of this section shall be supplemented by printed cards that must be carried in the aircraft in locations convenient for the use of each passenger. The cards shall—

(1) Be appropriate for the aircraft on which they are to be used;

(2) Contain a diagram of, and method of operating, the emergency exits; and

(3) Contain other instructions necessary for the use of emergency equipment on board the aircraft.

(g) The briefing required by paragraphs (a), (b) and (c) of this section do not apply if passengers have been briefed before a previous leg of a flight in the same aircraft.

§ 91.1037 Large transport category airplanes: Turbine engine powered; Limitations; Destination and alternate airports.

(a) No program manager or any other person may permit a turbine engine powered large transport category airplane on a program flight to take off at a weight at which (allowing for normal consumption of fuel and oil in flight to the destination or alternate airport) the weight of the airplane on arrival would exceed the landing weight in the Airplane Flight Manual for the elevation of the destination or alternate airport and the ambient temperature anticipated at the time of landing.

(b) Except as provided in paragraph (c) of this section, no program manager or any other person may permit a turbine engine powered large transport category airplane on a program flight to take off unless, its weight on arrival, allowing for normal consumption of fuel and oil in flight (in accordance with the landing distance in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions anticipated there at the time of landing), would allow a full stop landing at the intended destination airport within 85 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining the allowable landing weight at the destination airport, the following is assumed:

(1) The airplane is landed on the most favorable runway and in the most favorable direction, in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of that airplane, and considering other conditions such as landing aids and terrain.

(c) A program manager or other person flying a turbine engine powered large transport category airplane on a program flight may permit that airplane to take off at a weight in excess of that allowed by the runway margin in paragraph (b) of this section if such operation is permitted by an approved Destination Airport Analysis in that person's program operating manual and an alternate airport meeting the criteria of paragraph (d) of this section is selected.

(d) A program manager or other person may select an airport as an alternate airport for a turbine engine powered large transport category airplane if (based on the assumptions in paragraph (b) of this section) that airplane, at the weight anticipated at the time of arrival, can be brought to a full stop landing within 85 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

(e) Unless, based on a showing of actual operating landing techniques on wet runways, a shorter landing distance (but never less than that required by paragraph (b) of this section) has been approved for a specific type and model airplane and included in the Airplane Flight Manual, no person may take off a turbojet airplane when the appropriate weather reports or forecasts, or any combination of them, indicate that the runways at the destination or alternate airport may be wet or slippery at the estimated time of arrival unless the effective runway length at the destination airport is at least 115 percent of the runway length required under paragraph (b) of this section.

§ 91.1039 IFR takeoff, approach and landing minimums.

(a) No pilot on a program aircraft operating a program flight may begin an instrument approach procedure to an airport unless—

(1) Either that airport or the alternate airport has a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator; and

(2) The latest weather report issued by the weather reporting facility includes a current local altimeter setting for the destination airport. If no local altimeter setting is available at the destination airport, the pilot may use the current alternate altimeter setting provided by the facility designated on the approach chart for the destination airport.

(b) For flight planning purposes, if the destination airport does not have a weather reporting facility described in paragraph (a)(1) of this section, the pilot must designate as an alternate an airport that has a weather reporting facility meeting that criteria.

(c) The MDA or DH and visibility landing minimums prescribed in part 97 of this chapter or in the program manager's management specifications are increased by 100 feet and ½ mile respectively, but not to exceed the ceiling and visibility minimums for that airport when used as an alternate airport, for each pilot in command of a turbine-powered aircraft who has not served at least 100 hours as pilot in command in that type of aircraft.

(d) No person may take off an aircraft under IFR from an airport where weather conditions are at or above takeoff minimums but are below authorized IFR landing minimums unless there is an alternate airport within one (1) hour's flying time (at normal cruising speed, in still air) of the airport of departure.

(e) Each pilot making an IFR takeoff or approach and landing at an airport shall comply with applicable instrument approach procedures and take off and landing weather minimums prescribed by the authority having jurisdiction over the airport. In addition, no pilot may, at that airport take off when the visibility is less than 600 feet in the latest weather report issued by a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator, or, in the absence of such a weather reporting facility, as determined by the pilot in command, and the pilot in command shall have ensured that this visibility is maintainable for the entire length of the runway.

§ 91.1041 Aircraft proving tests.

(a) No program manager may permit the operation of an aircraft for which two pilots are required by the type certification requirements of this chapter for operations under VFR, if it has not previously proved such an aircraft in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of enroute airports as determined by the Administrator.

(b) No program manager may permit the operation of a turbojet airplane if it has not previously proved the same or another turbojet airplane in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of enroute airports as determined by the Administrator.

(c) No program manager may carry passengers in an aircraft during proving tests, except those needed to make the tests and those designated by the Administrator to observe the tests. However, pilot flight training may be conducted during the proving tests.

(d) The Administrator may authorize deviations from this section if the Administrator finds that special circumstances make full compliance with this section unnecessary.

§ 91.1043 [Reserved]

§ 91.1045 Additional equipment requirements.

No person may operate a program aircraft on a program flight unless the aircraft is equipped with the following—

(a) A cockpit voice recorder conforming to § 121.359 or § 135.151 of this chapter as applicable to the aircraft specified therein.

(b) A flight recorder conforming to § 121.343, § 121.344 or § 135.152 of this chapter as applicable to the aircraft specified therein.

(c) A ground proximity warning system conforming to § 121.360 or § 135.153 of this chapter as applicable to the aircraft specified therein.

(d) A terrain awareness and warning system conforming to § 121.354 or § 135.154 of this chapter as applicable to the aircraft specified therein.

(e) A traffic alert and collision avoidance system conforming to § 121.356 or § 135.180 of this chapter as applicable to the aircraft specified therein.

(f) Either:

(1) Airborne thunderstorm detection equipment conforming to § 135.173 of this chapter as applicable to the aircraft specified in that section; or

(2) Airborne weather radar conforming to § 121.357 or § 135.175 of this chapter as applicable to the aircraft specified in that section.

§ 91.1047 Drug and alcohol misuse program.

(a) Each program manager shall provide each direct employee performing flight crew member, flight attendant, flight instructor, or aircraft maintenance duties with drug and alcohol misuse education.

(b) No program manager may use any contract employee to perform flight crew member, flight attendant, flight instructor, or aircraft maintenance duties for the program manager unless that contract employee has been provided with drug and alcohol misuse education.

(c) Program managers shall disclose to their owners and prospective owners the existence or absence of a drug and alcohol misuse education program and/or a company testing program. If the program manager has implemented a testing program, the program manager's disclosure shall include the following:

(1) Information on the substances that they test for, e.g., alcohol and a list of the drugs;

(2) The persons tested, the types of tests, e.g., pre-employment, random, reasonable cause/suspicion, post accident, return to duty and follow-up; and

(3) The degree to which the program manager's company testing program is consistent with or not consistent with the federally mandated drug and alcohol misuse prevention program on these points.

(d) If a program aircraft is operated on a program flight into an airport at which no maintenance personnel are available that are subject to the requirements of paragraphs (a) or (b) of this section and emergency maintenance is required, the program manager may use persons not meeting the requirements of paragraphs (a) or (b) of this section to provide such emergency maintenance. A program

manager shall notify the Drug Abatement Program Division, AAM–800, 800 Independence Avenue, SW., Washington, DC 20591 in writing within 10 days after being provided emergency maintenance in accordance with this paragraph. A program manager shall retain copies of all such written notifications for two years.

(e) For purposes of this section, emergency maintenance means maintenance which—

(1) is not scheduled, and

(2) is made necessary by an aircraft condition not discovered prior to the departure for that location.

(f) Notwithstanding paragraphs (a) and (b) of this section, drug and alcohol misuse education conducted under an FAA-approved drug and alcohol misuse prevention program may be used to satisfy these requirements.

§ 91.1049 Personnel.

(a) Each program manager and each fractional owner shall use in program operations on program aircraft flight crews meeting § 91.1053 criteria and qualified under the appropriate regulations. The program manager shall provide oversight of those crews.

(b) Unless otherwise authorized by the Administrator, each program manager shall employ at least three (3) pilots per program aircraft. Additional flight crew staffing shall be determined based on the following factors, at a minimum:

(1) Number of program aircraft.

(2) Program manager flight, duty, and rest time considerations, and in all cases within the limits set forth in §§ 91.1057 through 91.1061 of this part.

(3) Vacations.

(4) Operational efficiencies.

(5) Training.

(c) Each program manager shall publish pilot and flight attendant duty schedules sufficiently in advance to follow the flight, duty, and rest time limits in §§ 91.1057 through 91.1061 of this part in program operations.

(d) Unless otherwise authorized by the Administrator, when any program aircraft is flown in program operations with passengers onboard, the crew shall consist of at least two (2) qualified pilots employed or contracted by the program manager or the fractional owner.

(e) The program manager shall ensure that trained and qualified scheduling or flight release personnel are on duty to schedule and release program aircraft during all hours that such aircraft are available for program operations.

§ 91.1051 Pilot safety background check.

Within 90 days of an individual beginning service as a pilot, the program manager shall request the following information:

(a) FAA records pertaining to—

(1) Current pilot certificates and associated type ratings.

(2) Current medical certificates.

(3) Summaries of legal enforcement actions resulting in a finding by the Administrator of a violation.

(b) Records from all previous employers during the five years preceding the date of the employment application where the applicant worked as a pilot. If any of these firms are in bankruptcy, the records shall be requested from the trustees in bankruptcy for those employees. If the previous employer is no longer in business, a documented good faith effort shall be made to obtain the records. Records from previous employers shall include, as applicable—

(1) Crew member records.

(2) Drug testing—collection, testing, and rehabilitation records pertaining to the individual.

(3) Alcohol misuse prevention program records pertaining to the individual.

(4) The applicant's individual record that includes certifications, ratings, aeronautical experience, effective date and class of the medical certificate, etc.

(c) Motor vehicle driving record of the pilot candidate from the National Driver Register (NDR) database from the chief driver licensing official of the state.

§ 91.1053 Flight crew experience.

(a) No program manager or owner may use any person, nor may any person serve, as a pilot in command or second in command of a program aircraft, or as a flight attendant on a program aircraft, in program operations under this subpart unless that person has met the applicable requirements of part 61 of this chapter and has the following experience and ratings:

(1) Total flight time for all pilots:

(i) Pilot in command—A minimum of 1,500 hours.

(ii) Second in command—A minimum of 500 hours.

(2) For multi-engine turbine-powered fixed-wing and powered-lift aircraft, the following FAA certification and ratings requirements:

(i) Pilot in command—Airline transport pilot and applicable type ratings

(ii) Second in command—Commercial pilot and instrument ratings

(iii) Flight attendant (if required or used)—Appropriately trained personnel

(3) For all other aircraft, the following FAA certification and rating requirements:

(i) Pilot in command—Commercial pilot and instrument ratings

(ii) Second in command—Commercial pilot and instrument ratings

(iii) Flight attendant (if required or used)—appropriately trained personnel

(b) The Administrator may authorize deviations from paragraph (a) of this section if the Flight Standards District Office which issued the program manager's management specifications finds that the crewmember has comparable experience, and can effectively perform the functions associated with the position in accordance with the requirements of this chapter. Grants of deviation under this paragraph may be granted after consideration of the size and scope of the operation, the qualifications of the intended personnel and the circumstances set forth in § 91.1055(b)(1)–(3). The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph.

§ 91.1055 Pilot operating limitations and pairing requirement.

(a) If the second in command of a fixed-wing program aircraft has fewer than 100 hours of flight time as second in command flying for the program manager in the type aircraft being flown, and the pilot in command is not an appropriately qualified check pilot, the pilot in command shall make all takeoffs and landings in any of the following situations:

(1) The prevailing visibility for the airport is at or below ¾ mile.

(2) The runway visual range for the runway to be used is at or below 4,000 feet.

(3) The runway to be used has water, snow, slush or similar contamination that may adversely affect aircraft performance.

(4) The braking action on the runway to be used is reported to be less than ''good.''

(5) The crosswind component for the runway to be used is in excess of 15 knots.

(6) Windshear is reported in the vicinity of the airport.

(7) Any other condition in which the pilot in command determines it to be prudent to exercise the pilot in command's authority.

(b) No program manager may release a program flight under this subpart unless, for that type aircraft, either the pilot in command or the second in command has at least 75 hours of program flight time, either as pilot in command or second in command. The Administrator may, upon application by the program manager, authorize deviations from the requirements of this paragraph by an appropriate

amendment to the management specifications in any of the following circumstances:

(1) A newly authorized program manager does not employ any pilots who meet the minimum requirements of this paragraph.

(2) An existing program manager adds to its fleet a new category and class aircraft not used before in its operation.

(3) An existing program manager establishes a new base to which it assigns pilots who will be required to become qualified on the aircraft operated from that base.

(c) No flight crew may be assigned in any capacity in a program operation to more than two (2) aircraft types that require a separate type rating.

§ 91.1057 Flight, duty and rest time requirements.

(a) For purposes of this subpart—

Augmented flight crew means at least three (3) pilots.

Calendar day means the period of elapsed time, using Coordinated Universal Time or local time that begins at midnight and ends 24 hours later at the next midnight.

Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the program manager. The time is calculated using either Coordinated Universal Time or local time to reflect the total elapsed time.

Extension of normal duty means an increase in the period of duty due to circumstances beyond the control of the program manager or flight crewmember (such as adverse weather) that are not known at the time of departure and that prevent the flightcrew from reaching the destination within the planned flight time.

Multi-time zone flight means a continuous east or west flight crossing five (5) or more time zones that is not north of 60 degrees north latitude or south of 60 degrees south latitude.

Planned expanded duty means the planned maximum flight and duty time and minimum rest time that may be scheduled for long-range aircraft capable of exceeding 10 hours of flight unless the flightcrew is augmented by a third pilot.

Reserve status means that status in which a flight crew member, by arrangement with the program manager: Holds himself or herself fit to fly to the extent that this is within the control of the flight crew member; remains within a reasonable response time of the aircraft as agreed between the flight crew member and the program manager; and maintains a ready means whereby the flight crew member may be contacted by the program manager. Reserve status is not part of any duty period. A flight crew member on reserve status who is called to duty may perform a normal duty period under § 91.1059 or § 91.1061 if, following the flight crew member's last duty period, the flight crew member received the minimum rest before duty required by § 91.1059 or § 91.1061, respectively, before entering reserve status.

Rest period means a period of time required pursuant to this subpart that is free of all responsibility for work or duty prior to the commencement of, or following completion of, a duty period, and during which the flight crew member cannot be required to receive contact from the program manager for purposes of program operations.

Standby means that portion of a duty period during which a flight crew member is subject to the control of the program manager and holds himself or herself in a condition of readiness to undertake a flight.

(b) A program manager may assign a flight crewmember and a flight crewmember may accept an assignment for program flight time only when the applicable requirements of this section are met.

(c) No program manager may assign any flight crewmember to any program duty during any required rest period.

(d) Time spent in transportation, not local in character, that a program manager requires of a flight crewmember and provides to transport the crewmember to an airport at which he is to serve on a flight as a crewmember, or from an airport at which he was relieved from duty to return to his home station, is not considered part of a rest period.

(e) A flight crewmember may continue a flight assignment if the flights to which he is assigned normally terminate within the limitations, but due to circumstances beyond the control of the program manager or flight crewmember (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the planned flight time.

(f) Each flight assignment shall provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment.

(g) The program manager shall provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter.

(h) Any extension of planned duty or flight time shall be approved by the program manager with the concurrence of the flight crew but in no event may exceed the maximum time limits set forth in §§ 91.1059 and 91.1061 of this part, as applicable.

(i) A flight crew member on standby status may decline to undertake flight activities if, in the flight crew member's determination, to do so would not be consistent with the standard of safe operation required under this subpart, this part, and applicable provisions of this title.

§ 91.1059 Flight time limitations and rest requirements: One or two pilot crews.

(a) No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, for flight time as a member of a one- or two-pilot crew if that crewmember's total flight time in all commercial flying will exceed—

(1) 500 hours in any calendar quarter;

(2) 800 hours in any two consecutive calendar quarters; or

(3) 1,400 hours in any calendar year.

(b) Except as provided in paragraph (c) of this section, during any 24 consecutive hours the total flight time of the assigned flight, when added to any commercial flying by that flight crewmember, may not exceed—

(1) 8 hours for a flight crew consisting of one pilot; or (2) 10 hours for a flight crew consisting of two pilots qualified under this subpart for the operation being conducted.

(c) No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, if that crewmember's flight time or duty time will exceed, or rest time will be less than—

	Normal duty	Extension of normal duty	Planned expanded duty
(1) Minimum Rest Before Duty	10 Hours	10 Hours	10 Hours.
(2) Duty Time	Up to 14 Hours	Exceeding 14 Hours up to 16 Hours.	Exceeding 14 Hours up to 16 Hours.
(3) Flight Time	Up to 10 Hours	Exceeding 10 Hours up to 12 Hours.	Up to 12 Hours.

	Normal duty	Extension of normal duty	Planned expanded duty
(4) Minimum After Duty Rest	10 Hours	12 Hours	Equal to Duty Time but never less than 10 Hours.
(5) Minimum After Duty Rest Period for Multi-Time Zone Flights.	14 Hours	18 Hours	24 Hours.

§ 91.1061 Augmented flight crews.

No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, if that crewmember's flight time or duty time will exceed, or rest time will be less than—

	Normal duty	Planned expanded duty
(a) Minimum Rest Before Duty	10 Hours	10 Hours.
(b) Duty Time	14 Hours–16 Hours	16 Hours–18 Hours.
(c) Flight Time	Up to 12 Hours	Up to 16 Hours.
(d) Minimum After Duty Rest	12 Hours	18 Hours.
(e) Minimum After Duty Rest Period for Multi-Time Zone Flights.	18 hours	24 hours.

§ 91.1063 Testing and training: Applicability and terms used.

(a) Sections 91.1065 through 91.1107 of this part:

(1) Prescribe the tests and checks required for pilots and flight attendant crewmembers and for the approval of check pilots in operations under this subpart;

(2) Prescribe the requirements for establishing and maintaining an approved training program for crewmembers, check pilot and instructors, and other operations personnel employed or used by the program manager in program operations;

(3) Prescribe the requirements for the qualification, approval and use of aircraft simulators and flight training devices in the conduct of an approved training program; and

(4) Permits training center personnel authorized under part 142 of this chapter who meet the requirements of § 91.1075 to conduct training, testing and checking under contract or other arrangements to those persons subject to the requirements of this subpart.

(b) If authorized by the Administrator, a program manager may comply with the applicable sections of subparts N and O of part 121 instead of §§ 91.1065 through 1107, except for the operating experience requirements of § 121.434 of this chapter.

(c) If authorized by the Administrator, a program manager may use the applicable training and testing requirements of subparts G and H of part 135 or the applicable sections of subparts N and O of part 121 to meet the training and testing requirements of this subpart.

(d) For the purposes of this subpart, the following terms and definitions apply:

(1) *Initial training.* The training required for crewmembers who have not qualified and served in the same capacity on an aircraft.

(2) *Transition training.* The training required for crewmembers who have qualified and served in the same capacity on another aircraft.

(3) *Upgrade training.* The training required for crewmembers who have qualified and served as second in command on a particular aircraft type, before they serve as pilot in command on that aircraft.

(4) *Differences training.* The training required for crewmembers who have qualified and served on a particular type aircraft, when the Administrator finds differences training is necessary before a crewmember serves in the same capacity on a particular variation of that aircraft.

(5) *Recurrent training.* The training required for crewmembers to remain adequately trained and currently proficient for each aircraft crewmember position, and type of operation in which the crewmember serves.

(6) *In flight.* The maneuvers, procedures, or functions that shall be conducted in the aircraft.

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that conducts training, testing, and checking under contract or other arrangement to program managers subject to the requirements of this subpart.

(8) *Requalification training.* The training required for crewmembers previously trained and qualified, but who have become unqualified due to not having met within the required period the—

(i) Recurrent pilot testing requirements of § 91.1107;

(ii) Instrument proficiency check requirements of § 91.1069.

§ 91.1065 Initial and recurrent pilot testing requirements.

(a) No program manager or owner may use a pilot, nor may any person serve as a pilot, unless, since the beginning of the 12th calendar month before that service, that pilot has passed a written or oral test, given by the Administrator or an authorized check pilot, on that pilot's knowledge in the following areas—

(1) The appropriate provisions of parts 61 and 91 of this chapter and the management specifications and the operating manual of the program manager;

(2) For each type of aircraft to be flown by the pilot, the aircraft powerplant, major components and systems, major appliances, performance and operating limitations, standard and emergency operating procedures, and the contents of the accepted operating manual or equivalent, as applicable;

(3) For each type of aircraft to be flown by the pilot, the method of determining compliance with weight and balance limitations for takeoff, landing and enroute operations;

(4) Navigation and use of air navigation aids appropriate to the operation or pilot authorization, including, when applicable, instrument approach facilities and procedures;

(5) Air traffic control procedures, including IFR procedures when applicable;

(6) Meteorology in general, including the principles of frontal systems, icing, fog, thunderstorms, and windshear, and, if appropriate for the operation of the program manager, high altitude weather;

(7) Procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear (except that rotorcraft aircraft pilots are not required to be tested on escaping from low-altitude windshear); and

(iii) Operating in or near thunderstorms (including best penetration altitudes), turbulent air (including clear air turbulence), icing, hail, and other potentially hazardous meteorological conditions; and

(8) New equipment, procedures, or techniques, as appropriate.

(b) No program manager or owner may use a pilot, nor may any person serve as a pilot, in any aircraft unless, since the beginning of the 12th calendar month before that service, that pilot has passed a competency check given by the Administrator or an authorized check pilot in that class of aircraft, if single-engine aircraft other than turbojet, or that type of aircraft, if rotorcraft, multiengine aircraft, or turbojet airplane, to determine the pilot's competence in practical skills and techniques in that aircraft or class of aircraft. The extent of the competency check shall be determined by the Administrator or authorized check pilot conducting the competency check. The competency check may include any of the maneuvers and procedures currently required for the original issuance of the particular pilot certificate required for the operations authorized and appropriate to the category, class and type of aircraft involved. For the purposes of this paragraph, type, as to an airplane, means any one of a group of airplanes determined by the Administrator to have a similar means of propulsion, the same manufacturer, and no significantly different handling or flight characteristics. For the purposes of this paragraph, type, as to a rotorcraft, means a basic make and model.

(c) The instrument proficiency check required by § 91.1069 may be substituted for the competency check required by this section for the type of aircraft used in the check.

(d) For the purpose of this subpart, competent performance of a procedure or maneuver by a person to be used as a pilot requires that the pilot be the obvious master of the aircraft, with the successful outcome of the maneuver never in doubt.

(e) The Administrator or authorized check pilot certifies the competency of each pilot who passes the knowledge or flight check in the program manager's pilot records.

(f) All or portions of a required competency check may be given in an aircraft simulator or other appropriate training device, if approved by the Administrator.

§ 91.1067 Initial and recurrent flight attendant crewmember testing requirements.

No program manager or owner may use a flight attendant crewmember, nor may any person serve as a flight attendant crewmember unless, since the beginning of the 12th calendar month before that service, the program manager has determined by appropriate initial and recurrent testing that the person is knowledgeable and competent in the following areas as appropriate to assigned duties and responsibilities—

(a) Authority of the pilot in command;

(b) Passenger handling, including procedures to be followed in handling deranged persons or other persons whose conduct might jeopardize safety;

(c) Crewmember assignments, functions, and responsibilities during ditching and evacuation of persons who may need the assistance of another person to move expeditiously to an exit in an emergency;

(d) Briefing of passengers;

(e) Location and operation of portable fire extinguishers and other items of emergency equipment;

(f) Proper use of cabin equipment and controls;

(g) Location and operation of passenger oxygen equipment;

(h) Location and operation of all normal and emergency exits, including evacuation chutes and escape ropes; and

(i) Seating of persons who may need assistance of another person to move rapidly to an exit in an emergency as prescribed by the program manager's operations manual.

§ 91.1069 Flight crew: Instrument proficiency check requirements.

(a) No program manager or owner may use a pilot, nor may any person serve, as a pilot in command of an aircraft under IFR unless, since the beginning of the 6th calendar month before that service, that pilot has passed an instrument proficiency check under this section administered by the Administrator or an authorized check pilot.

(b) No program manager or owner may use a pilot, nor may any person serve, as a second command pilot of an aircraft under IFR unless, since the beginning of the 12th calendar month before that service, that pilot has passed an instrument proficiency check under this section administered by the Administrator or an authorized check pilot.

(c) No pilot may use any type of precision instrument approach procedure under IFR unless, since the beginning of the 6th calendar month before that use, the pilot satisfactorily demonstrated that type of approach procedure. No pilot may use any type of nonprecision approach procedure under IFR unless, since the beginning of the 6th calendar month before that use, the pilot has satisfactorily demonstrated either that type of approach procedure or any other two different types of nonprecision approach procedures. The instrument approach procedure or procedures shall include at least one straight-in approach, one circling approach, and one missed approach. Each type of approach procedure demonstrated shall be conducted to published minimums for that procedure.

(d) The instrument proficiency checks required by paragraphs (a) and (b) of this section consists of an oral or written equipment test and a flight check under simulated or actual IFR conditions. The equipment test includes questions on emergency procedures, engine operation, fuel and lubrication systems, power settings, stall speeds, best engine-out speed, propeller and supercharger operations, and hydraulic, mechanical, and electrical systems, as appropriate. The flight check includes navigation by instruments, recovery from simulated emergencies, and standard instrument approaches involving navigational facilities which that pilot is to be authorized to use.

(e) Each pilot taking the instrument proficiency check shall show that standard of competence required by § 91.1065(d).

(1) The instrument proficiency check must—

(i) For a pilot in command of an aircraft, include the procedures and maneuvers for an airline transport pilot certificate in the particular type of aircraft, if appropriate; and

(ii) For a pilot in command of a rotorcraft or a second in command of any aircraft include the procedures and maneuvers for a commercial pilot certificate with an instrument rating and, if required, for the appropriate type rating.

(2) The instrument proficiency check must be given by an authorized check pilot or by the Administrator.

(f) If the pilot is assigned to pilot only one type of aircraft, that pilot shall take the instrument proficiency check required by paragraph (a) of this section in that type of aircraft.

(g) If the pilot in command is assigned to pilot more than one type of aircraft, that pilot shall take the instrument proficiency check required by paragraph (a) of this section in each type of aircraft

to which that pilot is assigned, in rotation, but not more than one flight check during each period described in paragraph (a) of this section.

(h) If the pilot in command is assigned to pilot both single-engine and multiengine aircraft, that pilot shall initially take the instrument proficiency check required by paragraph (a) of this section in a multiengine aircraft, and each succeeding check alternately in single-engine and multiengine aircraft, but not more than one flight check during each period described in paragraph (a) of this section.

(i) All or portions of a required flight check may be given in an aircraft simulator or other appropriate training device, if approved by the Administrator.

§ 91.1071 Crewmember: Tests and checks, grace provisions, training to accepted standards.

(a) If a crewmember who is required to take a test or a flight check under this subpart, completes the test or flight check in the calendar month before or after the calendar month in which it is required, that crewmember is considered to have completed the test or check in the calendar month in which it is required.

(b) If a pilot being checked under this subpart fails any of the required maneuvers, the person giving the check may give additional training to the pilot during the course of the check. In addition to repeating the maneuvers failed, the person giving the check may require the pilot being checked to repeat any other maneuvers that are necessary to determine the pilot's proficiency. If the pilot being checked is unable to demonstrate satisfactory performance to the person conducting the check, the program manager may not use the pilot, nor may the pilot serve, as a flight crewmember in operations under this subpart until the pilot has satisfactorily completed the check.

§ 91.1073 Training program: General.

(a) Each program manager shall have a training program and shall:

(1) Establish, obtain the appropriate initial and final approval of, and provide a training program that meets this subpart and that ensures that each crewmember, including each flight attendant if the program manager uses a flight attendant crewmember, flight instructor, check pilot, and each person assigned duties for the carriage and handling of hazardous materials (as defined in 49 CFR 171.8) is adequately trained to perform these assigned duties.

(2) Provide adequate ground and flight training facilities and properly qualified ground instructors for the training required by this subpart.

(3) Provide and keep current for each aircraft type used and, if applicable, the particular variations within the aircraft type, appropriate training material, examinations, forms, instructions, and procedures for use in conducting the training and checks required by this subpart.

(4) Provide enough flight instructors, check pilots, and simulator instructors to conduct required flight training and flight checks, and simulator training courses allowed under this subpart.

(b) Whenever a crewmember who is required to take recurrent training under this subpart completes the training in the calendar month before, or the calendar month after, the month in which that training is required, the crewmember is considered to have completed it in the calendar month in which it was required.

(c) Each instructor, supervisor, or check pilot who is responsible for a particular ground training subject, segment of flight training, course of training, flight check, or competence check under this subpart shall certify as to the proficiency and knowledge of the crewmember, flight instructor, or check pilot concerned upon completion of that training or check. That certification must be made a part of the crewmember's record. When the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the certifying instructor, supervisor, or check pilot, shall be identified with that entry. However, the signature of the certifying instructor, supervisor, or check pilot, is not required for computerized entries.

(d) Training subjects that apply to more than one aircraft or crewmember position and that have been satisfactorily completed during previous training while employed by the program manager for another aircraft or another crewmember position, need not be repeated during subsequent training other than recurrent training.

(e) Aircraft simulators and other training devices may be used in the program manager's training program if approved by the Administrator.

(f) Each program manager shall be responsible for establishing safe and efficient crew management practices for all phases of flight in program operations including cockpit resource management training for all crew members used in program operations.

(g) If an aircraft simulator has been approved by the Administrator for use in the program manager's training program, the program manager shall ensure that each pilot annually completes at least one flight training session in an approved simulator for at least one program aircraft. The training session may be the flight training portion of any of the pilot training or check requirements of this subpart, including the initial, transition, upgrade, requalification, differences, or recurrent training, or the accomplishment of a competency check or instrument proficiency check. If there is no approved simulator for that aircraft type in operation, then all flight training and checking must be accomplished in the aircraft.

§ 91.1075 Training program: Special rules.

(a) Other than the program manager, only another program manager operating under this subpart or a training center certificated under part 142 of this chapter is eligible under this subpart to conduct training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

(b) A program manager may contract with, or otherwise arrange to use the services of, a training center certificated under part 142 of this chapter to conduct training, testing, and checking required by this subpart only if the training center—

(1) Holds applicable training specifications issued under part 142 of this chapter;

(2) Has facilities, training equipment, and courseware meeting the applicable requirements of part 142 of this chapter;

(3) Has approved curriculums, curriculum segments, and portions of curriculum segments applicable for use in training courses required by this subpart; and

(4) Has sufficient instructors and check pilots qualified under the applicable requirements of §§ 91.1089 through 91.1095 to conduct training, testing, and checking to persons subject to the requirements of this subpart.

§ 91.1077 Training program and revision: Initial and final approval.

(a) To obtain initial and final approval of a training program, or a revision to an approved training program, each program manager must submit to the Administrator—

(1) An outline of the proposed or revised curriculum, that provides enough information for a preliminary evaluation of the proposed training program or revision; and

(2) Additional relevant information that may be requested by the Administrator.

(b) If the proposed training program or revision complies with this subpart, the Administrator grants initial approval in

writing after which the program manager may conduct the training under that program. The Administrator then evaluates the effectiveness of the training program and advises the program manager of deficiencies, if any, that must be corrected.

(c) The Administrator grants final approval of the proposed training program or revision if the program manager shows that the training conducted under the initial approval in paragraph (b) of this section ensures that each person who successfully completes the training is adequately trained to perform that person's assigned duties.

(d) Whenever the Administrator finds that revisions are necessary for the continued adequacy of a training program that has been granted final approval, the program manager shall, after notification by the Administrator, make any changes in the program that are found necessary by the Administrator. Within 30 days after the program manager receives the notice, it may file a petition to reconsider the notice with the Administrator. The filing of a petition to reconsider stays the notice pending a decision by the Administrator. However, if the Administrator finds that there is an emergency that requires immediate action in the interest of safety, the Administrator may, upon a statement of the reasons, require a change effective without stay.

§ 91.1079 Training program: Curriculum.

(a) Each program manager must prepare and keep current a written training program curriculum for each type of aircraft for each crewmember required for that type aircraft. The curriculum must include ground and flight training required by this subpart.

(b) Each training program curriculum must include the following:

(1) A list of principal ground training subjects, including emergency training subjects, that are provided.

(2) A list of all the training devices, mockups, systems trainers, procedures trainers, or other training aids that the program manager will use.

(3) Detailed descriptions or pictorial displays of the approved normal, abnormal, and emergency maneuvers, procedures and functions that will be performed during each flight training phase or flight check, indicating those maneuvers, procedures and functions that are to be performed during the inflight portions of flight training and flight checks.

§ 91.1081 Crewmember training requirements.

(a) Each program manager must include in its training program the following initial and transition ground training as appropriate to the particular assignment of the crewmember:

(1) Basic indoctrination ground training for newly hired crewmembers including instruction in at least the—

(i) Duties and responsibilities of crewmembers as applicable;

(ii) Appropriate provisions of this chapter;

(iii) Contents of the program manager's management specifications (not required for flight attendants); and

(iv) Appropriate portions of the program manager's operating manual.

(2) The initial and transition ground training in §§ 91.1101 and 91.1105, as applicable.

(3) Emergency training in § 91.1083.

(b) Each training program shall provide the initial and transition flight training in § 91.1103, as applicable.

(c) Each training program must provide recurrent ground and flight training as provided in § 91.1107.

(d) Upgrade training in §§ 91.1101 and 91.1103 for a particular type aircraft may be included in the training program for crewmembers who have qualified and served as second in command on that aircraft.

(e) In addition to initial, transition, upgrade and recurrent training, each training program must provide ground and flight training, instruction, and practice necessary to ensure that each crewmember—

(1) Remains adequately trained and currently proficient for each aircraft, crewmember position, and type of operation in which the crewmember serves; and

(2) Qualifies in new equipment, facilities, procedures, and techniques, including modifications to aircraft.

§ 91.1083 Crewmember emergency training.

(a) Each training program shall provide emergency training under this section for each aircraft type, model, and configuration, each crewmember, and each kind of operation conducted, as appropriate for each crewmember and the program manager.

(b) Emergency training must provide the following:

(1) Instruction in emergency assignments and procedures, including coordination among crewmembers.

(2) Individual instruction in the location, function, and operation of emergency equipment including—

(i) Equipment used in ditching and evacuation;

(ii) First aid equipment and its proper use; and

(iii) Portable fire extinguishers, with emphasis on the type of extinguisher to be used on different classes of fires.

(3) Instruction in the handling of emergency situations including—

(i) Rapid decompression;

(ii) Fire in flight or on the surface and smoke control procedures with emphasis on electrical equipment and related circuit breakers found in cabin areas;

(iii) Ditching and evacuation;

(iv) Illness, injury, or other abnormal situations involving passengers or crewmembers; and

(v) Hijacking and other unusual situations.

(4) Review of the program manager's previous aircraft accidents and incidents involving actual emergency situations.

(c) Each crewmember must perform at least the following emergency drills, using the proper emergency equipment and procedures, unless the Administrator finds that, for a particular drill, the crewmember can be adequately trained by demonstration:

(1) Ditching, if applicable.

(2) Emergency evacuation.

(3) Fire extinguishing and smoke control.

(4) Operation and use of emergency exits, including deployment and use of evacuation chutes, if applicable.

(5) Use of crew and passenger oxygen.

(6) Removal of life rafts from the aircraft, inflation of the life rafts, use of life lines, and boarding of passengers and crew, if applicable.

(7) Donning and inflation of life vests and the use of other individual flotation devices, if applicable.

(d) Crewmembers who serve in operations above 25,000 feet must receive instruction in the following:

(1) Respiration.

(2) Hypoxia.

(3) Duration of consciousness without supplemental oxygen at altitude.

(4) Gas expansion.

(5) Gas bubble formation.

(6) Physical phenomena and incidents of decompression.

§ 91.1085 Hazardous materials recognition training.

No program manager may use any pilot to perform, and no pilot may perform, any assigned duties and responsibilities for the handling or carriage of hazardous materials (as defined in 49 CFR 171.8), unless that pilot has received training in the recognition of hazardous materials.

§ 91.1087 Approval of aircraft simulators and other training devices.

(a) Training courses using aircraft simulators and other training devices may be included in the program manager's training program if approved by the Administrator.

(b) Each aircraft simulator and other training device that is used in a training course or in checks required under this subpart must meet the following requirements:

(1) It must be specifically approved for—

(i) The program manager; and

(ii) The particular maneuver, procedure, or crewmember function involved.

(2) It must maintain the performance, functional, and other characteristics that are required for approval.

(3) Additionally, for aircraft simulators, it must be—

(i) Approved for the type aircraft and, if applicable, the particular variation within type for which the training or check is being conducted; and

(ii) Modified to conform with any modification to the aircraft being simulated that changes the performance, functional, or other characteristics required for approval.

(c) A particular aircraft simulator or other training device may be used by more than one program manager.

(d) In granting initial and final approval of training programs or revisions to them, the Administrator considers the training devices, methods, and procedures listed in the program manager's curriculum under § 91.1079.

§ 91.1089 Qualifications: Check pilots (aircraft) and check pilots (simulator).

(a) For the purposes of this section and § 91.1093:

(1) A check pilot (aircraft) is a person who is qualified to conduct flight checks in an aircraft, in a flight simulator, or in a flight training device for a particular type aircraft.

(2) A check pilot (simulator) is a person who is qualified to conduct flight checks, but only in a flight simulator, in a flight training device, or both, for a particular type aircraft.

(3) Check pilots (aircraft) and check pilots (simulator) are those check pilots who perform the functions described in §§ 91.1073(a)(4) and (c).

(b) No program manager may use a person, nor may any person serve as a check pilot (aircraft) in a training program established under this subpart unless, with respect to the aircraft type involved, that person—

(1) Holds the pilot certificates and ratings required to serve as a pilot in command in operations under this subpart;

(2) Has satisfactorily completed the training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart;

(4) Has satisfactorily completed the applicable training requirements of § 91.1093;

(5) Holds at least a Class III medical certificate unless serving as a required crewmember, in which case holds a Class I or Class II medical certificate as appropriate; and

(6) Has been approved by the Administrator for the check pilot duties involved.

(c) No program manager may use a person, nor may any person serve as a check pilot (simulator) in a training program established under this subpart unless, with respect to the aircraft type involved, that person meets the provisions of paragraph (b) of this section, or—

(1) Holds the applicable pilot certificates and ratings, except medical certificate, required to serve as a pilot in command in operations under this subpart;

(2) Has satisfactorily completed the appropriate training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the appropriate proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart;

(4) Has satisfactorily completed the applicable training requirements of § 91.1093; and

(5) Has been approved by the Administrator for the check pilot (simulator) duties involved.

(d) Completion of the requirements in paragraphs (b)(2), (3), and (4) or (c)(2), (3), and (4) of this section, as applicable, shall be entered in the individual's training record maintained by the program manager.

(e) A check pilot who does not hold an appropriate medical certificate may function as a check pilot (simulator), but may not serve as a flightcrew member in operations under this subpart.

(f) A check pilot (simulator) must accomplish the following—

(1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month period preceding the performance of any check pilot duty in a flight simulator; or

(2) Satisfactorily complete an approved line-observation program within the period prescribed by that program and that shall precede the performance of any check pilot duty in a flight simulator.

(g) The flight segments or line-observation program required in paragraph (f) of this section are considered to be completed in the month required if completed in the calendar month before or the calendar month after the month in which they are due.

§ 91.1091 Qualifications: Flight instructors (aircraft) and flight instructors (simulator).

(a) For the purposes of this section and § 91.1095:

(1) A flight instructor (aircraft) is a person who is qualified to instruct in an aircraft, in a flight simulator, or in a flight training device for a particular type, class, or category aircraft.

(2) A flight instructor (simulator) is a person who is qualified to instruct in a flight simulator, in a flight training device, or in both, for a particular type, class, or category aircraft.

(3) Flight instructors (aircraft) and flight instructors (simulator) are those instructors who perform the functions described in § 91.1073(a)(4) and (c).

(b) No program manager may use a person, nor may any person serve as a flight instructor (aircraft) in a training program established under this subpart unless, with respect to the type, class, or category aircraft involved, that person—

(1) Holds the pilot certificates and ratings required to serve as a pilot in command in operations under this subpart or part 121 or 135;

(2) Has satisfactorily completed the training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart;

(4) Has satisfactorily completed the applicable training requirements of § 91.1095; and

(5) Holds at least a Class III medical certificate.

(c) No program manager may use a person, nor may any person serve as a flight instructor (simulator) in a training program established under this subpart, unless, with respect to the type, class, or category aircraft involved, that person meets the provisions of paragraph (b) of this section, or—

(1) Holds the pilot certificates and ratings, except medical certificate, required to serve as a pilot in command in operations under this subpart or part 121 or 135;

(2) Has satisfactorily completed the appropriate training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the appropriate proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart; and

(4) Has satisfactorily completed the applicable training requirements of § 91.1095.

(d) Completion of the requirements in paragraphs (b)(2), (3), and (4) or (c)(2), (3), and (4) of this section, as applicable, shall be entered in the individual's training record maintained by the program manager.

(e) A pilot who does not hold a medical certificate may function as a flight instructor in an aircraft if functioning as a non-required crewmember, but may not serve as a flightcrew member in operations under this subpart.

(f) A flight instructor (simulator) must accomplish the following—

(1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month period preceding the performance of any flight instructor duty in a flight simulator; or

(2) Satisfactorily complete an approved line-observation program within the period prescribed by that program and that must precede the performance of any check pilot duty in a flight simulator.

(g) The flight segments or line-observation program required in paragraph (f) of this section are considered completed in the month required if completed in the calendar month before, or in the calendar month after, the month in which they are due.

§ 91.1093 Initial and transition training and checking: Check pilot (aircraft), check pilot (simulator).

(a) No program manager may use a person nor may any person serve as a check pilot unless—

(1) That person has satisfactorily completed initial or transition check pilot training; and

(2) Within the preceding 24 calendar months, that person satisfactorily conducts a proficiency or competency check under the observation of an FAA inspector or an aircrew designated examiner employed by the program manager. The observation check may be accomplished in part or in full in an aircraft, in a flight simulator, or in a flight training device.

(b) The observation check required by paragraph (a)(2) of this section is considered to have been completed in the month required if completed in the calendar month before or the calendar month after the month in which it is due.

(c) The initial ground training for check pilots must include the following:

(1) Check pilot duties, functions, and responsibilities.

(2) The applicable provisions of the Code of Federal Regulations and the program manager's policies and procedures.

(3) The applicable methods, procedures, and techniques for conducting the required checks.

(4) Proper evaluation of student performance including the detection of—

(i) Improper and insufficient training; and

(ii) Personal characteristics of an applicant that could adversely affect safety.

(5) The corrective action in the case of unsatisfactory checks.

(6) The approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the aircraft.

(d) The transition ground training for a check pilot must include the approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the aircraft to which the check pilot is in transition.

(e) The initial and transition flight training for a check pilot (aircraft) must include the following—

(1) The safety measures for emergency situations that are likely to develop during a check;

(2) The potential results of improper, untimely, or nonexecution of safety measures during a check;

(3) Training and practice in conducting flight checks from the left and right pilot seats in the required normal, abnormal, and emergency procedures to ensure competence to conduct the pilot flight checks required by this subpart; and

(4) The safety measures to be taken from either pilot seat for emergency situations that are likely to develop during checking.

(f) The requirements of paragraph (e) of this section may be accomplished in full or in part in flight, in a flight simulator, or in a flight training device, as appropriate.

(g) The initial and transition flight training for a check pilot (simulator) must include the following:

(1) Training and practice in conducting flight checks in the required normal, abnormal, and emergency procedures to ensure competence to conduct the flight checks required by this subpart. This training and practice must be accomplished in a flight simulator or in a flight training device.

(2) Training in the operation of flight simulators, flight training devices, or both, to ensure competence to conduct the flight checks required by this subpart.

§ 91.1095 Initial and transition training and checking: Flight instructors (aircraft), flight instructors (simulator).

(a) No program manager may use a person nor may any person serve as a flight instructor unless—

(1) That person has satisfactorily completed initial or transition flight instructor training; and

(2) Within the preceding 24 calendar months, that person satisfactorily conducts instruction under the observation of an FAA inspector, a program manager check pilot, or an aircrew designated examiner employed by the program manager. The observation check may be accomplished in part or in full in an aircraft, in a flight simulator, or in a flight training device.

(b) The observation check required by paragraph (a)(2) of this section is considered to have been completed in the month required if completed in the calendar month before, or the calendar month after, the month in which it is due.

(c) The initial ground training for flight instructors shall include the following:

(1) Flight instructor duties, functions, and responsibilities.

(2) The applicable Code of Federal Regulations and the program manager's policies and procedures.

(3) The applicable methods, procedures, and techniques for conducting flight instruction.

(4) Proper evaluation of student performance including the detection of—

(i) Improper and insufficient training; and

(ii) Personal characteristics of an applicant that could adversely affect safety.

(5) The corrective action in the case of unsatisfactory training progress.

(6) The approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the aircraft.

(7) Except for holders of a flight instructor certificate—

(i) The fundamental principles of the teaching-learning process;

(ii) Teaching methods and procedures; and

(iii) The instructor-student relationship.

(d) The transition ground training for flight instructors must include the approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the type, class, or category aircraft to which the flight instructor is in transition.

(e) The initial and transition flight training for flight instructors (aircraft) must include the following—

(1) The safety measures for emergency situations that are likely to develop during instruction;

(2) The potential results of improper or untimely safety measures during instruction;

(3) Training and practice from the left and right pilot seats in the required normal, abnormal, and emergency maneuvers to ensure competence to conduct the flight instruction required by this subpart; and

(4) The safety measures to be taken from either the left or right pilot seat for emergency situations that are likely to develop during instruction.

(f) The requirements of paragraph (e) of this section may be accomplished in full or in part in flight, in a flight simulator, or in a flight training device, as appropriate.

(g) The initial and transition flight training for a flight instructor (simulator) must include the following:

(1) Training and practice in the required normal, abnormal, and emergency procedures to ensure competence to conduct the flight instruction required by this subpart. These maneuvers and procedures must be accomplished in full or in part in a flight simulator or in a flight training device.

(2) Training in the operation of flight simulators, flight training devices, or both, to ensure competence to conduct the flight instruction required by this subpart.

§ 91.1097 Pilot and flight attendant crewmember training programs.

(a) Each program manager shall establish and maintain an approved pilot training program, and each program manager who uses a flight attendant crewmember shall establish and maintain an approved flight attendant training program, that is appropriate to the operations to which each pilot and flight attendant is to be assigned, and will ensure that they are adequately trained to meet the applicable knowledge and practical testing requirements of §§ 91.1065 through 91.1071. However, the Administrator may authorize a deviation from this section if the Administrator finds that, because of the limited size and scope of the operation, safety will allow a deviation from these requirements.

(b) Each program manager required to have a training program by paragraph (a) of this section shall include in that program ground and flight training curriculums for—

(1) Initial training;

(2) Transition training;

(3) Upgrade training;

(4) Differences training;

(5) Recurrent training; and

(6) Requalification training.

(c) Each program manager required to have a training program by paragraph (a) of this section shall provide current and appropriate study materials for use by each required pilot and flight attendant.

(d) The program manager shall furnish copies of the pilot and flight attendant crewmember training program, and all changes and additions, to the assigned representative of the Administrator. If the program manager uses training facilities of other persons, a copy of those training programs or appropriate portions used for those facilities shall also be furnished. Curricula that follow FAA published curricula may be cited by reference in the copy of the training program furnished to the representative of the Administrator and need not be furnished with the program.

§ 91.1099 Crewmember initial and recurrent training requirements.

No program manager may use a person, nor may any person serve, as a crewmember in operations under this subpart unless that crewmember has completed the appropriate initial or recurrent training phase of the training program appropriate to the type of operation in which the crewmember is to serve since the beginning of the 12th calendar month before that service.

§ 91.1101 Pilots: Initial, transition, and upgrade ground training.

Initial, transition, and upgrade ground training for pilots must include instruction in at least the following, as applicable to their duties:

(a) General subjects—

(1) The program manager's flight locating procedures;

(2) Principles and methods for determining weight and balance, and runway limitations for takeoff and landing;

(3) Enough meteorology to ensure a practical knowledge of weather phenomena, including the principles of frontal systems, icing, fog, thunderstorms, windshear and, if appropriate, high altitude weather situations;

(4) Air traffic control systems, procedures, and phraseology;

(5) Navigation and the use of navigational aids, including instrument approach procedures;

(6) Normal and emergency communication procedures;

(7) Visual cues before and during descent below DH or MDA; and

(8) Other instructions necessary to ensure the pilot's competence.

(b) For each aircraft type—

(1) A general description;

(2) Performance characteristics;

(3) Engines and propellers;

(4) Major components;

(5) Major aircraft systems (i.e., flight controls, electrical, and hydraulic), other systems, as appropriate, principles of normal, abnormal, and emergency operations, appropriate procedures and limitations;

(6) Knowledge and procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear (except that rotorcraft pilots are not required to be trained in escaping from low-altitude windshear);

(iii) Operating in or near thunderstorms (including best penetration altitudes), turbulent air (including clear air turbulence), inflight icing, hail, and other potentially hazardous meteorological conditions; and

(iv) Operating airplanes during ground icing conditions, (i.e., any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft), if the program manager expects to authorize takeoffs in ground icing conditions, including:

(A) The use of holdover times when using deicing/anti-icing fluids;

(B) Airplane deicing/anti-icing procedures, including inspection and check procedures and responsibilities;

(C) Communications;

(D) Airplane surface contamination (i.e., adherence of frost, ice, or snow) and critical area identification, and knowledge of how contamination adversely affects airplane performance and flight characteristics;

(E) Types and characteristics of deicing/anti-icing fluids, if used by the program manager;

(F) Cold weather preflight inspection procedures;

(G) Techniques for recognizing contamination on the airplane;

(7) Operating limitations;

(8) Fuel consumption and cruise control;

(9) Flight planning;

(10) Each normal and emergency procedure; and

(11) The approved manual.

§ 91.1103 Pilots: Initial, transition, upgrade, requalification, and differences flight training.

(a) Initial, transition, upgrade, requalification, and differences training for pilots must include flight and practice in each of the maneuvers and procedures contained in each of the curriculums which are a part of the approved training program.

(b) The maneuvers and procedures required by paragraph (a) of this section must be performed in flight, except to the extent that certain maneuvers and procedures may be performed in an aircraft simulator, or an appropriate training device, as allowed by this subpart.

(c) If the program manager's approved training program includes a course of training using an aircraft simulator or other training device, each pilot must successfully complete—

(1) Training and practice in the simulator or training device in at least the maneuvers and procedures in this subpart that are capable of being performed in the aircraft simulator or training device; and

(2) A flight check in the aircraft or a check in the simulator or training device to the level of proficiency of a pilot in command or second in command, as applicable, in at least the maneuvers and procedures that are capable of being performed in an aircraft simulator or training device.

§ 91.1105 Flight attendants: Initial and transition ground training.

Initial and transition ground training for flight attendants must include instruction in at least the following—

(a) General subjects—

(1) The authority of the pilot in command; and

(2) Passenger handling, including procedures to be followed in handling deranged persons or other persons whose conduct might jeopardize safety.

(b) For each aircraft type—

(1) A general description of the aircraft emphasizing physical characteristics that may have a bearing on ditching, evacuation, and inflight emergency procedures and on other related duties;

(2) The use of both the public address system and the means of communicating with other flight crewmembers, including emergency means in the case of attempted hijacking or other unusual situations; and

(3) Proper use of electrical galley equipment and the controls for cabin heat and ventilation.

§ 91.1107 Recurrent training.

(a) Each program manager must ensure that each crewmember receives recurrent training and is adequately trained and currently proficient for the type aircraft and crewmember position involved.

(b) Recurrent ground training for crewmembers must include at least the following:

(1) A quiz or other review to determine the crewmember's knowledge of the aircraft and crewmember position involved.

(2) Instruction as necessary in the subjects required for initial ground training by this subpart, as appropriate, including low-altitude windshear training and training on operating during ground icing conditions, as prescribed in § 91.1097 and described in § 91.1101, and emergency training.

(c) Recurrent flight training for pilots must include, at least, flight training in the maneuvers or procedures in this subpart, except that satisfactory completion of the check required by § 91.1065 within the preceding 12 calendar months may be substituted for recurrent flight training.

§ 91.1109 Aircraft maintenance: Inspection program.

Each operator or program manager of a program aircraft must establish an aircraft inspection program and ensure the aircraft is inspected in accordance with that inspection program.

(a) The inspection program must be in writing and include at least the following information:

(1) Instructions and procedures for the conduct of inspections for the particular make and model aircraft, including necessary tests and checks. The instructions and procedures must set forth in detail the parts and areas of the airframe, engines, propellers, rotors, and appliances, including survival and emergency equipment required to be inspected.

(2) A schedule for performing the inspections that must be performed under the inspection program expressed in terms of the time in service, calendar time, number of system operations, or any combination thereof.

(3) The name and address of the person responsible for scheduling the inspections required by the inspection program. A copy of the inspection program must be made available to the person performing inspections on the aircraft and, upon request, to the Administrator.

(b) Each person desiring to establish or change an approved inspection program under this section must submit the inspection program for approval to the local FAA Flight Standards district office having jurisdiction over the area in which the aircraft is based. The inspection program must be derived from one of the following programs:

(1) An inspection program currently recommended by the manufacturer of the aircraft, aircraft engines, propellers, appliances, and survival and emergency equipment;

(2) An inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier or operating certificate issued under part 119 of this chapter and operating that make and model aircraft under part 121 or 135 of this chapter;

(3) An aircraft inspection program approved under § 135.419 of this chapter and currently in use under part 135 of this chapter by a person holding a certificate issued under part 119 of this chapter; or

(4) An aircraft inspection program approved under § 125.247 of this chapter and currently in use under part 125 of this chapter by a person holding a certificate issued under part 125 of this chapter.

(c) The Administrator may require revision of the inspection program approved under this section in accordance with the provisions of § 91.415.

§ 91.1111 Maintenance training.

The program manager shall ensure that all personnel who are employed by the program manager or fractional owner and responsible for maintenance related to program aircraft undergo appropriate initial and annual recurrent training and are competent to perform those duties.

§ 91.1113 Maintenance recordkeeping.

Each fractional ownership program manager shall keep (using the system specified in the manual required in § 91.1025) the records specified in § 91.417(a) for the periods specified in § 91.417(b).

§ 91.1115 Minimum equipment lists and letters of authorization.

Any Minimum Equipment Lists, Letters of Authorization, Dispatch Deviation Guides, Deferred Discrepancy Lists or any other approvals covering the program aircraft will be issued to,

and in the sole name of, the program manager on behalf of the fractional owners collectively. No Minimum Equipment Lists, Letters of Authorization, Dispatch Deviation Guides, and Deferred Discrepancy Lists shall be affected by any change in ownership of a program aircraft, as long as the aircraft remains a program aircraft in the program identified on the respective approval.

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

11. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

Subpart A—General

12. Amend § 119.1 by revising paragraph (d) to read as follows:

§ 119.1 Applicability.

* * * * *

(d) This part does not govern operations conducted under part 91, subpart K (when common carriage is not involved) nor does it govern operations conducted under part 129, 133, 137, or 139 of this chapter.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

13. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

Subpart A—General

14. Amend § 125.1 by revising paragraphs (b)(4) and (5) and by adding paragraphs (b)(6) and (b)(7) as follows:

§ 125.1 Applicability.

* * * * *

(b) * * *

(4) They are being operated under part 91 by an operator certificated to operate those airplanes under the rules of parts 121, 135, or 137 of this chapter, they are being operated under the applicable rules of part 121 or part 135 of this chapter by an applicant for a certificate under part 119 of this chapter or they are being operated by a foreign air carrier or a foreign person engaged in common carriage solely outside the United States under part 91 of this chapter;

(5) They are being operated under a deviation authority issued under § 125.3 of this chapter;

(6) They are being operated under part 91, subpart K by a fractional owner as defined in § 91.1001; or

(7) They are being operated by a fractional ownership program manager as defined in § 91.1001, for training, ferrying, positioning, maintenance, or demonstration purposes under part 91 and without carrying passengers or cargo for compensation or hire except as permitted for demonstration flights under § 91.501(b)(3).

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

15. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

Subpart A—General

16. Amend § 135.1 by adding paragraph (b) to read as follows:

§ 135.1 Applicability.

* * * * *

(b) For the purpose of §§ 135.23, 135.225 and 135.385, eligible on-demand operator means an on-demand operator that meets the flight crew experience, pilot operating limitations and pairing requirements of §§ 91.1053 and 91.1055.

17. Amend § 135.21 by revising paragraphs (f) and (g) and adding paragraph (h) to read as follows:

§ 135.21 Manual requirements.

* * * * *

(f) Except as provided in paragraph (h) of this section, each certificate holder shall carry appropriate parts of the manual on each aircraft when away from the principal operations base. The appropriate parts must be available for use by ground or flight personnel.

(g) For the purpose of complying with paragraph (d) of this section, a certificate holder may furnish the persons listed therein with all or part of its manual in printed form or other form, acceptable to the Administrator, that is retrievable in the English language. If the certificate holder furnishes all or part of the manual in other than printed form, it shall ensure there is a compatible reading device available to those persons that provides a legible image of the information and instructions, or a system that is able to retrieve the information and instructions in the English language.

(h) If a certificate holder conducts aircraft inspections or maintenance at specified stations where it keeps the approved inspection program manual, it is not required to carry the manual aboard the aircraft en route to those stations.

18. Amend § 135.23 by revising paragraph (r) and adding paragraph (s) to read as follows:

§ 135.23 Manual contents.

* * * * *

(r) If required by § 135.385, an approved Destination Airport Analysis establishing procedures for establishing runway safety margins at destination airports, taking into account the following factors as supported by published aircraft performance data supplied by the aircraft manufacturer for the appropriate runway conditions—

(1) Pilot qualifications and experience;

(2) Aircraft performance data to include normal, abnormal and emergency procedures as supplied by the aircraft manufacturer;

(3) Airport facilities and topography;

(4) Runway conditions (including contamination);

(5) Airport or area weather reporting;

(6) Appropriate additional runway safety margins, if required; and

(7) Other criteria affecting aircraft performance.

(s) Other procedures and policy instructions regarding the certificate holder's operations issued by the certificate holder.

Subpart C—Aircraft and Equipment

19. Revise § 135.145 to read as follows:

§ 135.145 Aircraft proving tests.

(a) No certificate holder may operate an aircraft for which two pilots are required by this chapter for operations under VFR, if it has not previously proved such an aircraft in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of enroute airports as determined by the Administrator.

(b) No certificate holder may operate a turbojet airplane if it has not previously proved the same or another

turbojet airplane in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of enroute airports as determined by the Administrator.

(c) The Administrator may authorize deviations from this section if the Administrator finds that special circumstances make full compliance with this section unnecessary.

20. Amend § 135.167 by revising paragraph (a) introductory text and adding paragraph (d) to read as follows:

§ 135.167 Emergency equipment: Extended overwater operations.

(a) Except as provided in paragraph (d) of this section, no person may operate an aircraft in extended overwater operations unless it carries, installed in conspicuously marked locations easily accessible to the occupants if a ditching occurs, the following equipment:

* * * * *

(d) For a pressurized turbine-powered aircraft operating at an altitude greater than 25,000 feet, a person may elect not to comply with the equipment requirements in § 135.167(a)(2), (b) and (c) of this part provided that the flight does not proceed more than 30 minutes flying time or 100 nautical miles from the nearest shore, whichever is greater.

Subpart D—VFR/IFR Operating Limitations and Weather Requirements

21. Amend § 135.225 by revising paragraph (a) introductory text, redesignating paragraphs (b) through (h) as paragraphs (c) through (i), adding new paragraph (b), and revising redesignated paragraphs (d) and (h) to read as follows:

§ 135.225 IFR: Takeoff, approach and landing minimums.

(a) Except to the extent permitted by paragraph (b) of this section, no pilot may begin an instrument approach procedure to an airport unless—

* * * * *

(b) A pilot employed by an eligible on-demand operator may begin an instrument approach procedure to an airport if—

(1) Either that airport or the alternate airport has a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator; and

(2) The latest weather report issued by the weather reporting facility includes a current local altimeter setting for the destination airport. If no local altimeter setting for the destination airport is available, the pilot may use the current altimeter setting provided by the facility designated on the approach chart for the destination airport.

(3) For flight planning purposes, if the destination airport does not have a weather reporting facility described in paragraph (b)(1) of this section, the pilot must designate as an alternate an airport that has a weather reporting facility meeting that criteria.

* * * * *

(d) If a pilot has begun the final approach segment of an instrument approach to an airport under paragraph (c) of this section and a later weather report indicating below minimum conditions is received after the aircraft is—

* * * * *

(h) Except as provided in paragraph (i) of this section, if takeoff minimums are not prescribed in part 97 of this chapter for the takeoff airport, no pilot may takeoff an aircraft under IFR when the weather conditions reported by the facility described in paragraph (a)(1) of this section are less than that prescribed in part 91 of this chapter or in the certificate holder's operations specifications.

* * * * *

Subpart E—Flight Crewmember Requirements

22. Amend § 135.247 by adding paragraph (a)(3) to read as follows:

§ 135.247 Pilot qualifications: Recent experience.

(a) * * *

(3) Paragraph (a)(2) of this section does not apply to a pilot in command of a turbine-powered airplane that requires more than one pilot crewmember, provided that pilot has complied with the requirements of paragraph (a)(3)(i) or (ii) of this section:

(i) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) That pilot has accomplished and logged at least 3 takeoffs and 3 landings to a full stop, as the sole manipulator of the flight controls, in a turbine-powered airplane that requires more than one pilot crewmember. The pilot must have performed the takeoffs and landings during the period beginning 1 hour after sunset and ending 1 hour before sunrise within the preceding 6 calendar months prior to the month of the flight.

(ii) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) Within the preceding 12 calendar months prior to the month of the flight, the pilot must have completed a training program that is approved under part 142 of this chapter. The approved training program must have required and the pilot must have performed, at least 6 takeoffs and 6 landings to a full stop as the sole manipulator of the controls in a flight simulator that is representative of a turbine-powered airplane that requires more than one pilot crewmember. The flight simulator's visual system must have been adjusted to represent the period beginning 1 hour after sunset and ending 1 hour before sunrise.

23. Amend § 135.251 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 135.251 Testing for prohibited drugs.

* * * * *

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator may use any contractor to perform a function listed in appendix I

to part 121 of this chapter unless that contractor tests each employee performing such a function for the certificate holder or operator in accordance with that appendix.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of appendix I to part 121 and emergency maintenance is required, the certificate holder may use persons not meeting the requirements of paragraph (b) of this section to provide such emergency maintenance. A certificate holder shall give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM–800, 800 Independence Avenue, Washington, DC, 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder shall retain copies of all such written notifications for two years.

(d) For purposes of this section, emergency maintenance means maintenance which—

(1) Is not scheduled and

(2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

24. Amend § 135.255 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 135.255 Testing for alcohol.

* * * * *

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator shall use any person who meets the definition of ''covered employee'' in appendix J to part 121 to perform a safety-sensitive function listed in that appendix unless such person is subject to testing for alcohol misuse in accordance with the provisions of appendix J.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of appendix J to part 121 and emergency maintenance is required, the certificate holder may use persons not meeting the requirements of paragraph (b) of this section to provide such emergency maintenance. A certificate holder shall give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM–800, 800 Independence Avenue, Washington, DC, 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder shall retain copies of all such written notifications for two years.

(d) For purposes of this section, emergency maintenance means maintenance which—

(1) Is not scheduled, and

(2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

Subpart G—Crewmember Testing Requirements

25. Revise § 135.291 paragraph (b) to read as follows:

* * * * *

(b) Permits training center personnel authorized under part 142 of this chapter who meet the requirements of sections 135.337 and 135.339 to conduct training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

Subpart H—Training

26. Amend § 135.321 by revising paragraph (b)(7) to read as follows:

§ 135.321 Applicability and terms used.

* * * * *

(b) * * *

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that conducts training, testing, and checking under contract or other arrangement to certificate holders subject to the requirements of this part.

* * * * *

27. Amend § 135.324 by revising paragraphs (a) and (b) introductory to read as follows:

§ 135.324 Training program: Special rules.

(a) Other than the certificate holder, only another certificate holder certificated under this part or a training center certificated under part 142 of this chapter is eligible under this subpart to conduct training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

(b) A certificate holder may contract with, or otherwise arrange to use the services of, a training center certificated under part 142 of this chapter to conduct training, testing, and checking required by this part only if the training center—

* * * * *

Subpart I—Airplane Performance Operating Limitations

28. Amend § 135.385 by revising paragraph (b) and adding paragraphs (f) and (g) to read as follows:

§ 135.385 Large transport category airplanes: Turbine engine powered: Landing limitations: Destination airports.

* * * * *

(b) Except as provided in paragraph (c), (d), (e), (f), or (g) of this section, no person operating a turbine engine powered large transport category airplane may take off that airplane unless its weight on arrival, allowing for normal consumption of fuel and oil in flight (in accordance with the landing distance in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions anticipated there at the time of landing), would allow a full stop landing at the intended destination airport within 60 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining the allowable landing weight at the destination airport the following is assumed:

* * * * *

(f) Eligible on-demand operators flying a turbine engine powered large transport category airplane on an on-demand flight may not take off that airplane unless, on arrival at its destination or alternate airport, the airplane is able to come to a full stop landing within 85 percent of the effective length of the runway, from a point 50 feet above the intersection of the obstruction plane and the runway, considering the runway elevation, airplane weight, ambient temperature and wind conditions anticipated upon arrival at that airport. The computation of landing weight and stopping distance must be done in accordance with the Airplane Flight Manual for that airplane, assuming:

(1) The airplane is landed on the most favorable runway and in the most favorable direction, in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of the airplane, and considering other conditions such as landing aids and terrain.

(g) Eligible on-demand operators flying a turbine engine powered large transport category airplane on an on-demand flight may take off that airplane at a weight in excess of that allowed by the runway margin in paragraph (f) of this section if such operation is permitted by an approved Destination Airport Analysis in that person's operations manual and an alternate airport meeting the criteria of § 135.387(b) is selected.

29. Revise § 135.387 to read as follows:

§ 135.387 Large transport category airplanes: Turbine engine powered: Landing limitations: Alternate airports.

(a) No person may select an airport as an alternate airport for a turbine engine powered large transport category airplane unless (based on the assumptions in § 135.385(b)) that airplane, at the weight anticipated at the time of arrival, can be brought to a full stop landing within 70 percent of the effective length of the runway for turbo-propeller-powered airplanes and 60 percent of the effective length of the runway for turbojet airplanes, from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

(b) Eligible on-demand operators may select an airport as an alternate airport for a turbine engine powered large transport category airplane if (based on the assumptions in § 135.385(f)) that airplane, at the weight anticipated at the time of arrival, can be brought to a full stop landing within 85 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

PART 142—TRAINING CENTERS

The authority citation for part 142 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

Subpart A—General

30. Amend § 142.1 by revising paragraph (a), republishing paragraph (b) introductory text, revising paragraphs (b)(1), (b)(4) and (b)(5)and adding paragraph (b)(6) asset forth below, and by removing paragraph (c):

§ 142.1 Applicability.

(a) This subpart prescribes the requirements governing the certification and operation of aviation training centers. Except as provided in paragraph (b) of this section, this part provides an alternative means to accomplish training required by parts 61, 63, 91, 121, 125, 127, 135, or 137 of this chapter.

(b) Certification under this part is not required for training that is—

(1) Approved under the provisions of parts 63, 91, 121, 127, 135, and 137;

* * * * *

(4) Conducted by a part 121 certificate holder for another part 121 certificate holder;

(5) Conducted by a part 135 certificate holder for another part 135 certificate holder; or

(6) Conducted by a part 91 fractional ownership program manager for another part 91 fractional ownership program manager.

Issued in Washington, DC, on June 28, 2001.

Nicholas A. Sabatini,

Director, Office of Flight Standards.

[FR Doc. 01–17503 Filed 7–11–01; 2:14 pm]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
July 18, 2001

Part III

Department of Health and Human Services

Centers for Medicare and Medicaid Services

Emergency Clearance; Public Information Collection Requirements Submitted to the Office of Management and Budget; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10046]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and possible public harm.

The new Administration plans to implement the Medicare-Endorsed Rx Discount Card Initiative by November 1, 2001 and wants to include this in the Fall beneficiary education campaign. In order to meet this date, we need immediate review and approval of collection.

CMS is requesting OMB review and approval of this collection by July 20, 2001, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by July 19, 2001.

Type of Information Collection Request: New collection; *Title of Information Collection:* Medicare Endorsed Rx Discount Card Initiative; *Form No.:* CMS–10046 (OMB# 0938–XXXX); *Use:* CMS is soliciting applications from prescription discount card programs so that it may endorse qualifying programs for Medicare beneficiaries. CMS, on its Web site, the consortium, and the endorsed programs, on request, will make information available for Medicare beneficiaries to use to compare the programs for possible enrollment in one of them; *Frequency:* Annually, Semi-annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 15 (estimated); *Total Annual Responses:* 15 (estimated); *Total Annual Hours:* 2,700.

Background

The Centers for Medicare & Medicaid Services (CMS) is seeking applications from qualified entities interested in entering into a Medicare endorsement agreement for their prescription discount card program. The general purpose of this Medicare endorsement agreement will be to publicize information that allows Medicare beneficiaries to compare prescription drug discount cards, assist Medicare beneficiaries in understanding and accessing private market methods for securing discounts on the purchase of prescription drugs, and raise beneficiary awareness of prescription drug discount card programs available in the commercial market. Around 73% of Medicare beneficiaries have drug coverage at any given time—but only 45% have uninterrupted coverage for 2 consecutive years. We expect this initiative will help beneficiaries, particularly those who lack prescription drug coverage, understand how drug discount card programs can lower beneficiary out-of-pocket prescription drug expenses. This effort is not, in any way, an offer of a Medicare-reimbursed drug benefit.

Readers can find the application for this initiative attached to this notice and on the Web site listed below. This notice is subject to OMB approval.

We have submitted a copy of this notice to OMB for its review of these information collections. This notice will be published in the **Federal Register**.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. The application will also be posted on *http://www.hcfa.gov/news/pr2001/pr010712__s.htm.*

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and record keeping requirements must be received by the designees referenced below, by July 19, 2001:

Centers for Medicare & Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–0207, Attn: John P. Burke III, CMS–10046

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Phone: (202) 395–4650, Fax Number: (202) 395–6974, Attn: Allison Eydt, CMS Desk Officer.

Dated: July 17, 2001.

Julie Brown,

Acting CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

Medicare-Endorsed Rx Discount Card Initiative

Notice of Application

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1.0 Introduction

The Centers for Medicare & Medicaid Services (CMS) is seeking applications from qualified entities interested in entering into a Medicare endorsement agreement. Applications are to be submitted according to the process described in this Notice under ''Applicant Instructions.''

The general purpose of such agreements will be to publicize information that allows Medicare beneficiaries to compare prescription drug discount cards; assist Medicare beneficiaries in understanding and accessing private market methods for securing discounts on the purchase of prescription drugs; and to raise beneficiary awareness of prescription drug discount card programs available in the commercial market.

Model language of the endorsement agreement can be found in Section 7.0. Qualifying applicants will be required to sign such an agreement.

Around 73% of Medicare beneficiaries have drug coverage at any given time—but only 45% have uninterrupted coverage for 2 consecutive years. We expect this initiative will help beneficiaries, particularly those who lack prescription drug coverage, understand how drug discount card programs can lower beneficiary out-of-pocket prescription drug expenses. This effort is not, in any way, an offer of a Medicare-reimbursed drug benefit.

Objectives

The objectives of this initiative are to:

- Provide a mechanism for Medicare beneficiaries to gain access to the effective tools widely used by prescription benefit managers in private health insurance plans to get lower drug prices and higher-quality pharmaceutical care.
- Publicize information (including drug-specific prices, formularies, and networks) that allows Medicare beneficiaries to compare prescription drug discount cards and choose the best card for them.
- Educate Medicare beneficiaries about private market methods for securing discounts on the purchase of prescription drugs.
- Enhance participation of seniors in discount systems, increasing the leverage and ability of these plans to negotiate discounts for seniors.
- Endorse qualified private sector prescription drug discount cards based on experience, customer service, discounts and access, and permit endorsed organizations to market their programs as Medicare-endorsed.
- Provide Medicare beneficiaries a low ($25 maximum) or no-cost opportunity to enroll in a Medicare-endorsed prescription drug discount program.

To meet these objectives, CMS plans to endorse prescription drug discount card programs that meet qualification criteria, and to permit successful applicants to market and label their programs as ''Medicare-endorsed.'' Medicare's endorsement will be based on meeting qualifications related to experience, customer service, discounts and access. The endorsement will be for 14 months. Announcements of the Medicare-endorsed discount card programs will begin in the Fall of 2001, with the first endorsement cycle being effective on November 1, 2001 through December 31, 2002.

CMS believes the Medicare endorsement will facilitate educating beneficiaries about discount card programs. ''Medicare'' is an extremely valuable and highly regarded program for nearly 40 million Medicare beneficiaries. Medicare focus groups indicate that virtually all seniors recognize the name ''Medicare''. Medicare's name recognition is so strong that it is unlikely to be duplicated in the commercial market.

CMS is committed to educating Medicare beneficiaries about the endorsed discount card programs, at the time the endorsements are announced and as part of ongoing education efforts thereafter. CMS anticipates that there will be national media attention when the Medicare-endorsed discount card programs are announced in the Fall of 2001. Throughout the Fall, CMS will provide information to the public about the discount card programs. On an ongoing basis, CMS plans to highlight the Medicare-endorsed discount card programs in Medicare publications and in the pre-enrollment package received by all beneficiaries upon eligibility for Medicare. CMS plans to provide descriptive information for each Medicare-endorsed prescription drug discount card program on the Medicare Web site (http://*www.medicare.gov*) beginning in October 2001. The information posted will include a basic card program description, the date on which Medicare beneficiaries may begin to enroll, the date the beneficiaries have access to discounts (if different from the beneficiaries' enrollment date), and the phone numbers of the endorsed card programs. In addition, general information will be available to Medicare beneficiaries through the toll-free information line (1–800–MEDICARE). CMS plans to educate beneficiary and consumer groups, health care providers, States and other interested groups about the discount programs.

As a result of the CMS endorsement, Medicare name recognition, and plans to educate Medicare beneficiaries about these discount card programs, we anticipate that successful applicants will have increased visibility for their discount drug card programs, which will lead to greater enrollment by Medicare beneficiaries. We expect that the formulary/network/education attributes of the program, coupled with exclusive enrollment, will provide card sponsors the necessary market leverage to negotiate significant and competitive drug manufacturer rebates. These rebates could be used to lower drug prices for program enrollees or shared with retail pharmacies.

Program Overview

CMS has established a set of qualifications commonly used in the marketplace that are more fully explained in Section 3.0 of this Notice. All applicants that meet or exceed these qualifications will be Medicare-endorsed. These qualifications are intended to provide Medicare beneficiaries with access to discount card programs with national or regional capabilities and discounts on at least one brand and/or generic prescription drug in each therapeutic class. In addition, the Applicant's organization must be a non-governmental entity and must demonstrate relevant experience, a

high level of customer service, and size sufficient to handle the anticipated volume. Key aspects of each Medicare-endorsed discount card program shall include the ability to:

• Enroll all Medicare beneficiaries wishing to participate, recognizing that the discount card programs do not supplant drug coverage under an insured product. CMS' educational materials will address the differences between discount programs and insured products;

• Provide a discount on at least one brand and/or generic prescription drug in each therapeutic class;

• Offer a national or regional pharmacy network, providing strong retail access. CMS also strongly encourages applicants to include a mail-order service as part of their program;

• Charge no fees to CMS;

• Charge an enrollment fee of no more than $25 per beneficiary to fund enrollment administration expenses. The enrollment fee, if any, is assessed on initial enrollment in a particular card program only. No additional (e.g., annual) fees may be required for beneficiaries to maintain their enrollment in that card program;

• Provide customer service to participating beneficiaries, including enrollment and toll-free telephone customer service help;

• Verify (through consortium described below) that enrolled applicants are not already participating in another Medicare-endorsed drug discount card program. Beneficiaries will be permitted to enroll in only one Medicare-endorsed drug discount program at a time. Allowing enrollment in only one program better pools beneficiary market power to secure deeper discounts. Beneficiaries may disenroll from an organization and enroll in another program on a semi-annual basis; and

• Agree to participate in, fund, and abide by the guidelines of a private consortium with other Medicare-endorsed discount card programs to perform administrative functions, as defined in Section 7.2. The consortium's activities will include the operation of a system to verify enrollment exclusivity and the review of marketing materials used by each program.

The consortium will also make available comparative information on each Medicare-endorsed drug discount card program. Information will be available on the consortium's Web site and in hard copy.

• Beginning no later than November 1, 2002, the comparative information will include drug/dose-specific prices (inclusive of discount and dispensing fee) for a sufficient number of drugs to allow beneficiaries to make an informed choice.

• Prior to November 1, 2002, the comparative information will include average discounts (expressed as a percentage off Average Wholesale Price, or AWP) for the most commonly used drugs, as determined by the consortium, for each Medicare-endorsed program.

Applicants are required to limit participation in their Medicare-endorsed discount card program to Medicare beneficiaries. CMS will not provide data or assistance to verify Medicare eligibility. Successful applicants will be responsible for verifying Medicare beneficiary eligibility.

Discount card programs may choose to enroll groups of beneficiaries (including Medicare+Choice plan members, Medigap enrollees, and beneficiaries with employer-sponsored retiree health insurance).

Applicants are expected to fund the cost of administering the discount card program. Consortium members will decide how to assess fees on member organizations for start-up and ongoing operations of the consortium. The Federal government shall not be charged for enrollment, administration, participation, or any other cost associated with a discount program.

Applicants are encouraged to negotiate with drug manufacturers for rebates. Applicants may retain any manufacturer rebates or other fees associated with the discount program, but are encouraged to pass a portion of these on to enrollees or retail pharmacies. Discount programs will not be expected to share rebates with Medicare, nor disclose this revenue information to CMS.

Successful applicants will be expected to administer and market their discount card program, and educate Medicare beneficiaries about the program. In order to secure deeper discounts for beneficiaries, Medicare-endorsed discount card programs could use formularies, patient education, pharmacy networks, mail order, and other commonly used tools.

Programs are expected to begin accepting enrollment as of November 1, 2001, and must begin providing discounts no later than January 1, 2002.

CMS encourages applicants and the consortium to develop features that could further add value through improved discounts to Medicare beneficiaries, customer service, reporting/analysis, educational or other efforts (e.g., drug interaction analysis).

Discount card programs must have in place a mechanism to ensure that beneficiaries may elect not to receive non-prescription drug related marketing material from Medicare-endorsed programs (e.g., material related to other services provided by the same organization). The sharing of beneficiary information must comply with applicable State and Federal privacy laws, as well as the privacy regulations established under the authority of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Organizations that offer discounts on items or services other than prescription drugs may continue to offer them; however, Medicare's endorsement will not extend to such items and services. Organizations must disclose these features to beneficiaries, and provide them an opportunity to decline participation related to them.

Although this notice refers to the initiative's requirements to be implemented after the first year of operation, the Medicare endorsements granted under this notice will be valid only from November 1, 2001 through December 31, 2002. Thereafter, CMS will review organizations' qualifications for endorsement annually.

2.0 Applicant Instructions

2.1 Intent to Respond and Pre-Application Conference

• CMS will hold a Pre-application Conference on July 23, 2001 for all interested Applicants. The purpose of this conference is to give Applicants an opportunity to ask questions and to provide individual comments concerning this Notice. Based on the results of this conference, CMS may provide additional clarification in consideration of the individual suggestions of potential applicants. CMS may also modify the qualifications in Section 2.2 below after the pre-application conference.

• Any modifications made to the scope of the initiative as a result of comments received during the pre-application conference will be published on the CMS Web site www.hcfa.gov on or about July 27, 2001.

• In order to receive additional information about the Pre-Application Conference and for future correspondence, potential Applicants are asked to indicate their intention to respond to this Notice by July 20, 2001.

• Your intent to respond should indicate your primary contact, and include your contact's:

—Direct telephone number;
—Fax number;
—E-mail address; and,
—Mailing address.

• The intent to respond should be in writing and sent to: Ron Deacon, Email: *rdeacon@cms.hss.gov*, Phone: (410) 786–6622, Fax: (410) 786–1048.

2.2 Approach to Application, Qualifications, and Evaluation

• Applicants are expected to submit sufficiently comprehensive information to support their application. The application should be prepared in four parts:

Part I: Proposed Prescription Drug Discount Card Program. Provide a description of how you meet the qualifications described in Section 3.0.

Part II: Implementation Approach. Describe your implementation approach as requested in Section 4.0.

Part III: Administrative Capabilities. Describe your administrative capabilities as requested in Section 5.0.

Part IV: Certification. Submit the signed certification found in Section 6.0.

• Incomplete applications will not be evaluated.

• CMS reserves the right to request clarifications or corrections to a submitted application and to reject any and all applications.

• Applicants are advised that their application will become part of the official agreement file.

• This Notice does not commit CMS to pay any cost for the preparation and submission of an application.

• CMS reserves the right to amend or cancel this Notice.

Evaluation

Part I of the application will contain the information necessary for CMS to determine whether the proposed discount card program meets the qualifications outlined in the table below. This Part will also contain the responses to the questions raised in Section 3.0. These responses will be the basis of a Pass/Fail evaluation of whether each of the qualifications is met. A proposed discount card program that successfully meets all qualifications will be endorsed.

Summary of Qualifications

Category	Qualifications
Organization	—At least 5 years United States private sector experience in pharmacy benefit management or discount card industries, with demonstrated financial soundness (see section 3.1.1). —*National Program:* Currently manages at least 2 million covered lives in an insured pharmacy benefit or a drug discount program. Covered lives are discrete individuals who have signed enrollment agreements or paid an enrollment fee or insurance premiums (see section 3.1.2). —*Regional Program:* Currently manages at least 1 million covered lives in an insured pharmacy benefit or a drug discount program and serves a contiguous, multi-state area similar to CMS regions (see section 3.1.2). —Agrees to participate in, abide by the guidelines of, and fund a private consortium with other Medicare-endorsed discount cards for (1) reviewing marketing materials, (2) assuring enrollment exclusivity, and (3) making available via Web site and hard copy (for each Medicare-endorsed discount card program) prices of the most common drugs in each therapeutic class included in the discount card program (see section 3.1.3). —Has written privacy policies that comply with all consumer protection and State and Federal privacy laws (including applicable privacy regulations promulgated under HIPAA) (see section 3.1.4). —Complies with all other applicable Federal and State laws (see section 3.1.4).
Customer Service	—Charges an enrollment fee of no more than $25 to beneficiaries (see section 3.2.1). —Discloses in customer appropriate printed material (may additionally make electronic disclosure) to interested Medicare beneficiaries (prior to enrollment and after enrollment upon request) a detailed description of the program that includes participating pharmacies, enrollment fees (if any), drugs included, and their discounts (see section 3.2.1). —Enrolls all Medicare beneficiaries wishing to participate. Provide beneficiaries the option of enrolling by paper, telephone, fax or Internet (see section 3.2.1). —Provides a mechanism for beneficiaries to decline receiving marketing material (e.g., material related to other services offered by the organization) (see section 3.2.1). —Provides customer appropriate beneficiary and pharmacy services consistent with industry standards, including toll-free telephone help during normal business hours (see section 3.2.2). —Reports to CMS twice annually the number of Medicare beneficiaries enrolled in and disenrolled from the Medicare-endorsed Discount Card Program (see section 3.2.3).
Discounts and Access	—No later than January 1, 2002, provides a discount on at least one brand and/or generic prescription drug in each therapeutic class (see sections 3.3.2 and 3.3.3). —Guarantees participating Medicare beneficiaries receive (at the point of sale) the lower of the discounted price available through the program or price the pharmacy would charge a ''cash'' paying customer (commonly called the Usual & Customary price) (see section 3.3.3). —Agrees to make available to the consortium information on discounts offered. In the first year, the information will include the average discount off the AWP for the most commonly used drugs, as determined by the consortium. In the second year and beyond, the information will include prices to the consumer of commonly prescribed drugs (see sections 3.1.3, 3.3.2, and 3.3.3). —Maintains a national or regional contracted pharmacy network consistent with industry practice in member travel distance and access to network pharmacies. Applicants are strongly encouraged to offer a mail order option in addition to their contracted pharmacy network (see section 3.3.1).

2.3 Application Format

• In preparing your application, please repeat each question followed by your response. Provide complete answers, and detail the opportunities and value your organization and discount card program offer to Medicare beneficiaries, in a clear, concise manner. All information requested is important and will be considered. If you have additional information you would like to provide, please include it as an appendix to your application, and cross reference its relation to the information requested.

• Applicants should deliver one (1) original and nine (9) copies of the written application with one (1) diskette copy of the application in Microsoft Office format to the following address

by 5:00 EDT, August 27, 2001. Centers for Medicare & Medicaid Services (CMS), Center for Beneficiary Choices, Attn: Ron Deacon, 410–786–6622, 7500 Security Boulevard, Mail Stop C4–17–27, Baltimore, Maryland 21244–1850.

• All copies and the original application should be in 3-ring binders. Tab indexing should be used to identify all major sections of the application.

• Page size should be 8½ by 11 inches and the pages should be numbered. Type size should not be less than 12 point with a space and a half between lines.

2.4 Important Dates

Date	Milestone
July 20, 2001	Notification of Intent to Apply.
July 23, 2001	Pre-Application Conference.
On or about July 27, 2001.	Any clarifications about the scope of the initiative published on CMS Web site (www.hcfa.gov).
Aug. 27, 2001 ...	Applications Due.
Sept. 14, 2001 ..	Begin Announcements of Endorsements
Sept. 21, 2001 ..	Begin submission of marketing material for review.
Nov. 1, 2001	Successful Applicants Permitted to Begin Marketing and Enrolling Participants in ''Medicare-Endorsed'' Discount Card program(s).

2.5 Applicant Inquiries

• It would be helpful if questions regarding this Notice or requests for additional information were submitted prior to the Pre-Application Conference to be held on July 23, 2001. Any modifications or clarifications made to the scope of the initiative as a result of comments received during the pre-application conference will be published on the CMS Web site http://*www.hcfa.gov* on or about July 27, 2001.

• Contact the following to submit your questions and requests via e-mail or fax before the conference: Centers for Medicare & Medicaid Services, Center for Beneficiary Choices, Attn: Ron Deacon, Phone: 410–786–6622, Fax: 410–786–1048, E-mail: *rdeacon@cms.hhs.gov.*

2.6 Withdrawal of an Application

• An applicant may withdraw an application at anytime before the agreement (Section 7.0) becomes effective, by submitting a written notification for its withdrawal to the CMS contact noted above.

• For the purpose of selecting applicants for Medicare endorsement, CMS will not accept any amendments, revisions, or alterations to applications after the due date of August 27, 2001 unless requested by CMS.

2.7 Information Available From CMS

• In order for Applicants to prepare their applications, CMS will provide the following information upon request:

CMS will provide aggregate data on counts of Medicare beneficiaries by zip code. The ''Annual Zip Code Enrollment File'' is a public use file and contains aggregated aged and disabled enrollment data by age range, race, and gender within zip code. The file is usually produced in April and reflects enrollment as of July 1 of the previous year. This file has been edited to protect the privacy of beneficiaries. For purposes of the new privacy regulations, Applicants will also be required to complete a Data Use Agreement (DUA) which is appended as Attachment A to this Notice. There is an expedited process in place to review and approve DUAs for enrollment data and information should be available within 1 week after request. The data will be on a cartridge.

Upon request, CMS will also provide drug utilization data from the Medicare Current Beneficiary Survey. The data will be on a CD in ASCII format. The file will include a random sample of unnamed, non-identifiable, non-institutionalized Medicare beneficiaries. For each unidentified individual, the file includes: prescription drug utilization information (e.g., drug name, dosage, number of prescriptions), date of birth, gender and prescription drug insurance coverage status (e.g., no drug coverage, or covered through a payer such as Medicaid, a Medicare+Choice organization, Medigap, or employer-sponsored retiree plan). The data is self-reported by beneficiaries. The attached DUA can also be used for this information.

• To obtain the above information, please submit a signed and completed DUA to: Ron Deacon, Centers for Medicare & Medicaid Services (CMS), Center for Beneficiary Choices, 7500 Security Boulevard, Mail Stop C4–17–27, Baltimore, Maryland 21244–1850, Phone: 410–786–6622, Fax: 410–786–1048. (Original document must also be mailed to CMS.)

• Please call the above contact if you have any questions concerning the data.

2.8 Protection of Confidential Commercial Information

• If any information within a submitted application (or attachments thereto) is labeled by the applicant as a trade secret or privileged or confidential information, and constitutes a trade secret or privileged or confidential information (as such terms are interpreted under the Freedom of Information Act and applicable case law), then such information will be protected from release by CMS under 5 U.S.C. § 552(b)(4).

2.9 Certification Instructions

Pursuant to the Certification Statement in Section 6.0, any changes to the information furnished in this application must be reported to:

Prior to Endorsement Announcement: Centers for Medicare & Medicaid Services (CMS), Center for Beneficiary Choices, Attention: Ron Deacon, 7500 Security Boulevard, Mail Stop C4–17–27, Baltimore, Maryland 21244–1850.

After Endorsement Announcement: Centers for Medicare & Medicaid Services (CMS), Center for Beneficiary Choices, Attention: Christopher Eisenberg, 7500 Security Boulevard, Mail Stop C4–23–07, Baltimore, Maryland 21244–1850.

3.0 Proposed Prescription Drug Discount Card Program

• Please respond to the following questions regarding your qualifications. You may submit additional information that demonstrates your ability to meet and/or exceed the summary of qualifications found in Section 2.0.

3.1 Your Organization

3.1.1 Experience and Financial Soundness

• Provide a brief summary of the history, structure, and ownership of your organization. Include a chart showing the structure of the organization's ownership, subsidiaries and business affiliations.

• Provide the most recent audited financial statements (including auditor's opinions and related footnotes) for your organization or its parent firm (if applicable).

• Report financial ratings given to your organization for the past five years.

• List past or pending investigations and legal actions brought against your organization (and the parent firm if applicable) by any financial institution, government agency (local, State, or Federal) or private organization over the past five years. If directly related to prescription drug services, provide a brief explanation including the following: (1) Circumstances; (2) Status (pending or closed); and (3) If closed, provide details as to resolution and any monetary damages.

3.1.2 Business Volumes

• Complete the following table. If your organization underwent significant change in 2000, or you expect 2001 to have substantially different business volumes please comment and provide your 2001 projected business volumes (in addition to your business volumes for 2000).

2000 BUSINESS VOLUMES

Metric	Insured pharmacy benefits*		Drug discount card programs	
	Retail	Mail	Retail	Mail
Covered lives**				
Senior lives (if available)				
Claims processed or number of discounted prescriptions				
Drug spending managed			N/A	N/A

* Exclusive of any drug discount card programs.
** Covered lives are discrete individuals who have signed enrollment agreements or paid an enrollment fee or an insurance premium.

• Please provide a description of your current clients including the number of covered lives and percentage who are seniors. Covered lives are discrete individuals who have signed enrollment agreements or paid an enrollment fee or paid insurance premiums.

• Please indicate if your proposed discount card program is a retail store only program or a retail store and mail order program.

• Please indicate if your program is national or regional. The CMS Web site where discount card program information will be posted searches by zip code and State. Provide enough information to clearly identify areas that you serve among the following: Each of the 50 States, Washington, D.C., Guam, and each of the U.S. territories.

3.1.3 Participation in and Funding of Consortium

• Describe how your organization anticipates working with the consortium (described in Sections 1 and 2, and in section 7.2) to ensure that the functions of the consortium are performed.

• Describe your organization's ideas for the development, implementation, and financing of the consortium. Assuming it is responsible for marketing review, enrollment exclusivity, and dissemination of comparative pricing data, discuss the level and extent of your organization's financial contribution to the initial and ongoing operation of the consortium.

• Describe your organization's capability and process for supporting the activities of the consortium and providing information on discounts offered. In the first year, the information will include the average discount off the AWP for the most commonly used drugs. In the second year and beyond, the information will include prices to the consumer of commonly prescribed drugs.

3.1.4 Compliance With Federal and State Laws

• Indicate compliance with Federal and State laws applicable to the conduct of your proposed discount card program (e.g., applicable regulations under HIPAA, State privacy laws, State licensure, and consumer protection laws).

3.2 Customer Service

3.2.1 Enrollment and Eligibility

• Describe the information about your discount card program that will be provided to Medicare beneficiaries prior to enrolling.

• Indicate whether your organization will charge an enrollment fee, and if so, the fee amount to offset enrollment administration costs.

• Programs are expected to begin accepting enrollment as of November 1, 2001. Describe your organization's abilities (e.g., paper, fax, phone, Internet) and process for enrolling Medicare beneficiaries in your proposed discount card program, and for maintaining this information (e.g., address changes, participant withdrawals).

• Will Medicare beneficiaries be able to enroll in your discount card program at the point-of-service (e.g., retail pharmacy)?

• What information would be collected from Medicare beneficiaries at the time of enrollment in your discount card program? What of this information would be required for enrollment? (See Section 7.6. for confidentiality requirements.)

• Upon your receipt of enrollment information, how long is required before a Medicare beneficiary can use the discount card program? Is this guaranteed? If so, what mechanisms do you have to monitor and enforce this guarantee?

• What mechanisms do you have to monitor and enforce the restriction that enrollment is limited to Medicare beneficiaries?

• Explain the information members receive after enrolling in your discount card program, including program updates (e.g., listing of participating pharmacies, drugs included, discount amounts, how to obtain discounts, etc.)

—How soon after enrollment will they receive this information? How is the information provided (Applicant must have a system to provide notification by mail, but may provide option to beneficiaries for electronic notification.)?

• Describe how you will ensure that beneficiaries may decline receiving marketing material regarding your program or regarding additional services offered by your organization.

• Describe whether it will service Guam and the U.S. territories.

3.2.2 Customer Service—Education and Information Services

In all of the following areas please describe how your organization meets or exceeds industry standards:

• The capabilities of your call center, including:

—Peak and average call volumes, per week, and number of customer service representatives.

• Your ability and experience providing customer service and call center support to seniors, people with disabilities, and non-English-speaking beneficiaries.

• The level of toll-free support you will provide Medicare beneficiaries and pharmacies participating in your discount card program. Include your:

—Forecast call volume and handle time for Medicare beneficiaries;
—Hours of operation;
—Average speed of answer; and
—Abandonment rate.

• Explain in detail how your customer service function would respond to the following:

—Questions concerning differences between the Medicare-endorsed discount card program, other discount programs and prescription drug insurance;
—Discount card program inquiries, prior to enrollment;
—Problems in the enrollment process;
—Questions concerning drug costs;
—Lost or stolen ID cards;
—Mail service questions, issues and concerns (if applicable);
—Pharmacy questions.

• Describe your organization's experience and processes for managing customer complaints and grievances, and the processes your organization expects to have in place for Medicare beneficiaries under your discount card program.

3.2.3 Reporting

• Describe the standard report your organization will submit twice a year on the number of Medicare beneficiaries enrolled and disenrolled. Provide sample report format.

• Describe any additional standard reports your organization will provide CMS, at no charge. Provide sample report formats.

3.3 Access and Discounts

3.3.1 Pharmacy Access

Retail Pharmacy

• Using GeoAccess or a similar methodology, demonstrate that the contracted pharmacies participating in your proposed Medicare-endorsed discount card program meet standards consistent with industry practice for member travel distance and access to contracted network pharmacies. Provide the total number of pharmacies participating in your discount card program's network. A zip code data file is available on cartridge from CMS upon request and acceptance by CMS of the attached DUA (Attachment A).

• For the geographic area you propose to serve, please provide the number of Medicare beneficiaries within varying travel distances to contracted network pharmacies (i.e., within 5 and 10 miles).

• Please describe the nature of your network pharmacy contracts. Do your network pharmacy contracts explicitly cover discount card programs? Are they in compliance with all applicable state laws?

Mail Order (If Applicable)

• If your discount card program includes mail service, please provide a detailed description of this service, including:

—Turnaround time;
—Process for Medicare beneficiaries to use the mail service, including paperwork to be completed, any Internet and payment methods, and average processing time;
—Process for resolving the problems commonly found with mail pharmacies (e.g., lost prescription, lost medication);

3.3.2 Drugs Included

• Comment on the drugs your discount card program includes (including at least one drug in each therapeutic class). Please indicate which, if any, of the attached list of drugs commonly used by Medicare beneficiaries (Attachment B), your program will include.

3.3.3 Discounts

• Describe the discount you will provide to Medicare beneficiaries participating in your discount card program (a discount must be provided on at least one brand and/or generic prescription drug in each therapeutic class). Please indicate the average discount level (by brand and generic, by retail and mail order), and the maximum range for each category.

• Your discount should reflect network discounts, manufacturer rebates, dispensing fees and any revenue sources available to you net of your need to fund your administrative costs from these sources.

—Your pricing should be reported as a discount off average wholesale price (AWP), as reported by FirstDatabank, and be consistent with industry standards for reimbursing network pharmacies dispensing covered drugs to qualified members.
—Your discount must include all dispensing fees and other fees (if applicable).

• Describe any dispensing or other fees (if applicable).

• If your discount card program features maximum allowable cost (MAC) pricing, provide the AWP discount equivalent. For those drugs not receiving MAC pricing, provide the AWP discount.

• How does your program guarantee that Medicare beneficiaries will receive (at point of sale) the lower of the discounted price available through the program or the price the pharmacy would charge a cash paying customer?

• Explain how your organization enforces and monitors the pricing discount.

3.4 Additional Discounts and Services

• CMS encourages applicants to offer better pricing to those Medicare beneficiaries willing to restrict drug choice to preferred brands or generics, fill prescriptions through a narrower pharmacy network, or use mail order pharmacy service. Organizations are encouraged to negotiate rebates with drug manufacturers. Medicare-endorsed organizations are not expected to share rebates or other revenues received with Medicare, but are encouraged to share the rebates with beneficiaries or retail pharmacies. Provide a description of your program's features in these areas including drugs included, discounts offered, scope of contracted pharmacy network, mechanism for sharing rebates with enrollees and pharmacies, and other features.

• Describe additional services that your organization offers with its proposed discount card program that significantly increases its value. Areas for consideration include:

—Approach to marketing and promoting your card program;
—Clinical services such as drug utilization review (DUR) that would help minimize inappropriate dosing, drug-drug interaction, drug-allergy interaction or similar situations;
—Educational material provided to participating Medicare beneficiaries that address medications, diseases, or wellness;
—Value added reporting to CMS or Medicare beneficiaries that could include the cost savings realized by Medicare beneficiaries participating in your card program.

• Describe discounts on other services (e.g., dental, vision) that will be offered to Medicare beneficiaries, if any.

—Describe how Medicare beneficiaries could decline to receive these additional services or marketing related to them.
—Would there be an additional fee related to these services? What is the annual fee for these services, if any, for 2001 and 2002?
—How will you assure that use of the Medicare name is not applied to these additional services?

4.0 Approach

• Please describe your approach to implementing your proposed discount card program:

Include a work plan and schedule in Microsoft Office format or similar software.

5.0 Administrative Capabilities

• The Medicare endorsement is effective on November 1, 2001. Specify the date on which Medicare beneficiaries may enroll in your discount card program, (should it be

endorsed); what date potential enrollees may call the organization for more information about the Medicare-endorsed discount card program; what phone number beneficiaries should call for more information about your program; and on what date Medicare beneficiaries can expect to begin receiving discounts on prescription drugs, if earlier than January 1, 2002;

• Provide the number of Medicare beneficiaries you expect to enroll in your discount card program at 1 month, 6 months, and 12 months.

• Describe how your operations and service levels will change to accommodate Medicare beneficiary volume and to meet your proposed service levels. Include in your description the expected impact on your customer service functions (e.g., enrollment call center support, participant communications, etc.)

• Include a list of names and proposed duties of the key personnel that will be assigned to this program, including but not limited to, the account manager and customer service manager. Provide resumes for these people that include work history, education, background, and industry accomplishments.

• Provide contact information for 3 of your largest clients including reference name, title, phone and fax, company name and address, years as a client, and a brief description of the services you have provided.

6.0 Certification

6.1 Prohibition of Misuse of Symbols, Emblems, or Names in Reference to Social Security or Medicare

42 U.S.C. 1320b–10 prohibits the misuse of the Medicare name or emblem. In general, it authorizes the Inspector General of the Department of Health and Human Services to impose penalties on any person who misuses the term Medicare, the symbols, emblems, or names of Social Security, the Centers for Medicare & Medicaid Services, Health and Human Services, Medicare (or other similar government entities), or the letters CMS, HHS, HCFA, DHHS or other similar letters in a manner which the person knows or should know gives the false impression that it is approved, endorsed, or authorized by CMS.

Offenders are subject to fines of up to $5,000 per violation or in the case of a broadcast or telecast violation, $25,000.

6.2 Penalties for Falsifying Information on the Medicare-Endorsed Rx Discount Card Initiative Application

18 U.S.C. 1001 authorizes criminal penalties against an individual who in any matter within the jurisdiction of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

Individual offenders are subject to fines of up to $250,000 and imprisonment for up to five years. Offenders that are organizations are subject to fines of up to $500,000. 18 U.S.C. 3571. Section 3571(d) also authorizes fines of up to twice the gross gain derived by the offender if it is greater than the amount specifically authorized by the sentencing statute.

6.3 Certification Statement

I, the undersigned, certify to the following:

(1.) I have read the contents of the completed application and the information contained herein is true, correct, and complete. If I become aware that any information in this application is not true, correct, or complete, I agree to notify the Centers for Medicare & Medicaid Services (CMS).

(2.) I authorize CMS to verify the information contained herein. I agree to notify CMS in writing of any changes in this application prior to such change or within 30 days of the effective date of such change. I understand that a change CMS deems to be major may require a new application and may result in termination of endorsement.

(3.) I agree that if my program meets the minimum qualifications and is Medicare-endorsed, I will abide by the requirements contained in Section 7.0 of this Notice and provide the services outlined in my application.

(4.) Neither I, nor owner, director, officer, or employee of the company or other organization on whose behalf I am signing this certification statement, or any contractor retained by the company or any of the aforementioned persons, currently is subject to sanction under the Medicare or Medicaid program, or debarred, suspended or excluded under any other Federal agency or program, or otherwise prohibited from providing services to CMS or other Federal Agency.

(5.) I understand that in accordance with 18 U.S.C. 1001, any omission, misrepresentation or falsification of any information contained in this application or contained in any communication supplying information to CMS to complete or clarify this application may be punishable by criminal, civil, or other administrative actions including revocation of endorsement, fines, and/or imprisonment under Federal law.

(6.) I further certify that I am an authorized representative, officer, chief executive officer, or general partner of the business organization that is applying for the endorsement.

Authorized Representative Name (printed)

Title

Authorized Representative Signature

Date (MM/DD/YY)

7.0 Model Agreement

[Qualified Applicant] agrees that, if Medicare-endorsed, the Applicant meets the requirements listed herein. [Qualified Applicant] agrees to implement a prescription drug discount card program as described in its application and as approved by CMS. Further, [Qualified Applicant] agrees to implement a prescription drug discount card program in accordance with the Objectives and Program Overview described in Section 1.0 (Introduction) of the Notice of Application entitled ''Medicare-Endorsed Rx Discount Card Initiative''.

7.1 Beneficiary Information

[Qualified Applicant] agrees to develop marketing materials and customer service strategies that incorporate educational information appropriate for a Medicare population regarding accessing market-based strategies (e.g., role of formularies, network pharmacies, and mail order pharmacy, if applicable) for purchasing prescription drugs.

7.2 Consortium

• [Qualified Applicant] agrees to participate in, abide by the guidelines of, and fund a HIPAA-compliant consortium with other Medicare-endorsed discount card programs. The consortium must comply with the privacy regulations promulgated under HIPAA upon the date of compliance specified in those regulations, as well as any applicable State privacy laws. The [Qualified Applicant] agrees to collaborate with other qualifying applicants to design and implement the consortium so that it can perform the administrative functions identified below.

• Provide a system to ensure that Medicare beneficiaries are enrolled in only one Medicare-endorsed discount card program at a time (actual enrollment will be conducted by

individual discount card programs). The consortium must assure enrollment exclusivity no later than December 31, 2001. The system could be enhanced after that date to more efficiently perform this function.

• Make available information regarding average discounts (expressed as a percentage off Average Wholesale Price or AWP) for the most commonly-used drugs as designated by the consortium for each Medicare-endorsed discount card program as close to November 1, 2001 as possible. (A CMS-produced list of commonly-used drugs is provided as Attachment B for reference only.) The consortium will publish this discount information on the Web site of the consortium and make available hardcopies to beneficiaries, upon request.

• Beginning no later than November 1, 2002, make available comparative information on each Medicare-endorsed drug discount card program that will include drug/dose-specific prices (inclusive of discount and dispensing fee) for a sufficient number of drugs to allow beneficiaries to make an informed choice, formularies, and networks. The prices to be made available are the prices the beneficiary would pay at a retail store and/or mail order program, including the discount and dispensing fee. [Qualified Applicant] agrees to provide all the necessary information regarding its discount card program, for comparison purposes, to the consortium no later than September 1, 2002.

• Review marketing material used by Medicare-endorsed discount card programs based on guidance provided by CMS. The consortium agrees to work with CMS to assure adherence to CMS marketing material review guidance. The consortium should be prepared to assume review of all marketing materials from CMS beginning September 1, 2002. Marketing materials will be reviewed to ensure that they convey accurate information, and are delivering pharmacy benefit management services (e.g., drug/drug interactions) promised, consistent with guidelines established by the CMS. [Qualified Applicant] agrees to provide all marketing materials to the consortium for review no later than September 1, 2002.

7.3 Enrollment System

[Qualified Applicant] shall assure that any Medicare beneficiary wishing to enroll is permitted to do so consistent with any eligibility criteria specified in [Qualified Applicant's] application and approved by CMS.

A beneficiary who enrolls in an Rx discount card program shall not enroll in another Medicare-endorsed card programs while enrolled. Beneficiaries who provide no disenrollment notice to the Applicant shall have their enrollment renewed following rules established by the Medicare-endorsed card program in its CMS approved application for endorsement, provided the Rx discount card program continues to be endorsed. Medicare beneficiaries may enroll in an alternative Medicare-endorsed discount card program if they are disenrolled or their card program withdraws or is terminated.

[Qualified Applicant] may charge an enrollment fee (not to exceed $25 per beneficiary) only upon enrollment. [Qualified Applicant] shall not require its Rx discount card program enrollees to pay annual or other fees to maintain their enrollment.

A beneficiary who enrolls in an Rx discount card program shall have the opportunity to select another card only twice a year, with a new election to be effective January 1 or July 1 of each year, whichever date immediately follows a beneficiary's provision of notice of a new election. A beneficiary enrolling in a second card program during the year must pay any enrollment fee charged by the second program. Beneficiaries who are not enrolled in a card program may enroll at any time.

[Qualified Applicant] shall notify Medicare beneficiaries enrolled in its card program, if they are disenrolled from the discount card program according to the rules established in its CMS approved application. The notification shall indicate that the beneficiary may enroll in an alternative Medicare-endorsed discount card program.

7.4 Marketing Strategy

7.4.1 Marketing Material

Marketing material includes any informational materials targeted to Medicare beneficiaries that promote a Medicare-endorsed Rx discount card program, inform Medicare beneficiaries that they may enroll or remain enrolled in a Medicare-endorsed prescription discount card program, and explain the features of the program, including rules that apply to enrollees. Examples of marketing materials include, but are not limited to, general audience materials, membership communication materials, communications to enrollees announcing changes in discount rates, and information relating to withdrawal and termination.

7.4.2 Marketing Material Review

Through August 31, 2002, [Qualified Applicant] shall submit Medicare-endorsed Rx discount card program materials to CMS for review 30 days prior to distribution to beneficiaries. CMS shall review marketing materials, communicate any required revisions in writing, and approve a final version during the thirty day period. [Qualified Applicant] may distribute marketing materials to Medicare beneficiaries after they have been approved. [Qualified Applicant's] use of the ''Medicare'' name shall be restricted to inclusion in those marketing materials that [Qualified Applicant] has submitted to CMS for review.

[Qualified Applicant] shall ensure that its Medicare-endorsed Rx discount card program marketing materials provide Medicare beneficiaries an adequate description of the rules for participation in the card program, including discounts and restrictions, if any, on enrollees' access to contracted network pharmacies through the program, and any other information necessary for Medicare beneficiaries to make a decision about enrollment. All marketing materials shall include a statement that the discount card program is endorsed by Medicare but is not a Medicare benefit and that [Qualified Applicant] is not a Medicare contractor. All marketing materials shall also include a statement that the discount card program is not intended to replace prescription drug benefits obtained through participation in any insurance plan, including a Medicare+Choice plan, Medigap policy, Medicaid, or employer retiree group plan. The text of all written marketing materials must be printed with a 12-point font size or larger.

7.4.3 Marketing Activities

[Qualified Applicant] shall not engage in activities that could mislead Medicare beneficiaries, or intentionally misrepresent the [Qualified Applicant] or the Medicare-endorsed Rx discount card program it offers. [Qualified Applicant] shall not solicit door-to-door to Medicare beneficiaries.

[Qualified Applicant] shall ensure that its marketing activities include marketing to beneficiaries with disabilities, beneficiaries with End-Stage Renal Disease (ESRD), and beneficiaries age 65 and over. The Applicant shall not employ discount card program names that suggest that it is not available to all Medicare beneficiaries (e.g., both beneficiaries who qualify based on disability status and those who are 65 and over).

7.5 Internal Performance Monitoring

[Qualified Applicant] shall establish internal performance monitoring for

verification of the discount, enrollment operations, customer service, network pharmacy and mail order operations (if applicable), as specified in the approved application for endorsement.

7.6 Confidentiality Requirements

[Qualified Applicant] shall abide by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information, including applicable privacy regulations promulgated under HIPAA. The [Qualified Applicant] shall safeguard the privacy of any information that identifies a particular enrollee and shall ensure that medical information is released only in accordance with applicable Federal or State law or regulations, or pursuant to court orders or subpoenas, including [Qualified Applicants] work with the consortium. Further, [Qualified Applicant] shall put in place a mechanism to ensure that beneficiaries may elect not to receive non-prescription drug related marketing material from Medicare-endorsed programs (e.g., material related to other services provided by the same organization).

7.7 Term of Agreement

Qualified applicants awarded Medicare endorsement under this Notice shall offer a Medicare-endorsed Rx discount card program for up to 14 months (November 1, 2001 to December 31, 2002), effective the date stated in the selection notification letter CMS sends to successful applicants.

CMS may terminate the endorsement at any time.

In the event of termination of the endorsement, [Qualified Applicant] shall notify its Medicare beneficiary enrollees that they may enroll in an alternative Medicare-endorsed discount card program within 10 days of receiving notice of termination.

Attachment A—Agreement for Use of Centers for Medicare & Medicaid Services (CMS) Beneficiary Encrypted Files

In order to ensure the confidence of the American public regarding the confidentiality of information collected and maintained by the Federal government, CMS expects the requestors and recipients of its data to agree to observe the following conditions and to comply with these requirements. These requirements apply to the use of the file(s) released or any data derived from such file(s).

This agreement pertains to the release of the following CMS data:

Filename(s)

Annual Zip Code Enrollment File (latest available)

Medicare Current Beneficiary Survey Prescription Drug Utilization

_____

(Requestor Name—First and Last)

_____

(Company/Organization)

_____

(Street Address)

_____

(City, State, and ZIP Code)

_____

(Phone Number—Including Area Code)

The User represents and warrants, and in furnishing the data file(s) specified. CMS relies upon such representation and warranty, that such data file(s) will be used for the following purpose(s).

Preparation of an Application for ''Medicare-Endorsed Rx Discount Card Program''

The user represents and warrants further that the facts and statements made in any project plan submitted to CMS for each purpose are complete and accurate.

A. The Requestor shall make no attempt to identify any specific individual whose record is included in the file(s). No attempt will be made to unencrypt any person-level data in the file(s).

B. The parties mutually agree that the aforesaid file(s) (and/or any derivative file(s) may be retained by the User until December 31, 2001, hereinafter known as the ''retention date.''

C. The requestor shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data covered by this Agreement.

D. The requestor shall not disclose any aggregations of data from the file(s) covered by this agreement without express written authorization from CMS.

E. Absent express written authorization from CMS, the Requestor shall make no attempt to link records included in the file(s) to any other beneficiary-specific source of information.

F. The Requestor shall neither publish nor release any information that is derived from the file(s) and that could reasonably be expected to permit deduction of a beneficiary's identity.

G. Appropriate administrative, technical, procedural, and physical safeguards shall be established by the Recipient to protect the confidentiality of the data and to prevent unauthorized access to it. The safeguards shall provide a level of security that is at least comparable to the level of security referred to in OMB Circular No. A–130, Appendix III—*Security of Federal Automated Information Systems* which sets forth guidelines for security plans for automated information systems in Federal agencies.

H. In the event the Requestor makes an unauthorized disclosure of these data, CMS may impose any or all of the following measures: (1) request a formal response to an allegation of an unauthorized disclosure, (2) require the submission of a corrective action plan formulated to implement steps to be taken to alleviate the possibility of any future unauthorized disclosure; (3) require the return of the data; and/or (4) sanction against further release of CMS data to the organization/requestor in question.

I. The Requestor acknowledges that criminal penalties under section 1106(a) of the Social Security Act (42 U.S.C. 1306(a)), including possible imprisonment, may apply with respect to any disclosure of information in the file(s) that is inconsistent with the terms of the agreement. The Requestor further acknowledges that criminal penalties under the Privacy Act (5 U.S.C. 552a(I)(3)) may apply if it is determined that the Requestor, or any individual employed or affiliated therewith, knowingly and willfully obtained the file(s) under false pretenses.

_____

1.
(Requestor name and title—typed or printed)

_____

2.
(Signature) (Date)

_____

3.
(Typed or printed name of custodian of files, if different)

_____

4.
(Signature) (Date)

_____

5.
(Typed or printed name/agency/telephone number of Federal representative)

_____

6.
(Signature) (Date)

Attachment B—Prescription Drugs Commonly Used by Medicare Beneficiaries

The following list of drugs is based on an analysis of the 1998 Medicare Current Beneficiary Survey. Drugs are self-reported by beneficiary. List includes the top100 drugs based on utilization and spending, yielding a total of 129 drugs.

Accupril, Albuterol, Allopurinol, Alprazolam, Amitriptidine, Amoxicillan, Aricept, Atenolol, Atrovent, Axid, Azmacort, Biaxin, Buspar, Capoten, Captopril, Cardizem, Cardizem CD, Cardura, Casodex, Cephalexin, Cimetidine, Cipro, Claritin, Clozaril, Conjugated Estrogens, Cordarone, Coumadin, Cozaar, Darvocet-N, Daypro, Depakote, Diazepam, Digoxin, Dilacor XR, Dilantin

Diltiazem, Doxipin, Dyamide, Dypyridamole, Folic Acid, Fosamax, Furosemide, Gemfibrozil, Glucophage, Glucotrol, Glyburide, Hctz, Hydrocodone, Hydrocodone/APAP, Hytrin, Ibuprofen, Imdur, Indapamide, Ipratropium Bromide, Isosorbide DN, K-Dur, Klor-Con, Lanoxin, Lasix, Lescol, Lipitor, Lopressor, Lorazepam, Lotensin, Lotrel, Meclizine, Methotrexate, Metoprolol, Mevacor, Miacalcin, Monopril, Naproxen, Neoral, Neurontin, Nitro-Dur, Nitroglycerin, Nitrostat, Norvasc, Paxil, Pepcid

Potassium, Potassium Chloride, Pravachol, Prednisone, Premarin, Prevacid, Prilosec, Prinivil, Procardia, Procardia XL, Prograf, Propoxy-N/APAP, Propoxyphene, Propranolol, Propulsid, Proscar, Proventil, Prozac, Ranitidine, Relafen, Rezulin, Risperdal, Serevent, Sinemet, Synthroid, Tagamet, Tamoxifen, Tenormin, Theo-Phylline, Ticlid, Timoptic, Tomazepam, Toprol XL, Tramodone, Trental, Triamterene/HCTZ, Ultram, Vasotec, Verapamil, Voltaren, Xalatan, Xanax, Zantac, Zestril, Ziac, Zithromax, Zocor, Zoloft, Zyprexa

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  - Correction; published 6-25-01
- Pine shoot beetle; published 7-18-01

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Air quality implementation plans; approval and promulgation; various States:
- Illinois; published 6-18-01
- Montana; published 6-18-01
- Utah; published 6-18-01

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- Pollutants analysis test procedures; guidelines—
  - Mercury; measurement method; technical correction; published 6-18-01

TRANSPORTATION DEPARTMENT

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- Michigan; published 6-18-01

Ports and waterways safety:
- Detroit and Saginaw River, MI; safety zone; published 6-19-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; published 6-13-01
- Dornier; published 6-13-01
- Learjet; published 6-13-01

TREASURY DEPARTMENT

Thrift Supervision Office

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- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific halibut and red king crab; comments due by 7-27-01; published 6-27-01
- West Coast States and Western Pacific fisheries—
  - Hawaii-based pelagic longline restrictions and seasonal area closure, and sea turtle and sea bird migration measures; comments due by 7-27-01; published 6-12-01
  - West Coast salmon; comments due by 7-26-01; published 7-11-01

ENVIRONMENTAL PROTECTION AGENCY

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- Proposed collection; comment request; comments due by 7-23-01; published 5-23-01

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- California; comments due by 7-26-01; published 6-26-01

Air quality implementation plans; approval and promulgation; various States:
- Colorado; comments due by 7-27-01; published 6-27-01
- Kentucky; comments due by 7-23-01; published 6-21-01
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- Pennsylvania; comments due by 7-25-01; published 6-25-01
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  - National priorities list update; comments due by 7-23-01; published 6-21-01
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- Wireless telecommunications services—
  - E911 compatibility; public safety answering points; comments due by 7-25-01; published 7-16-01

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- Clinical investigations of FDA-regulated products; additional safeguards for children; comments due by 7-23-01; published 4-24-01

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- Secondary direct food additives—
  - Treatment, storage, and processing of foods; safe use of ozone in gaseous and aqueous phases as antimicrobial agent; comments due by 7-26-01; published 6-26-01

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TRANSPORTATION DEPARTMENT

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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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S. 657/P.L. 107–19
To authorize funding for the National 4-H Program Centennial Initiative. (July 10, 2001; 115 Stat. 153)
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