AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

10–23–01 Tuesday
Vol. 66 No. 205 Oct. 23, 2001
Pages 53503–53710

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

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

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

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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 66 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

What's NEW!

Federal Register Table of Contents via e-mail

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

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

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

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

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register

Vol. 66, No. 205

Tuesday, October 23, 2001

Agency for Toxic Substances and Disease Registry
NOTICES
Superfund program:
Hazardous substances priority list (toxicological profiles), 53610–53612

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
Central, 53551–53554
Voluntary Federal seed testing and certification services and preliminary test reports; fees, 53550–53551

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farm Service Agency
See Natural Resources Conservation Service

Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53584–53585

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Detection of antibodies to squalene in serum, 53589
Method of inhibiting side effects of pharmaceutical compositions containing amphiphilic vehicles or drug carrier molecules, 53589
One-pot synthesis of functional dendigrafts and their block copolymers with simple initiating systems, 53590

Blackstone River Valley National Heritage Corridor Commission
NOTICES
Meetings, 53629–53630

Coast Guard
RULES
Offshore supply vessels:
Alternative compliance program; incorporation, 53542–53545

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Technology Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Romania, 53587–53588

Commodity Credit Corporation
RULES
Loan and purchase programs:
Tobacco, 53507–53510

Commodity Futures Trading Commission
RULES
Commodity Exchange Act:
Commodity interest transactions; intermediaries; amendments, 53510–53523

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 53588

Corporation for National and Community Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53588–53589

Customs Service
NOTICES
Meetings:
Trade symposium, 53656

Defense Department
See Army Department
See Engineers Corps
See Navy Department

Economic Development Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 53585

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Quality Assurance Program, 53591–53592

Employment Standards Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53634–53635

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Idaho National Engineering and Environmental Laboratory, ID, 53592–53593

Energy Efficiency and Renewable Energy Office
PROPOSED RULES
Energy conservation:
Consumer products and commercial and industrial equipment; energy conservation program; meeting, 53554–53555

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Morro Bay, CA; Morro Bay Estuary Feasibility Study, 53590–53591

Environmental Protection Agency
RULES
Air programs:
Outer Continental Shelf regulations—
Alaska; consistency update, 53533–53535
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Kentucky and Indiana, 53664–53686
Air quality implementation plans; approval and promulgation; various States:
Kentucky, 53657–53665, 53685–53690
Hazardous waste:
Solid waste disposal facilities and municipal solid waste landfills; residential lead-based paint waste disposal, 53535–53542
PROPOSED RULES
Hazardous waste:
Solid waste disposal facilities and municipal solid waste landfills; residential lead-based paint waste disposal, 53566–53573
NOTICES
Meetings:
Science Advisory Board, 53607–53608
Superfund; response and remedial actions, proposed settlements, etc.:
Economy Products Site, IA, 53608

Executive Office of the President
See Presidential Documents

Farm Service Agency
RULES
Farm marketing quotas, acreage allotments, and production adjustments:
Tobacco, 53507–53510

Federal Aviation Administration
NOTICES
Exemption petitions; summary and disposition, 53652–53653
Meetings:
Harmonization Work Program, 53653–53654
Satellite Operational Implementation Team Global Positioning System/Wide Area and Local Area Augmentation Systems; capabilities, 53654
U.S. launch range improvements and modernization; commercial requirements; comment request, 53654–53655

Federal Communications Commission
RULES
Common carrier services:
Telecommunications Act of 1996; implementation—
Customer proprietary network information and other customer information; telecommunications carriers' use; clarification, 53545
NOTICES
Meetings:
2003 World Radiocommunication Conference Advisory Committee, 53608–53609

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Boston Edison Co. et al., 53598–53601
Llano Estacado Wind, LP, et al., 53602–53606
Hydroelectric applications, 53593–53598, 53606–53607
Applications, hearings, determinations, etc.:
Boston Edison Co., 53593
Colorado Interstate Gas Co., 53594
Great Lakes Gas Transmission L.P., 53594–53595
Kern River Gas Transmission Co., 53595
Natural Gas Pipeline Co. of America, 53596
Northern Natural Gas Co., 53596–53597
Northwest Pipeline Corp., 53597
Tennessee Gas Pipeline Co., 53597

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 53609
Permissible nonbanking activities, 53609
Meetings; Sunshine Act, 53609–53610

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Cape Sable seaside sparrow, 53573–53575

Food and Drug Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53612–53614
Reporting and recordkeeping requirements, 53614
Submission for OMB review; comment request, 53614–53615
Committees; establishment, renewal, termination, etc.:
Public advisory committees and panels; voting and nonvoting consumer representative members, 53615–53616
Meetings:
Medical Devices Advisory Committee, 53616
Vaccine and Related Biological Products Advisory Committee, 53616–53617

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 53617–53618

Indian Health Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 53618

Interior Department
See Blackstone River Valley National Heritage Corridor Commission

See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
PROPOSED RULES
Excise taxes:
Gasoline tax claims, 53564–53565
Income taxes:
Catch-up contributions for individuals age 50 or over, 53555–53564

International Trade Administration
NOTICES
Antidumping:
Stainless steel bar from—
India, 53585–53586

International Trade Commission
NOTICES
Import investigations:
Automotive replacement glass windshields from—
China, 53630–53632

Justice Department
See Juvenile Justice and Delinquency Prevention Office

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Comprehensive program plan; program activities (2002 FY), 53691–53710

Labor Department
See Employment Standards Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 53632–53634

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Sierra Front/Northwestern Great Basin, Northeastern Great Basin, and Mojave-Southern Great Basin, 53630
Public land orders:
Colorado, 53630

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Miscellaneous amendments, 53545–53549
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53638–53640
Submission for OMB review; comment request, 53640–53641
Meetings:
Advisory Council
Minority Business Resource Advisory Committee, 53641

National Archives and Records Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 53641

National Institute of Standards and Technology
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53586–53587
Meetings:
Malcolm Baldrige National Quality Award—
Panel of Judges, 53587

National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53618–53619
Submission for OMB review; comment request, 53619–53620
Committees; establishment, renewal, termination, etc.:
National Cancer Institute Director's Liaison Group, 53620
Meetings:
National Cancer Institute, 53621–53622
National Human Genome Research Institute, 53622
National Institute of Child Health and Human Development, 53622–53623
National Institute of Environmental Health Sciences, 53623
Scientific Review Center, 53623–53626

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish, 53579–53583
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish, 53575–53579
NOTICES
Permits:
Marine mammals, 53587

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Neshaminy Creek Watershed, PA, 53585

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS BULKELEY, 53525–53526
USS HOWARD, 53524–53525
USS IWO JIMA, 53528–53529
USS LASSEN, 53526–53528
USS NIMITZ, 53529
USS OSCAR AUSTIN, 53530–53531
USS RAMAGE, 53532–53533
USS ROOSEVELT, 53529–53530
USS TEMPEST, 53523–53524
USS WINSTON S. CHURCHILL, 53531–53532

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 53645–53646
Meetings; Sunshine Act, 53646
Applications, hearings, determinations, etc.:
Arizona Public Service Co., 53641–53643
Exelon Generation Co., LLC, 53643–53645

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Kimball International, Inc., et al., 53635–53638

Personnel Management Office
RULES
Pay administration:
Combined Federal Campaign; allotment limitation; CFR correction, 53507

Presidential Documents
ADMINISTRATIVE ORDERS
Pakistan; financial assistance (Presidential Determination No. 2002-02 of October 16, 2001), 53503
Palestine Liberation Organization; waiver of statutory provisions (Presidential Determination No. 2002-03 of October 16, 2001), 53505

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Reports and guidance documents; availability, etc.:
National Toxicology Program—
1-Bromopropane and 2-bromopropane; Expert Panel Reports, 53626–53628

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
MassMutual Institutional Funds et al., 53647–53649
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 53649–53650
Applications, hearings, determinations, etc.:
DrugMax, Inc., 53647
Public Service Enterprise Group Inc., 53647

Small Business Administration
NOTICES
Disaster loan areas:
Texas, 53650

Social Security Administration
NOTICES
Meetings:
President's Commission to Strengthen Social Security, 53650–53651
Organization, functions, and authority delegations:
Commissioner Office et al., 53651–53652

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Opioid treatment programs; accreditation, 53628–53629

Technology Administration
NOTICES
U.S. launch range improvements and modernization; commercial requirements; comment request, 53654–53655

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration

Treasury Department
See Customs Service
See Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53655–53656

Veterans Affairs Department
PROPOSED RULES
Adjudication; pensions, compensation, dependency, etc.:
Universal adjudication rules applicable to benefit claims; decisions finality, 53565–53566

Separate Parts In This Issue

Part II
Environmental Protection Agency, 53657–53690

Part III
Justice Department, Juvenile Justice and Delinquency Prevention Office, 53691–53710

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.
To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Order

Presidential Determinations:

No. 2002-02 of October 16, 2001 53503

No. 2002-03 of October 16, 2001 53505

5 CFR

550 53507

7 CFR

718 53507

723 53507

1464 53507

Proposed Rules:

75 53550

1032 53551

10 CFR

Proposed Rules:

430 53554

17 CFR

1 53510

3 53510

4 53510

140 53510

155 53510

26 CFR

Proposed Rules:

1 53555

48 53564

32 CFR

706 (10 documents) 53523, 53524, 53525, 53526, 53528, 53529, 53530, 53531, 53532

38 CFR

Proposed Rules:

3 53565

40 CFR

52 (4 documents) 53658, 53662, 53665, 53686

55 53533

81 53665

257 53535

258 53535

Proposed Rules:

257 53566

258 53566

46 CFR

126 53542

47 CFR

64 53545

48 CFR

1804 53545

1807 53545

1808 53545

1815 53545

1816 53545

1817 53545

1819 53545

1822 53545

1832 53545

1835 53545

1836 53545

1837 53545

1842 53545

1843 53545

1844 53545

1852 53545

50 CFR

Proposed Rules:

17 53573

600 53575

622 53579

648 53575

Federal Register
Vol. 66, No. 205
Tuesday, October 23, 2001

Presidential Documents

Title 3—

The President

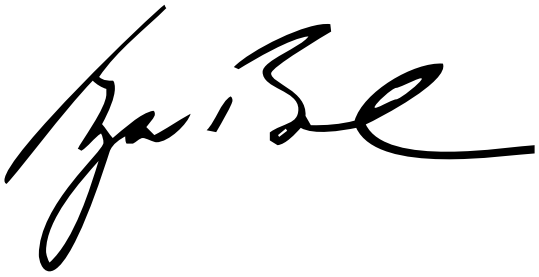
Presidential Determination No. 2002–02 of October 16, 2001

Assistance for Pakistan

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the ''Act''), I hereby determine that it is important to the security interests of the United States to furnish up to $50 million for Pakistan without regard to any provision of law within the scope of section 614(a)(1) of the Act. I hereby authorize the furnishing of this assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register.**



THE WHITE HOUSE,
Washington, October 16, 2001.

[FR Doc. 01–26789
Filed 10–22–01; 8:45 am]
Billing code 4710–10–M

Presidential Documents

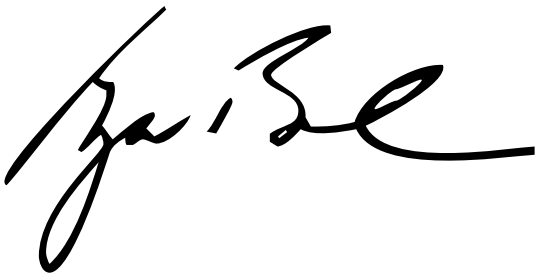
Presidential Determination No. 2002–03 of October 16, 2001

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority and conditions contained in section 538(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001, Public Law 106–429, as provided for in the Joint Resolution Making Continuing Appropriations for the Fiscal Year 2002, and for other Purposes (Public Law 107–44), I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date hereof. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register.**



THE WHITE HOUSE,
Washington, October 16, 2001.

[FR Doc. 01–26790
Filed 10–22–01; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 66, No. 205
Tuesday, October 23, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Administration (General)

CFR Correction

PART 550—[CORRECTED]

§ 550.342 [Removed]

In Title 5 of the Code of Federal Regulations, Parts 1 to 699, revised as of January 1, 2001, part 550 is corrected by removing § 550.342.

[FR Doc. 01–55532 Filed 10–22–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

7 CFR Parts 718, 723 and 1464

RIN 0560–AG 40

Amendments to the Tobacco Marketing Quota Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the provisions of the Agricultural Risk Protection Act of 2000 (ARPA) regarding transfers of tobacco allotments, the lease and transfer of burley tobacco quota and record keeping for burley tobacco quota and acreage. It also implements the provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (the 2001 Act) regarding the Tobacco Loss Assistance Program 2000 (TLAP00).

Notice and Comment

Section 840 of Pub. L. 106–387 requires that the regulations necessary to implement its provisions regarding TLAP00 be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Section 263 of Pub. L. 106–224 requires that the regulations necessary to implement its provisions regarding quotas and allotments be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These provisions are thus issued as final and are effective immediately.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Joe Lewis Jr., Agricultural Program Specialist, Tobacco and Peanuts Division, or Bob Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Staff, Farm Service Agency, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW., STOP 0514, Washington, DC 20250–0514, telephone (202) 720–0795, (202) 720–5346.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and was reviewed by OMB .

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Federal Assistance Programs

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies is: Commodity Loans and Purchases–10.0514.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

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

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Act of 1996

Section 263 of Pub. L. 106–224 and Section 840 of Pub. L. 106–387 requires that these regulations be issued as soon as practicable after the date of enactment and without regard to the notice and comment provision of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notice of proposed rulemaking and public participation in rulemaking. They also require the Secretary to use the provisions of 5 U.S.C. 808, the Small Business Regulatory Enforcement Act (SBREFA), which provide that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose, and thus does not have to meet the requirements of 801 of SBREFA requiring a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. This final rule is considered major for the purposes of SBREFA. However, these regulations affect a large number of agricultural producers who have been significantly impacted by natural disasters and poor market conditions. Accordingly, and because § 263 explicitly sets out Congress' intent that the waiting period of SBREFA should not apply, it has been determined that it would be

contrary to the public interest and the relevant public laws to delay implementation of this rule. This rule is therefore made effective immediately.

Paperwork Reduction Act

Section 263 of Pub. L. 106–224 requires that the bulk of these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act and an equivalent provision is contained in the other legislation implemented herein, specifically in section 840 of the 2001 Act. This means that the information collections required by these rules and the burdens that may be imposed as a result do not have to be reviewed and/or approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period that may be applicable to some information collections.

Background

This final rule implements provisions of section 204 (b) (8)–(12) of the ARPA, enacted on June 20, 2000, which amended provisions of the Agricultural Adjustment Act of 1938 (1938 Act) pertaining to burley tobacco. In addition, as indicated below provisions of Pub. L. 106–387 relating to tobacco are also implemented in this rule.

Section 204(b)(8) of the ARPA revised section 318 (g) of the 1938 Act (7 U.S.C. 1314d), which deals with the transfer of allotments for fire-cured, dark air-cured and Virginia sun-cured tobacco. Prior to the amendment such transfers between farms could not exceed more than 10 acres of allotments and the total acreage allotted to any farm after the transfer could not exceed 50 percent of the acreage of cropland on the farm. The amendment retains the latter limitation but drops the 10 acre rule. This rule updates the program regulations accordingly.

Section 204(b)(9) of the ARPA deals with burley tobacco. It amends section 319(c)(3) of the 1938 Act which sets out the formula for setting the annual burley tobacco quota. Under that formula, the Secretary is allowed to make an adjustment in the calculated formula so that stocks of the tobacco reach a prescribed ''reserve stock level.'' Provisions of Section 319 have limited the amount in pounds that can be made using that authority; however, the new law provides that the limitation on the adjustment will not apply beginning with any year in which non-committed pool stocks of burly tobacco actually do reach a level equal to or less than the reserve stock level. This rule updates the program regulations accordingly.

Section 204(b)(10)(A) of the ARPA also deals with burley tobacco. It also amends section 319. It limit the total amount of under marketings that can be ''carried over'' as quota additions to farms, nationwide, in total, to 10 percent of the national basic quota for the preceding year. Hence, if individual farms under marketings will, in total, exceed that level, some form of factoring will have to be used to determine the amount of under marketings that can be carried forward by the individual farm. In this rule, the program regulations are updated accordingly. Further, in other legislation, Pub. L. 106–472, enacted after ARPA, Congress provided that the amendments made by Section 204(b)(10)(A) of the ARPA would only apply beginning with under marketings of the 2001 crop of burley tobacco and with marketings of the 2002 crops of burley tobacco. Further, in Pub. L. 106–554, it was provided that section 204(b)(10)(B) would not be effective until July 1, 2002. Hence, this limitation on the amount of under marketings that can be added to a farm's quota will not be applied until beginning with 2002 crop (at which time the quota calculations will take into account the 2001 crop under marketings).

Other provisions in this rule, however, are effective beginning with the 2001 crops. Section 204(b)(10)(B) of the ARPA deals with burley tobacco. It changes 319(k) of the 1938 Act to limit ''fall transfers'' of burley tobacco quota (those essentially being disaster transfers of quota made after the normal planting season). Under the statutory amendment, the total quantity of tobacco that can be leased or transferred to a farm during a crop year is limited to 15 percent of the effective quota on that farm that existed prior to the lease or transfer for leases filed after July 1 of the crop year. The program rules have been updated accordingly.

Section 204(b)(11) of the ARPA deals with burley tobacco. It revises section 319(l) of the 1938 Act by making a technical change in the language dealing with allowing cross-county leasing of burley tobacco, but in certain states only and then only if, in those states, producers approve of the measure in a state-wide referendum. Previous language in Section 319 produced litigation and following the statutory revisions new votes were held in those states in which the Department had previously considered the measure for cross-county leasing to have been approved. After that new vote in those four states, three approved the measure—Tennessee, Indiana, and Ohio. Kentucky producers, which had previously approved the measure, voted against it. In this rule, the regulations are updated to reflect the new votes.

Section 204(b)(12) of the ARPA deals with burley tobacco. It amends section 319 of the 1938 Act by adding a requirement that owners of farms for which a burley tobacco quota is established must report acreage planted to burley tobacco annually. This final rule revises the tobacco regulations at 7 CFR part 1464 accordingly and makes a corresponding change in 7 CFR 718.102(b)(4).

This final rule also implements provisions of Pub. L. 106–387 related to the TLAP 2000. TLAP 2000 unlike the previous ''TLAP'' program involved direct federal payments to farmers. In the previous TLAP, program the payments were made to States which then paid farmers. TLAP 2000 was provided for under Pub. L. 106–224 and a rule implementing that program was published in the **Federal Register** on November 2, 2000 (65 FR 65718). By the provisions of that statute actual production of the quota was required for anyone associated with the quota to be paid. However, Section 841 of Pub. L. 106–387 directs the Secretary to make payments to otherwise eligible persons who would have been paid but for the quota not being produced. Payments are to be made under the same rules, and in the same amounts, that otherwise applied to other payments but these payments are not subject to the same overall funding limit that applied to the program. Hence, the TLAP rules are amended accordingly and they are clarified, too, in accord with the circumstances under which the payment was made with respect to quota lessees. Other than the change in eligibility compelled by Pub. L. 106–387, there has been no change in payment eligibility and no additional payments will be made.

Changes made in this rule are prospective only and do not effect previous program actions and determinations.

List of Subjects

7 CFR Part 718

Acreage allotments, Marketing quotas, Reconstitutions.

7 CFR Part 723

Acreage allotments, Auction warehouses, Dealers, Domestic manufacturers, Marketing quotas Penalties, Reconstitutions, Tobacco.

7 CFR Part 1464

Tobacco, Loans, Importer assessments.

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

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

Authority: 7 U.S.C. 1373, 1374, 7201 *et seq.*; 15 U.S.C. 714b, Pub. L. 106–224.

2. Revise § 718.102(b)(4) to read as follows:

§ 718.102 Acreage reports.

* * * * *

(b) * * *

(4) Participants in the programs authorized by parts 723 and 1464 of this title must report the acreage planted to tobacco by kind on all farms that have an effective allotment or quota greater than zero; provided further that for burley tobacco each person who owns a farm for which a burley quota is established must report the acreage planted to burley tobacco, including instances in which the acres planted are zero acres; and

* * * * *

PART 723—TOBACCO

4. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–1379, 1421, 1445–1 and 1445–2.

5. Revise § 723.206(c)(1) to read as follows:

§ 723.206 Determining farm marketing quotas and effective farm marketing quotas.

* * * * *

(c) * * *

(1) Upward adjustments. Adding the:

(i) Effective under marketings from the preceding marketing year, but effective for the 2002 and subsequent marketing years, the aggregate amount for all farms of under marketings of burley tobacco for all farms that can be carried over shall be limited to 10 percent of the national basic quota of the preceding year. If needed, factoring will be undertaken to insure that the limit of the preceding sentence is not exceeded.

* * * * *

6–8. Revise §§ 723.216(e)(5)(iv), (e)(6)(ii)(B) and (i)(6) to read as follows:

§ 723.216 Transfer of tobacco acreage allotment or marketing quota by sale, lease, or owner.

* * * * *

(e) * * *

(5) * * *

(iv) Filed on or before July 1. Unless the receiving farm is administratively located in the same county as the transferring farm. However, burley tobacco producers in the States of Tennessee, Ohio and Indiana shall, irrespective of the preceding sentence, be permitted to lease and transfer burley tobacco quota from one farm in a State to any other farm in the State if other conditions for the transfer are met.

* * * * *

(e) * * *

(6) * * *

(ii) * * *

(B) Pounds of quota to be transferred to the lessee farm do not exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year. However, the total quantity of tobacco that can be leased or transferred to a farm during a crop year may not exceed that quantity which equals 15 percent of the effective quota on the farm prior to any leases or transfers filed after July 1 of the crop year.

* * * * *

(i) * * *

(6) *Limitation on acreage transferred.* The total of the Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment which may be transferred for each kind of tobacco, by sale, lease, or by owner, to a farm shall not exceed 50 percent of the acreage of cropland on the farm. The cropland in the farm for the current year for purposes of such transfers shall be the total cropland as defined in Part 718 of this chapter.

* * * * *

9. Revise § 723.503(a)(3) to read as follows:

§ 723.503 Establishing the quotas.

* * * * *

(a) * * *

(3) *Reserve stock level adjustment.* The Director may then adjust the total calculated by adding the sums of paragraphs (a)(1) and (a)(2) of this section, by making such adjustment which the Director, in his discretion, determines necessary to maintain inventory levels held by producer loan associations for burley and flue-cured tobacco at the reserve stock level. For burley tobacco, the reserve stock level for these purposes is the larger of 50 million pounds farm sales weight or 15 percent of the previous year's national market quota. For flue-cured tobacco, the reserve stock level for these purposes is the larger of 100 million pounds farm sales weight or 15 percent of the previous year's national market quota. Any adjustment under this clause shall be discretionary taking into account supply conditions: provided that for burley tobacco no downward adjustment under this clause may exceed the larger of 35 million pounds (farm sales weight) or 50 percent of the amount by which loan inventories exceed the reserve stock level. However, if for any of the 2001 and subsequent crops the uncommitted pool stocks of burley tobacco become equal to or less than the reserve stock level, then for that year and any subsequent year the limitation contained in the previous sentence on the amount of the downward adjustment in quota that may be made based on the reserve stock level, for that kind of tobacco, shall not apply.

* * * * *

PART 1464—TOBACCO

10. The authority citation for part 1464 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1; 1445–2; 15 U.S.C. 714b, 714c; Pub. L. 106–78, Pub. L. 106–113, Stat.1135 and Pub. L. 106–224.

11. Revise § 1464.8(d)(1) to read as follows:

§ 1464.8 Eligible tobacco.

* * * * *

(d) * * *

(1) The farm operator has filed a report of the acreage planted to tobacco on the farm in the applicable year in accordance with part 718 of this title.

* * * * *

12. Revise § 1464.401(a) to read as follows:

§ 1464.401 Applicability and basic terms for payments.

(a) This subpart sets forth the terms and conditions of the Tobacco Loss Assistance Program 2000 (TLAP00) authorized by Section 204(b) of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224). That section provides that $340 million of funds of the Commodity Credit Corporation (CCC) shall be made available to make direct payments to eligible persons, on a farm for which the quantity of quota of eligible tobacco allotted to the farm was reduced from the 1999 crop year to the 2000 crop year.

* * * * *

13. Revise § 1464.403 to read as follows:

§ 1464.403 Eligibility.

For a person to be considered an ''eligible person'' for purposes of this

part, such person must own, operate or produce eligible tobacco on a farm for which a quota reduction from the 1999 crop year to the 2000 crop year occurred and that was used for the production of tobacco during the 2000 crop year. Leased quotas may, as determined appropriate by the Deputy Administrator in making the payments prior to January 1, 2001, may qualify operators or controllers and growers by reference by back, as needed, to the leasing farm. Also, to the extent allowed by Pub. L. 106–387 payments may be made to person without regard to whether the quota was used for the production of eligible tobacco during the 2000 crop year. Payments that are made by virtue of the preceding sentence may by made, to the extent authorized by law, from funds of the Commodity Credit Corporation and without regard to the overall limitation for payment that otherwise apply to this program.

14. In § 1464.404 revise the definition of ''Eligible person'' to read as follows:

§ 1464.404 Definitions.

* * * * *

Eligible person means, with respect to payments under this part and subject to the provisions of section 1464.403 and other provisions of this part, a person who owns or operates, or produces eligible tobacco on a farm for which the quantity of quota of eligible tobacco allotted to the farm under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 was reduced from the 1999 crop year to the 2000 crop year. Actual production of the crop may be required to the extent otherwise provided in these rules. For purposes of this subpart, further, an eligible person's status, as owner or controller or producer of the tobacco, will be determined as of July 3, 2000.

* * * * *

Signed at Washington, DC, on October 16, 2001.

James R. Little,

Acting Administrator, Farm Service Agency and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 01–26543 Filed 10–22–01; 8:45 am]

BILLING CODE 3410–05–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 140 and 155

RIN 3038–AB56

Rules Relating to Intermediaries of Commodity Interest Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: Following the enactment of the Commodity Futures Modernization Act of 2000 (CFMA) and the resulting revisions to the Commodity Exchange Act (CEA or Act), the Commodity Futures Trading Commission (CFTC or Commission) is adopting rules relating to intermediation of commodity futures and commodity options (commodity interest) transactions. These new rules and rule amendments provide greater flexibility in several areas, and addresses, among other things, the definition of the term ''principal,'' certified financial reports, ethics training, disclosure, account opening procedures, trading standards, reporting requirements, and offsetting positions. The Commission is also adopting changes to allow a registrant to notify the Commission when a new natural person is added as a principal promptly after the change occurs.

These rules are consistent with the mandate of the CFMA to streamline regulation of entities registered under the Act. Most of the new rules and rule amendments were part of the Commission's final rules relating to intermediaries that were adopted in December 2000, and subsequently withdrawn following the CFMA's enactment in order to determine their consistency with the CFMA (December Release). Upon reviewing the rules in light of the CFMA, the Commission has determined that the rules being adopted herein are consistent with the CFMA.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Michael A. Piracci, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

II. Overview of Comments

III. New Rules and Rule Amendments

A. Registration

1. Definition of the Term ''Principal'
2. Application Procedures for IBs and FCMs

B. Fitness and Supervision

C. Financial Requirements

1. Trading by Non-Institutional Customers on DTFs
2. Investment of Customer Funds

D. Risk Disclosure and Account Statements

E. Trading Standards

F. Recordkeeping

1. Customer Account Statements
2. Close-Out of Offsetting Positions

IV. Section 4(c) Findings

V. Cost-Benefit Analysis

VI. Related Matters

A. Regulatory Flexibility Act

B. Paperwork Reduction Act

C. Administrative Procedure Act

I. Background

Section 2 of the CFMA sets forth the purposes of the CFMA, which include streamlining and eliminating unnecessary regulation for the commodity futures exchanges and other entities regulated under the Act. Section 125 of the CFMA directs the Commission to complete a study of its rules, regulations, and interpretations governing the conduct of persons registered under the Act by December 21, 2001. The rules adopted herein are designed to be an initial step in fulfilling the mandates of Section 2 and Section 125.

Most of the new rules and rule amendments were part of the Commission's final rules relating to intermediaries that were adopted in December 2000, and subsequently withdrawn following the CFMA's enactment in order to determine their consistency with the CFMA (December Release).[1] On August 20, 2001, after reviewing the rules in light of the CFMA and determining that the rules are consistent with the CFMA, the Commission proposed the new rules and rule amendments being adopted herein.[2]

II. Overview of Comments

The Commission received five comment letters on the proposals. The commenters included Fimat USA Inc. (Fimat), a registered futures commission merchant (FCM) and securities broker-dealer (BD); the Chicago Board of Trade (CBT), a designated contract market; Exchange Analytics Inc. (EA), an ethics

[1] *See* Rules Relating to Intermediaries of Commodity Interest Transactions, 65 FR 39008 (June 22, 2000) (proposed rules); ''Rules Relating to Intermediaries of Commodity Interest Transactions,'' 65 FR 77993 (Dec. 13, 2000) (final rules); 65 FR 82272 (Dec. 28, 2000) (final rules; partial withdrawal).

[2] *See* 66 FR 45221 (Aug. 28, 2001).

training provider; National Futures Association (NFA), a registered futures association; and the Managed Funds Association (MFA), an industry trade association. Each commenter indicated that it generally supported the adoption of the proposed new rules and rule amendments. The issue that generated the most discussion was ethics training, which was addressed by four of the five commenters. As discussed more fully below, the Commission proposed to replace Rule 3.34 governing ethics training with a Statement of Acceptable Practices.

As noted above, these rules are intended to be a first step with respect to intermediaries in meeting the purpose of the CFMA to streamline and eliminate unnecessary regulation. The Commission will look at possible further regulatory relief related to intermediaries as part of the study mandated by Section 125 of the CFMA.[3] Fimat urged the Commission to consider adopting further relief for intermediaries prior to the conclusion of this study. The study is just one aspect of the Commission's ongoing efforts in this regard and the Commission anticipates that additional reforms may be implemented before the study is completed.[4] The Commission urges Fimat and any other persons interested in intermediaries reform to submit comments regarding appropriate reforms to the Secretary of the Commission in accordance with the **Federal Register** release soliciting such comments.[5]

III. New Rules and Rule Amendments

A. Registration

1. Definition of the Term ''Principal''

Under Commission staff's prior interpretation of the definition of the term ''principal'' in Rules 3.1(a)(1) and 4.10(e)(1),[6] all officers of a registrant were treated as principals and were required to register as such.[7] In response to changes in management structures over the last 20 years and requests from registrants that certain employees, such as some vice presidents, not be considered principals because they do not exercise a controlling influence over the registrant or any of its activities subject to Commission regulation, the Commission is amending Rules 3.1(a)(1) and 4.10(e)(1) by defining as principals persons within a given organizational structure who hold specific offices.[8] A registrant, therefore, will no longer be required to treat every officer as a principal, but only those who meet the criteria of the rule as revised.[9] The amendment to the definition of principal thus reduces the number of officers that will be considered principals, while ensuring that appropriate personnel, *e.g.*, those that exercise, or are in a position to exercise a controlling influence over the registrant or any of its activities subject to Commission regulation, remain listed as such.

The principal definition also includes an individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise: (1) Is the owner of ten percent or more of any class of a firm's securities; (2) is entitled to vote ten percent or more of any class of a firm's voting securities; (3) has the power to sell or direct the sale of ten percent or more of any class of a firm's voting securities; (4) has contributed ten percent or more of a firm's capital; or (5) is entitled to receive ten percent or more of a firm's profits. Further, the principal definition includes an *entity* that is the direct owner of ten percent or more of any class of a firm's securities or that has directly contributed ten percent or more of a firm's capital. Adopting these amendments permits the deletion of Rule 3.10(a)(2)(ii), which has proved somewhat unwieldy in practice.[10] NFA and CBT supported these amendments to the principal definition.

The Commission is also adopting conforming changes to Rules 4.24(f)(1)(v), 4.25(a)(8)(ii)(A) and 4.25(c)(2)(i)(B), applicable to CPOs, and 4.34(f)(1)(ii) and 4.35(a)(7)(ii)(A), applicable to CTAs, as incorporated by reference in amended Rule 4.10(e)(1). Accordingly, CPOs and CTAs are only required to provide business backgrounds and proprietary trading results for those principals who participate in making trading or operational decisions, or supervise persons so engaged, and not for all officers.

Finally, the Commission is deleting Rule 3.32, which specifies certain events or changes within a firm's management structure that require the firm to file a new registration form. In its place, a new paragraph (a)(2) is being added to Rule 3.31 to require the registrant to file a Form 8–R on behalf of each new natural person principal who was not listed on the registrant's Form 7–R, promptly after the change occurs. New Rule 3.31(a)(2) closely parallels Rule 3.10(a)(2)(i),[11] and provides that, if the change that renders the application for registration deficient or inaccurate results from the addition of a new principal without a current Form 8–R on file with NFA, a Form 8–R for that principal must accompany the Form 3–R amending the registrant's application for registration.[12] NFA supported these rule changes, as well as the changes to Part 4 referred to above.

---

[3] *See* 66 FR 33531 (June 22, 2001).

[4] As the Commission stated in the August proposals, to the extent that an existing rule is not addressed in this release, the Commission will, pending further relief, continue to apply the rule to intermediaries transacting business on behalf of customers on designated contract markets and registered derivatives transaction execution facilities (DTFs) regardless of whether the contract market or DTF itself, or its operators, have been exempted from applicable provisions of the rule. *See* 66 FR 45221 at 45222.

[5] *See* 66 FR at 33532.

[6] Rule 3.1(a) defines ''principal'' for purposes of the Commission's Part 3 rules, which govern registration. Rule 4.10(e) defines ''principal'' for purposes of the Commission's Part 4 rules, which apply to the activities of commodity pool operators (CPOs) and commodity trading advisors (CTAs).

[7] This interpretation was consistent with the language of the second proviso to Section 8a(2) of the Act, which states that a principal shall mean a general partner of a partnership, any officer, director or beneficial owner of at least ten percent of the voting shares of a corporation, ''and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of [firms] which are subject to regulation by the Commission.''

[8] Thus, the principal definition includes, if the entity is organized as a sole proprietorship, the proprietor; if a partnership, any general partner (including individuals and entities, such as corporations); if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; and, if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, the manager, managing member or those members vested with management authority for the entity, and any person in charge of a principal business unit, division or function subject to regulation by the Commission. *See* Rule 3.1(a)(1).

The reference in the amendment to the ''principal'' definition to ''any person in charge of a principal business unit subject to regulation by the Commission'' does not include departments such as human resources or administration.

[9] The ''principal'' definition continues to include all directors of a corporate registrant. In addition, the definition includes the general provision that defines as a principal any person occupying a similar status as or performing similar functions to those persons specifically listed, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over a firm's activities that are subject to regulation by the Commission. What constitutes ''a controlling influence'' will generally be left for determination on a case-by-case basis; however, such influence would be ascribed to, among others, those persons who have policymaking or managerial authority over the activities of an applicant or registrant that are subject to Commission regulation.

[10] The amendments also result in the redesignation of Rule 3.10(a)(2)(i) as Rule 3.10(a)(2).

[11] As noted in the preceding footnote, this provision is being redesignated as Rule 3.10(a)(2).

[12] An additional conforming amendment to Rule 3.21(c) reflects the deletion of Rule 3.32, and the addition of new paragraph (a)(2) to Rule 3.31.

2. Application Procedures for IBs and FCMs

The Commission is also adopting Rule 1.10(a)(2)(ii)(A)(*3*), which will permit applicants for registration as IBs who raise their own capital to satisfy minimum financial requirements, to file an unaudited financial report indicating satisfaction of the minimum requirements, rather than requiring them to provide certified financial statements with their registration application.[13] A firm taking advantage of the new procedure will be subject to an on-site review within six months of registration by the firm's designated self-regulatory organization (DSRO) or, at the DSRO's discretion, a conference between appropriate staff of the firm and the DSRO at the DSRO's offices.[14] This alternative procedure is modeled on similar procedures in the securities industry.[15]

With respect to the six-month review that must be conducted should an IB choose not to file a certified financial statement with its registration application, the Commission believes that the six-month time period for the review of IBs should begin from the date the applicant is registered. The Commission has held consistently that once a registrant becomes registered in a certain capacity, the registrant is immediately assumed to be engaging in the activities permitted by such registration.[16] However, the Commission notes that the DSRO will be able to conduct the review telephonically where the DSRO does not have reason to question the IB's capital. In addition, an applicant that does not wish to be subject to the six-month review can continue to follow the existing rules and file a certified financial statement with its application.

The Commission's December Release contained relief for FCM applicants similar to that provided to IB applicants. The Commission did not repropose these rule changes for FCM applicants in light of comments filed by NFA and CBT on the June 2000 proposed rules. NFA and CBT reiterated in their comment letters filed on the August 2001 proposals their strong support for maintaining the requirement of a certified financial report as part of an FCM registration application.[17]

B. Fitness and Supervision

An essential component of maintaining fitness is continuing education concerning obligations under the Act and rules thereunder. In order to provide flexibility and ease compliance for all registrants, the Commission proposed deleting Rule 3.34 and instead implementing Congressional intent regarding ethics training through a Statement of Acceptable Practices. Rule 3.34 specified the frequency and duration of ethics training, the suggested curriculum, qualifications of instructors, and the necessary proof of attendance at such classes. In proposing to replace the rule with a Statement of Acceptable Practices that leaves the format, frequency, and providers of ethics training up to the registrants themselves, the Commission noted that greater flexibility regarding ethics training would be afforded to registrants than had been permitted under Rule 3.34 so that registrants could tailor training to their particular business activities. For registrants seeking guidance as to the maintenance of proper ethics training procedures, the Statement of Acceptable Practices would serve as a ''safe harbor.''[18]

Ethics training generated the most discussion among the commenters. Fimat commented that, while it did not oppose the elimination of Commission Rule 3.34, it did believe that a Commission rule providing for ethics training on a specified schedule would help Fimat to ''ensure full cooperation by all [of its] employees.'' EA expressed opposition to the repeal of Rule 3.34, although it indicated that it would be amenable to the removal of the minimum time requirements of that rule (four hours within six months of being granted registration and an hour every three years thereafter) and to allowing training in whatever format works best for the industry. EA also expressed concern about the maintenance of records of completion of ethics training and stated that NFA should continue to assist firms by maintaining records of training even if Rule 3.34 is replaced with a Statement of Acceptable Practices. EA stated that the Commission's proposal concerning ethics training would create uncertainty, may lead firms to place an inadequate priority on training, and weaken public confidence in the industry. CBT applauded the Commission's proposal concerning ethics training, stating that the result would avoid micromanagement in this area, consistent with the overall intent of the CFMA. NFA also strongly supported the Commission's proposal, claiming that the current rule was far too detailed and administratively cumbersome.

The Commission does not believe that the replacement of the rule with a Statement of Acceptable Practices diminishes a registrant's obligations to remain fit and to adequately supervise the handling of customer accounts. Instead, the Commission, through the Statement of Acceptable Practices, which provides guidance to registrants to develop training programs that are suited to their individual needs, is signaling that ethics should be considered an ongoing responsibility rather than an episodic one. The Commission believes that the essence of the ethics training or continuing education requirement is to remain current as to the legal requirements applicable to a person's role in the futures industry, which a registrant ignores at his or her peril. The Commission further believes that, given

[13] However, those IB applicants who do not raise their own capital continue to be required to file a guarantee agreement entered into with an FCM with their registration application. IBs and FCMs should refer to Commission Rules 1.10(j) and 1.57(a)(1) concerning the procedures applicable to guarantee agreements. *See also First American Discount Corp. v. CFTC,* 222 F.3d 1008 (D.C. Cir. Aug. 18, 2000).

Filing of financial statements or guarantee agreements is unnecessary for any FCM or IB registered in accordance with recently-adopted Rule 3.10(a)(3), which applies to those securities brokers or dealers registering as FCMs or IBs because their only futures-related activities involve security futures products. *See* 66 FR 43080 (Aug. 17, 2001).

[14] Although the rule does not require IBs to file a certified financial statement with their application for registration, this does not preclude any SRO from imposing this requirement before accepting an IB for membership.

[15] Certain technical amendments are also being made to paragraph (j)(8), which addresses guaranteed IBs' compliance with the financial reporting requirements in the event that their guarantee agreement has been terminated. Such IBs will be deemed to have satisfied the Commission's minimum financial requirements if they enter into another guarantee agreement or file a certified Form 1–FR–IB.

[16] *See, e.g., In re Premex,* [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,992 (Feb. 1, 1984), *aff'd in relevant part, rev'd in part,* 785 F.2d 1403 (9th Cir. 1986).

[17] As noted in the August 2001 proposals, the Commission did not repropose its ''passporting'' registration procedure in light of various provisions of the CFMA. See 66 FR 45221 at 45222 & n.2. The Commission also indicated that it might revisit that issue in the context of the study mandated by Section 125 of the CFMA. NFA agreed that the Commission's earlier passporting proposal was generally rendered moot by the CFMA, but stated that the issue of streamlining the registration process for dual securities and futures applicants by eliminating duplicate background checks should be addressed as part of the mandated study.

[18] For instance, under the Statement of Acceptable Practices, registrants may engage in ethics training programs sponsored by the registrants themselves, their DSROs, trade associations or others. The format of such training, whether by personal or recorded instruction, or by circulation of written materials such as legal cases, interpretative letters or advisories, is left to the discretion of registrants and DSROs. It is also permissible to require training on whatever periodic basis the registrants and DSROs deem appropriate. Thus, the Commission will not specify any particular programs or procedures that must be followed.

the increasing rapidity of market evolution, it is appropriate for firms to determine how frequently their employees need to be updated on their obligations to customers. Thus, the Commission is not adopting EA's suggestion to maintain the current six-month and three-year training schedule or Fimat's suggestion that the Commission mandate that all registrants participate in some kind of program at least annually or once within some other specified time period. Instead, the Commission is replacing Rule 3.34 with the Statement of Acceptable Practices as proposed.

The Commission is also publishing its recent ''guidance letters'' issued to NFA concerning the treatment of SRO disciplinary actions in assessing the fitness of floor brokers (FBs) and floor traders (FTs). The guidance letters were issued to provide greater clarity in interpreting the ''other good cause'' ground for statutory disqualification from registration under Section 8a(3)(M) of the Act. These letters are being added to the end of Appendix A to Part 3 as they relate to the issue of ''other good cause,'' which is discussed at the end of Appendix A.

C. Financial Requirements

1. Trading by Non-Institutional Customers on DTFs

Although access to DTFs is generally limited to institutional customers,[19] under certain conditions a DTF may permit non-institutional customers to enter into transactions thereon. To address the higher degree of risk associated with the lower regulatory protections offered to DTF participants, such non-institutional customer business may be transacted through a registered FCM that (1) is a clearing member of a derivatives clearing organization, and (2) has a minimum net capital of at least $20 million.[20] Such an FCM is considered to be more capable of properly handling these transactions and the associated risk.

The Commission is adopting new Rule 4.32 to permit registered CTAs to enter trades on or subject to the rules of a DTF on behalf of a non-institutional customer, provided that the CTA: (1) directs the client's commodity interest account;[21] (2) directs accounts containing total assets of not less than $25 million at the time the trade is entered; and (3) discloses to the client that it may enter trades on a DTF on the client's behalf. Paragraph (b) of Rule 4.32 further requires that the client's commodity interest account be carried by a registered FCM. However, an FCM who receives orders on behalf of a non-institutional customer from a CTA acting in accordance with Rule 4.32 need not maintain $20 million in minimum adjusted net capital. *See* Rule 1.17(a)(1)(ii)(B).

As with a highly-capitalized FCM, a CTA meeting this asset test, in its capacity as a professional asset manager, should have the appropriate financial sophistication to handle the risk associated with trading for non-institutional customers on a DTF.[22] Additionally, focusing on the financial sophistication of the person managing the assets, rather than on the sophistication of the individual client advised by the CTA, is consistent with the approach taken by the Commission in adopting Rule 30.12.[23] NFA and MFA supported the new rule pertaining to CTAs.

In order to provide guidance to non-institutional customers trading through a highly-capitalized FCM or a CTA meeting the standards of Rule 4.32, NFA will issue a Statement of Acceptable Practices regarding additional disclosures to be made to such customers trading on DTFs and on related issues involving price dissemination. NFA stated in its comment letter that it looked forward to developing appropriate disclosures for non-institutional customers trading on DTFs.

2. Investment of Customer Funds

Final rules and rule amendments concerning the investment of customer funds by FCMs and clearing organizations became effective on December 28, 2000.[24] To facilitate the implementation of Rule 1.25 and its related amendments, new paragraph (a)(7) to Rule 140.91 is being added to delegate to the Director of the Division of Trading and Markets any functions reserved to the Commission in Rule 1.25 regarding permitted investments for customer funds. The Commission notes that it has determined not to rescind Division of Trading and Markets Financial and Segregation Interpretation No. 9 (Interp. 9).[25] The Commission had previously indicated that it would do so in light of the fact that amendments to Rule 1.25 would now permit investment of customer funds in money market mutual funds (MMMFs).[26] Because Interp. 9 addresses the use of money market deposit accounts rather than MMMFs, however, the Commission has decided not to rescind Interp. 9.

D. Risk Disclosure and Account Statements

The Commission recognizes that there are certain areas of the account opening process that may be streamlined. Accordingly, the Commission has adopted amendments to Rules 1.55(d)(1) and (2), to permit certain required disclosures, such as those concerning consent to (1) allow electronic transmission of statements under new Rule 1.33(g),[27] or (2) transfer funds out of segregated accounts to another account (such as a money market account), to be included in a customer agreement and acknowledged through a ''single signature,'' rather than the multiple signatures that are currently required.[28] The single signature may be made electronically as provided for in Rules 1.3(tt) and 1.4.[29]

CBT supported these rule changes. NFA commented that Rule 1.55 should not dictate the specifics of delivering and acknowledging disclosure. Because the Commission made no proposal on those aspects of Rule 1.55, it has determined not to adopt NFA's suggestion, but will revisit the issue in the intermediary study.

E. Trading Standards

The Commission proposed that Rules 155.1, 155.3, and 155.4, which collectively require FCMs and IBs to establish and to maintain supervisory procedures to assure that neither they nor any affiliated persons use their knowledge of customer orders to the customer's disadvantage, continue to apply to intermediation of trades on contract markets. The Commission also proposed to extend these requirements to trading by non-institutional customers on DTFs under new Rule 155.6(a). Rules 155.1, 155.3 and 155.4 have helped the Commission to deter

[19] *See* new Part 37 of the Commission rules, 66 FR 42256 at 42271 (Aug. 10, 2001).

[20] Section 5a of the Act, 7 U.S.C. 7a, as amended by Pub. L. No. 106–554, 114 Stat. 2763.

[21] The term ''direct'' as defined in Rule 4.10(f), refers to, in the context of trading commodity interest accounts, ''agreements whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization.''

[22] *See* Section 1a(12)(C) of the Act.

[23] *See* 65 FR 47275, at 47277 (Aug. 2, 2000).

[24] *See* 65 FR 82270 (Dec. 28, 2000).

[25] 1 Comm. Fut. L. Rep. (CCH) ¶ 7119 (Nov. 23, 1983).

[26] *See* 65 FR at 78001 n.53.

[27] *See infra.*

[28] Contemporaneously with opening an account, an FCM may obtain the acknowledgment of receipt and understanding of the risk disclosure statement, along with margin funds and any other required account opening documents, from the customer. However, the FCM remains responsible for ensuring that the risk disclosure document is furnished to the customer in such a way that the customer can review and understand the document before committing funds to the FCM.

[29] 65 FR 12466 (Mar. 9, 2000).

such practices as ''front-running,'' ''trading ahead,'' ''bucketing,'' and improper disclosure of customer orders. However, for intermediation of trades by institutional customers at DTFs, the Commission proposed to adopt a new Rule 155.6(b), which would set forth a general standard of practice in this area. The Commission also indicated in the August 2001 proposals that it would consider the development of a Statement of Acceptable Practices to be issued at a later date, with the consultation of DTFs, regarding appropriate procedures that should be employed in order to ensure compliance with the general standard.[30]

NFA commented that, with respect to trading standards, there should be no distinctions based upon the type of trading facility or the type of customer. NFA further commented that it could support either extending the existing rules to DTFs or a core principle with a Statement of Acceptable Practices for both designated contract markets and DTFs. CBT suggested a rule change related to the Commission's proposal to retain the applicability of Rules 155.3 and 155.4 to FCMs and IBs with regard to transactions on designated contract markets. CBT noted that paragraph (b)(2) of each rule prohibits an FCM or IB, respectively, and their affiliated persons, from knowingly taking the other side of a customer order ''except with such other person's prior consent and in conformity with contract market rules *approved by the Commission.*'' (Emphasis added.) CBT requested that, in light of the new rule certification procedures permitted by the CFMA and the Commission, the emphasized text be amended to read ''approved by *or certified to* the Commission.''

The Commission believes that its proposed approach with respect to trading standards strikes a reasonable balance in preserving rules that have worked successfully over the years in curbing abusive trading practices, while relaxing certain of the specific provisions of the existing rules in connection with the trading on DTFs by more sophisticated customers. New Rule 155.6 is intended to proscribe the same trade practice abuses as Rules 155.1, 155.3, and 155.4. Accordingly, the Commission is adopting Rule 155.6 as proposed and has determined not to follow NFA's suggestions in this area. However, the Commission believes that CBT's comment is valid and has adopted amendments to Rules 155.3 and 155.4 to encompass rules certified to the Commission as well as those approved by the Commission concerning trading standards.

F. Recordkeeping

1. Customer Account Statements

In keeping with changes in technology and commercial practices, the Commission proposed to codify its previous Advisory relating to the electronic transmission of account statements in new Rule 1.33(g).[31] The Advisory permitted an FCM, with customer consent, to deliver required confirmation, purchase-and-sale, and monthly account statements electronically in lieu of mailing a paper copy. FCMs need only to retain the daily confirmation statement as of the end of the trading session, provided that it reflects all trades made during that session. Before transmitting any statement electronically to a customer, however, the FCM is required to make certain disclosures regarding the practice, including: (1) The electronic medium or source through which statements would be delivered, (2) the duration, whether indefinite or not, of the period during which consent would be effective, (3) any charges for such service, (4) the information that would be delivered electronically, and (5) a statement that consent to electronic delivery may be revoked at any time. For non-institutional customers, the FCM is required to obtain the customer's signed consent acknowledging the disclosures, prior to the transmission of any statement by means of electronic media. The acknowledgement could be made through a single signature in accordance with Rule 1.55 as discussed above. Institutional customers do not need to provide written consent, and the Commission recommends that FCMs confirm procedures relating to electronic transmission of statements to institutional customers as described in the above-referenced Advisory. Any statement required to be furnished to a person other than a customer in accordance with paragraph (d) of Rule 1.33 would also be permitted to be furnished by electronic media.

NFA opposed codification of the Advisory, even though it fully supports its content. NFA stated that codification would decrease flexibility and that the Advisory should be treated as acceptable practices guidance rather than codified in a rule. The Commission believes that adopting the contents of the Advisory as a rule provides greater legal certainty and visibility, and has determined to adopt new Rule 1.33(g) as proposed.

2. Close-Out of Offsetting Positions

The Commission is amending Rule 1.46 to allow customers or account controllers to instruct the FCM (in writing or orally) if they wish to deviate from the current default rule that the FCM close out offsetting positions on a first-in, first-out basis, looking across all accounts it carries for the same customer.[32] NFA supported this rule change, but cautioned that the discretion provided by the rule amendment should not be misused to permit customers to change offsetting instructions on every transaction. The Commission appreciates these concerns and will monitor implementation of the rule amendment to prevent misuse.

The Commission proposed that CPOs and CTAs be required to disclose to customers, under amendments to Rules 4.24(h)(2) and 4.34(h), respectively, if they instruct an FCM to deviate from the default rule for closing out offsetting positions.[33] NFA objected to these proposals. NFA commented that disclosure would only be material if a CPO or CTA is compensated based upon realized gains and, if that is the case, disclosure about how positions are closed out and the effect on fees is already required. The Commission believes that, given the change in the longstanding rule concerning offsetting positions and the concerns about possible misuse expressed by NFA as noted above, disclosure by CPOs and CTAs as proposed is appropriate. Accordingly, the Commission has determined to adopt the amendments to Rules 4.24(h)(2) and 4.34(h) as proposed.

In order to implement this revision of Rule 1.46, the Commission is amending the rule by inserting, after the words ''omnibus accounts'' in paragraph (a), the phrase ''or where the customer or account controller has instructed otherwise.'' Rule 1.46 is also being

[30] Because the DTF is a new institution, and it is not known how such an institution would choose to operate (*e.g.,* a DTF may choose to sponsor trading in a traditional open-outcry pit trading system, in a purely automated, electronic trading format, or in a combination of the two formats), the Commission is not at this time issuing a Statement of Acceptable Practices in this area.

[31] 65 FR at 39017; *see also* 62 FR 31507 (June 10, 1997).

[32] An FCM must take into consideration positions in separate accounts of the same customer that it is carrying in applying Rule 1.46. *See* 57 FR 55082, 55083 n.2 (Nov. 24, 1992), *citing* U.S. Department of Agriculture, Commodity Exchange Authority Administrative Determination No. 134 (May 25, 1948).

[33] Generally, responsibility for transmitting instructions regarding offset would lie with the registrant directing trading. Thus, where a pool's trading is directed by a CTA, it would be the CTA who would be responsible for transmitting offset instructions, not the CPO.

amended by revising paragraph (e) to correspond to new Rule 1.33(g) (the substance of paragraph (e) of Rule 1.46 is being deleted because it relates back to paragraph (d)(6), which is being removed and reserved) to read: ''The statements required by paragraph (a) of this section may be furnished to the customer or the person described in § 1.33(d) by means of electronic transmission, in accordance with § 1.33(g).''

IV. Section 4(c) Findings

Certain of the rules and rule amendments discussed herein are being adopted under Section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may, by rule, regulation or order, exempt any class of agreements, contracts or transactions, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to the agreement, contract, or transaction, from any of the provisions of the Act (except certain provisions governing a group or index of securities and security futures products). As relevant here, when granting an exemption pursuant to Section 4(c), the Commission must find that the exemption would be consistent with the public interest.

As explained above, the rules and rule amendments provide greater flexibility for intermediaries and their customers in several areas. Specifically, the Commission is adopting rule amendments concerning the definition of the term ''principal'' that are narrower than the language of the second proviso of Section 8a(2) of the Act. These amendments recognize the evolution of management structures by reducing the number of officers that will be considered principals, while ensuring that appropriate personnel that perform significant roles within the firm remain listed as such. The Commission believes that, in light of the conditions and safeguards provided for under the rules and rule amendments, the exemptive relief will have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act. Moreover, the Commission believes that the additional flexibility for intermediaries and their customers provided for by the rules and rule amendments adopted herein are consistent with the public interest. The Commission, in proposing the rules and rule amendments adopted herein, specifically invited public comment on this finding. The Commission received no comments regarding this finding.

V. Cost-Benefit Analysis

Section 15 of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15 as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15 simply requires the Commission to ''consider the costs and benefits'' of its action.

The amended Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

This rulemaking constitutes a package of related rule provisions affecting market intermediaries. The rules and rule amendments are intended to provide greater flexibility for intermediaries and their customers in their methods of doing business. The Commission is considering the costs and benefits of these rules in light of the specific provisions of Section 15 of the Act:

1. *Protection of market participants and the public.* In general, the rules would be expected to cost little in terms of diminishing the protection of market participants and the public.

2. *Efficiency and competition.* The rules are expected to benefit competition and market efficiency broadly by providing increased flexibility for intermediaries. For instance, the Commission is adopting new rule amendments concerning the definition of the term ''principal'' that recognize the evolution of management structures by reducing the number of officers that will be considered principals, while ensuring that personnel that exercise or are in a position to exercise a controlling influence over the activities of the registrant will remain listed as such. In addition, FCMs will be permitted to obtain several consents from consumers with a single signature. The rules do not impose a cost on market efficiency or competition.

3. *Financial integrity of futures markets and price discovery.* The rules should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets or on the risk management practices of FCMs, CTAs, CPOs or IBs.

4. *Sound risk management practices.* The Commission has previously adopted amendments to its rules regarding the investment of customer funds that were originally part of the December Release. These amendments expanded the list of permissible investments in which FCMs and clearing organizations are permitted to invest cash segregated for the benefit of commodity customers, thereby enhancing the yield available to FCMs, clearing organizations and their customers, and contained specific risk-limiting features intended to minimize credit risk, market risk, and liquidity risk.

5. *Other public interest considerations.* The Commission's rules implementing the new regulatory structure would open up new markets for the benefit of market participants and the public, thus making available more customized products for risk management purposes. The new rules and rule amendments adopted herein establish appropriate safeguards for those customers seeking to trade on the new DTF and security futures product markets.

After considering these factors, the Commission has determined to adopt the revisions to its rules discussed above. The Commission invited public comment on its application of the new cost-benefit provision. The Commission did not receive any comments regarding the application of the cost-benefit provision.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (1994 & Supp. II 1996), requires federal agencies, in promulgating rules, to consider the impact of those rules on small businesses. The rules adopted herein would affect FCMs, IBs, CPOs, CTAs, FBs, FTs, leverage transaction merchants (LTMs) and agricultural trade option merchants (ATOMs), as well as principals thereof. The Commission has previously established certain

definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[34] The Commission has previously determined that registered FCMs, CPOs, LTMs and ATOMs are not small entities for the purpose of the RFA.[35] With respect to IBs, CTAs, FBs and FTs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all of the affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule. In this regard, the rules being adopted herein would not require any registrant to change its current method of doing business. For many registrants, the revisions should decrease the number of persons within the registrant's organization who would be considered principals under the CFTC's rules. Further, the revisions should reduce, rather than increase, the regulatory requirements that apply to registrants and applicants for registration, regardless of size. The Commission notes that no comments were received from the public on the RFA and its relation to the proposed rules.

B. Paperwork Reduction Act

This proposed rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the Commission has submitted a copy of these proposed amendments to its rules to the Office of Management and Budget (OMB) for its review. No comments were received in response to the Commission's invitation in the proposed rules to comment on any potential paperwork burden associated with this regulation.

C. Administrative Procedures Act

The Administrative Procedures Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' [36] The new rules and rule amendments herein provide greater flexibility in several areas, including, among other things, amending the definition of ''principal'' so as to reduce the number of officers of a registrant that are required to be listed as principals with the Commission, reducing the burden on a registrant in notifying the Commission when a new natural person is added as a principal, and permitting a firm greater freedom in creating its own program for ethics training. Further, the Commission notes that most of the rules and rule amendments have now been published twice for public comment and that this is the second time they have been adopted by the Commission. Accordingly, the Commission has determined to make the new rules and rule amendments effective immediately.

Lists of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Principals, Registration, Reporting and recordkeeping requirements.

17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Disclosure, Principals, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organization and functions (Government agencies).

17 CFR Part 155

Brokers, Commodity futures, Reporting and recordkeeping requirements.

For the reasons discussed in the foregoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

2. Section 1.3 is amended by adding new paragraph (g) to read as follows:

§ 1.3 Definitions.

* * * * *

(g) *Institutional customer.* This term has the same meaning as ''eligible contract participant'' as defined in section 1a(12) of the Act.

* * * * *

3. Section 1.10 is amended by revising paragraphs (a)(2) and (j)(8) and removing the undesignated paragraphs within and following paragraphs (a)(2) and (j)(8) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) * * *

(2) (i) (A) Except as provided in paragraphs (a)(3) and (h) of this section, each person who files an application for registration as a futures commission merchant and who is not so registered at the time of such filing, must, concurrently with the filing of such application, file either:

(*1*) A Form 1–FR–FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed; or

(*2*) A Form 1–FR–FCM as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1–FR–FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which such report is filed.

(B) Each such person must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii) (A) Except as provided in paragraphs (a)(3) and (h) of this section, each person who files an application for registration as an introducing broker and who is not so registered at the time of such filing, must, concurrently with the filing of such application, file either:

(*1*) A Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed;

(*2*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1-FR-IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which such report is filed;

(*3*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which such report is filed, *Provided, however,* that such applicant shall be subject to a review by the applicant's designated self-regulatory

[34] 47 FR 18618–21 (Apr. 30, 1982).

[35] *Id.* at 18619–20 (discussing FCMs and CPOs); 54 FR 19556, 19557 (May 8, 1989) (discussing LTMs); and 63 FR 18821, 18830 (Apr. 16, 1998) (discussing ATOMs).

[36] 5 U.S.C. 553(d).

organization within six months of registration; or

(*4*) A guarantee agreement.

(B) Each person filing in accordance with paragraphs (a)(2)(ii)(A) (*1*), (*2*) or (*3*) of this section must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

* * * * *

(j) * * *

(8)(i)(A) An introducing broker that is a party to a guarantee agreement that has been terminated in accordance with the provisions of paragraph (j)(5) of this section, or that is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, must cease doing business as an introducing broker on or before the effective date of such termination or expiration unless, on or before 10 days prior to the effective date of such termination or expiration or such other period of time as the Commission or the designated self-regulatory organization may allow for good cause shown, the introducing broker files with its designated self-regulatory organization either a new guarantee agreement effective as of the day following the date of termination of the existing agreement, or, in the case of a guarantee agreement that is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, a new guarantee agreement effective on or before such expiration, or either:

(*1*) A Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which the report is filed; or

(*2*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed.

(B) Each person filing a Form 1–FR–IB in accordance with this section must include with the financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii) (A) Notwithstanding the provisions of paragraph (j)(8)(i) of this section or of § 1.17(a), an introducing broker that is a party to a guarantee agreement that has been terminated in accordance with the provisions of paragraph (j)(5)(ii) of this section shall not be deemed to be in violation of the minimum adjusted net capital requirement of § 1.17(a)(1)(ii) or (a)(2) for 30 days following such termination. Such an introducing broker must cease doing business as an introducing broker on or after the effective date of such termination, and may not resume doing business as an introducing broker unless and until it files a new agreement or either:

(*1*) A Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which the report is filed; or

(*2*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed.

(B) Each person filing a Form 1–FR–IB in accordance with this section must include with the financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

* * * * *

4. Section 1.17 is amended by redesignating paragraph (a)(1)(ii) as (a)(1)(iii) and by adding new paragraph (a)(1)(ii) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a) * * *

(1) * * *

(ii) Each person registered as a futures commission merchant engaged in soliciting or accepting orders and customer funds related thereto for the purchase or sale of any commodity for future delivery or any commodity option on or subject to the rules of a registered derivatives transaction execution facility from any customer who does not qualify as an ''institutional customer'' as defined in § 1.3(g) must:

(A) Be a clearing member of a derivatives clearing organization and maintain net capital in the amount of the greater of $20,000,000 or the amounts otherwise specified in paragraph (a)(1)(i) of this section; or

(B) Receive orders on behalf of the customer from a commodity trading advisor acting in accordance with § 4.32 of this chapter.

* * * * *

5. Section 1.33 is amended by adding a new paragraph (g) to read as follows:

§ 1.33 Monthly and confirmation statements.

* * * * *

(g) *Electronic transmission of statements.* (1) The statements required by this section, and by § 1.46, may be furnished to any customer by means of electronic media if the customer so consents, *Provided, however,* that a futures commission merchant must, prior to the transmission of any statement by means of electronic media, disclose the electronic medium or source through which statements will be delivered, the duration, whether indefinite or not, of the period during which consent will be effective, any charges for such service, the information that will be delivered by such means, and that consent to electronic delivery may be revoked at any time.

(2) In the case of a customer who does not qualify as an ''institutional customer'' as defined in § 1.3(g), a futures commission merchant must obtain the customer's signed consent acknowledging disclosure of the information set forth in paragraph (g)(1) of this section prior to the transmission of any statement by means of electronic media.

(3) Any statement required to be furnished to a person other than a customer in accordance with paragraph (d) of this section may be furnished by electronic media.

(4) A futures commission merchant who furnishes statements to any customer by means of electronic media must retain a daily confirmation statement for such customer as of the end of the trading session, reflecting all transactions made during that session for the customer, in accordance with § 1.31.

* * * * *

6. Section 1.46 is amended as follows:

a. By revising paragraph (a) introductory text,

b. By removing and reserving paragraphs (d)(4) through (d)(7),

c. By removing paragraph (d)(9) and

d. By revising paragraph (e) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(a) *Application of purchases and sales.* Except with respect to purchases or sales which are for omnibus accounts, or where the customer has instructed otherwise, any futures commission merchant who, on or subject to the rules of a designated

contract market or registered derivatives transaction execution facility:

* * * * *

(e) The statements required by paragraph (a) of this section may be furnished to the customer or the person described in § 1.33(d) by means of electronic transmission, in accordance with § 1.33(g).

* * * * *

7. Section 1.55 is amended by revising paragraphs (d) and (f) to read as follows:

§ 1.55 Distribution of ''Risk Disclosure Statement'' by futures commission merchants and introducing brokers.

* * * * *

(d) Any futures commission merchant, or in the case of an introduced account any introducing broker, may open a commodity futures account for a customer without obtaining the separate acknowledgments of disclosure and elections required by this section and by § 1.33(g), and by §§ 33.7 and 190.06 of this chapter, provided that:

(1) Prior to the opening of such account, the futures commission merchant or introducing broker obtains an acknowledgment from the customer, which may consist of a single signature at the end of the futures commission merchant's or introducing broker's customer account agreement, or on a separate page, of the disclosure statements and elections specified in this section and § 1.33(g), and in §§ 33.7 and 190.06 of this chapter, and which may include authorization for the transfer of funds from a segregated customer account to another account of such customer, as listed directly above the signature line, provided the customer has acknowledged by check or other indication next to a description of each specified disclosure statement or election that the customer has received and understood such disclosure statement or made such election; and

(2) The acknowledgment referred to in paragraph (d)(1) of this section is accompanied by and executed contemporaneously with delivery of the disclosures and elective provisions required by this section and § 1.33(g), and by §§ 33.7 and 190.06 of this chapter.

* * * * *

(f) A futures commission merchant or, in the case of an introduced account an introducing broker, may open a commodity futures account for an ''institutional customer'' as defined in § 1.3(g) without furnishing such institutional customer the disclosure statements or obtaining the acknowledgments required under paragraph (a) of this section, §§ 1.33(g) and 1.65(a)(3), and §§ 30.6(a), 33.7(a) and 190.10(c) of this chapter.

* * * * *

PART 3—REGISTRATION

8. The authority citation for Part 3 is revised to read as follows:

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

9. Section 3.1 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 3.1 Definitions.

(a) * * *

(1) If the entity is organized as a sole proprietorship, the proprietor; if a partnership, any general partner; if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, the manager, managing member or those members vested with the management authority for the entity, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; and, in addition, any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission;

(2)(i) Any individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise, is the owner of ten percent or more of the outstanding shares of any class of stock, is entitled to vote or has the power to sell or direct the sale of ten percent or more of any class of voting securities, or is entitled to receive ten percent or more of the profits; or

(ii) Any person other than an individual that is the direct owner of ten percent or more of any class of securities; or

* * * * *

10. Section 3.10 is amended by removing paragraph (a)(2)(ii) and by redesignating paragraph (a)(2)(i) as paragraph (a)(2).

11. Section 3.21 is amended by revising paragraph (c) introductory text to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(c) *Outside directors.* Any futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of §§ 3.10(a)(2) and 3.31(a)(2), file a ''Notice Pursuant to Rule 3.21(c)'' with the National Futures Association. Such notice shall state, if true, that such outside director:

* * * * *

12. Section 3.31 is amended by redesignating paragraph (a) as paragraph (a)(1), and by adding new paragraph (a)(2) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) (1) * * *

(2) Where the deficiency or inaccuracy is created by the addition of a new principal not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration), each Form 3–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8–R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c). The provisions of this paragraph do not apply to any principal who has a current Form 8-R on file with the Commission or the National Futures Association.

* * * * *

§ 3.32 [Removed]

13. Section 3.32 is removed.

§ 3.34 [Removed]

14. Section 3.34 is removed.

15. Appendix A to Part 3 is amended by adding to the end thereto the following:

Appendix A to Part 3—Interpretative Statement With Respect to Section 8A(2)(C) and (E) and Section 8A(3)(J) and (M) of the Commodity Exchange Act

* * * * *

The Commission has further addressed ''other good cause'' under Section 8a(3)(M) of the Act in issuing guidance letters on assessing the fitness of floor brokers, floor traders or applicants in either category:

[First guidance letter]

December 4, 1997

Robert K. Wilmouth, President, National Futures Association, 200 West Madison Street, Chicago, IL 60606–3447

Re: Adverse Registration Actions with Respect to Floor Brokers, Floor Traders and Applicants for Registration in Either Category

Dear Mr. Wilmouth: As you know, the Commission on June 26, 1997, approved for publication in the **Federal Register** a Notice and Order concerning adverse registration actions by the National Futures Association (''NFA'') with respect to registered floor brokers (''FBs''), registered floor traders (''FTs'') and applicants for registration in either category. 62 Fed. Reg. 36050 (July 3, 1997). The Notice and Order authorized NFA to grant or to maintain, either with or without conditions or restrictions, FB or FT registration where NFA previously would have forwarded the case to the Commission for review of disciplinary history. The Commission has worked with its staff to determine which of the pending matters could efficiently be returned to NFA for handling, and such matters have been forwarded to NFA. The Commission will continue to accept or to act upon requests for exemption, and the Commission staff will consider requests for ''no-action'' opinions with respect to applicable registration requirements.

By this correspondence, the Commission is issuing guidance that provides NFA further direction on how it expects NFA to exercise its delegated power, based upon the experience of the Commission and the staff with the registration review process during the past three years. This guidance will help ensure that NFA exercises its delegated power in a manner consistent with Commission precedent.

In exercising its delegated authority, NFA, of course, needs to apply all of the provisions of Sections 8a(2) and (3) of the Commodity Exchange Act (''Act'').[1] In that regard, NFA should consider the matters in which the Commission has taken action in the past and endeavor to seek similar registration restrictions, conditions, suspensions, denials, or revocations under similar circumstances.

One of the areas in which NFA appears to have had the most uncertainty is with regard to previous self-regulatory organization (''SRO'') disciplinary actions. Commission Rule 1.63[2] provides clear guidelines for determining whether a person's history of ''disciplinary offenses'' should preclude service on SRO governing boards or committees.[3] In determining whether to grant or to maintain, either with or without conditions or restrictions, FB or FT registration, NFA should, as an initial matter, apply the Rule 1.63(a)(6) criteria to those registered FBs, registered FTs and applicants for registration in either category. However, NFA should be acting based upon any such offenses that occurred within the previous five years, rather than the three years provided for in Rule 1.63(c). NFA should consider disciplinary actions taken by an SRO as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934 no differently from disciplinary actions taken by an SRO in the futures industry as defined in Rule 1.3(ee).[4] Application of the Rule 1.63 criteria, as modified, to these matters will aid NFA in making registration determinations that are reasonably consonant with Commission views.[5] NFA should focus on the nature of the underlying conduct rather than the sanction imposed by an SRO. Thus, if a disciplinary action would not come within the coverage of Rule 1.63 but for the imposition of a short suspension of trading privileges (such as for a matter involving fighting, use of profane language or minor recordkeeping violations), NFA could exercise discretion, as has the Commission, not to institute a statutory disqualification case. On the other hand, conduct that falls clearly within the terms of Rule 1.63, such as violations of rules involving potential harm to customers of the exchange, should not be exempt from review simply because the exchange imposed a relatively minor sanction.

The Commission has treated the registration process and the SRO disciplinary process as separate matters involving separate considerations. The fact that the Commission has not pursued its own enforcement case in a particular situation does not necessarily mean that the Commission considers the situation to be a minor matter for which no registration sanctions are appropriate. Further, the Commission believes that it and NFA, entities with industry-wide perspective and responsibilities, are the appropriate bodies, rather than any individual exchange, to decide issues relating to registration status, which can affect a person's ability to function in the industry well beyond the jurisdiction of a particular exchange. Thus, NFA's role is in no way related to review of exchange sanctions for particular conduct, but rather it is the entirely separate task of determining whether an FB's or FT's conduct should impact his or her registration.

NFA also should look to Commission precedent in selecting conditions or restrictions to be imposed, such as a dual trading ban where a person has been involved in disciplinary offenses involving customer abuse. Where conditions or restrictions are imposed, or agreed upon, NFA also should follow Commission precedent, under which such conditions or restrictions generally have been imposed for a two-year period.

The Commission has required sponsorship for conditioned FBs and FTs when their disciplinary offenses have involved noncompetitive trading and fraud irrespective of the level of sanctions imposed by an SRO. Indeed, but for a sponsorship requirement there would be no one routinely watching and responsible for the activities of these registrants. Absent sponsorship, such FBs and FTs would only be subject to routine Commission and exchange surveillance. The Commission's rules are premised upon the judgment that requiring FTs and FBs to have sponsors to ensure their compliance with conditions is both appropriate and useful. See Rule 3.60(b)(2)(i).

A question has arisen whether, if NFA is required to prove up the underlying facts of an SRO disciplinary action, the exchanges can provide information on exchange disciplinary proceedings directly to NFA. Although Section 8c(a)(2) of the Act states that an exchange shall not disclose the evidence for a disciplinary action except to the person disciplined and to the Commission, Section 8a(10) of the Act allows the Commission to authorize any person to

[1] 7 U.S.C. 12a(2) and (3) (1994). The letter is intended to supplement, not to supersede, other guidance provided in the past to NFA. In this regard, the NFA should continue to follow other guidance provided by the Commission or its staff.

[2] Commission rules referred to herein are found at 17 CFR Ch. I.

[3] Rule 1.63(c) provides that a person is ineligible from serving on an SRO's disciplinary committees, arbitration panels, oversight panels or governing board if, as provided in Rule 1.63(b), the person, inter alia: (1) within the past three years has been found by a final decision of an SRO, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense; or (2) within the past three years has entered into a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

Rule 1.63(a)(6) provides that a ''disciplinary offense'' includes: (i) any violation of the rules of an SRO except those rules related to (A) decorum or attire, (B) financial requirements, or (C) reporting or record-keeping unless resulting in fines aggregating more than $5,000 within any calendar year; (ii) any rule violation described in subparagraphs (A) through (C) above that involves fraud, deceit or conversion or results in a suspension or expulsion; (iii) any violation of the Act or the regulations promulgated thereunder; or (iv) any failure to exercise supervisory responsibility with respect to an act described in paragraphs (i) through (iii) above when such failure is itself a violation of either the rules of an SRO, the Act or the regulations promulgated thereunder.

[4] Thus, for example, a disciplinary action taken by the Chicago Board Options Exchange or the National Association of Securities Dealers, Inc. should be considered in a manner similar to a disciplinary action of the Chicago Board of Trade or NFA.

[5] In reviewing these matters, the NFA should bear in mind recent Commission precedent which allows for reliance on settled disciplinary proceedings in some circumstances. *See In the Matter of Michael J. Clark,* [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,032 (Apr. 22, 1997) (''other good cause'' under Section 8a(3)(M) of the Act exists based upon a pattern of exchange disciplinary actions resulting in significant sanctions for serious rule violations—whether settlements or adjudications), *aff'd sub nom., Clark* v. *Commodity Futures Trading Commission,* No. 97–4228 (2d Cir. June 4, 1999) (unpublished).

perform any portion of the registration functions under the Act, notwithstanding any other provision of law. The effective discharge of the delegated registration function requires NFA to have access to the exchange evidence. Thus, the Commission believes that Section 8a(10) may reasonably be interpreted to allow the disclosure of information from exchange disciplinary proceedings directly to NFA despite the provisions of Section 8c(a)(2).

Nothing in the Notice and Order affects the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions, including review of the sufficiency of conditions or restrictions imposed by NFA, to review the determination by NFA not to take action to affect an existing registration, or to take its own action to address a statutory disqualification. Moreover, the Commission Order contemplates that to allow for appropriate Commission oversight of NFA's exercise of this delegated authority, NFA will provide for the Commission's review quarterly schedules of all applicants cleared for registration and all registrants whose registrations are maintained without adverse action by NFA's Registration, Compliance, Legal Committee despite potential statutory disqualifications.

The Commission will continue to monitor NFA activities through periodic rule enforcement reviews, and NFA remains subject to the present requirement that it monitor compliance with the conditions and restrictions imposed on conditioned and restricted registrants.

Sincerely,

Jean A. Webb, Secretary of the Commission

[Second guidance letter]

April 13, 2000

Robert K. Wilmouth, President, National Futures Association, 200 West Madison Street, Chicago, IL 60606–3447

Re: Use of Exchange Disciplinary Actions as ''Other Good *Cause'' to Affect Floor Broker/Floor Trader Registration*

Dear Mr. Wilmouth:

I. Introduction and Background

In July 1997, the Commission issued a Notice and Order authorizing the National Futures Association (''NFA'') to grant or to maintain, either with or without conditions or restrictions, floor broker (''FB'') or floor trader (''FT'') registration where NFA previously would have forwarded the case to the Commission for review of disciplinary history.[1] By letter dated December 4, 1997 (''Guidance Letter''), the Commission provided further direction on how the Commission expected NFA to exercise its delegated power and to ensure that NFA exercised its delegated power in a manner consistent with Commission precedent.

The Commission has determined to revise the Guidance Letter. Specifically, the Commission is revising the portion of the Guidance Letter that addresses the use of exchange disciplinary actions as ''other good cause'' to affect FB and FT registrations. The Commission has made this determination following its own reconsideration of the issue and at the urging of industry members.[2]

The Guidance Letter pointed out that, in exercising its delegated authority, NFA must apply all of the provisions of Sections 8a(2) and (3) of the Commodity Exchange Act (''Act'').[3] In particular, Section 8a(3)(M) of the Act authorizes the Commission to refuse to register or to register conditionally any person if it is found, after opportunity for hearing, that there is other good cause for statutory disqualification from registration beyond the specifically listed grounds in Sections 8a(2) and 8a(3) of the Act. The Commission held in *In the Matter of Clark* that statutory disqualification under the ''other good cause'' provision of Section 8a(3)(M) may arise on the basis of, among other things, a pattern of exchange disciplinary actions alleging serious rule violations that result in significant sanctions, and that it is immaterial whether the sanctions imposed resulted from a fully-adjudicated disciplinary action or an action that was taken following a settlement.[4]

The Guidance Letter recommended the application of the provisions of Commission Rule 1.63[5] as criteria to aid in assessing the impact of an FB or FT applicant's or registrant's previous disciplinary history on the person's fitness to be registered, with the exception that NFA should be acting based on disciplinary history from the previous five years, rather than the three years provided for in Rule 1.63.[6] The Guidance Letter also noted that NFA should consider disciplinary actions taken not only by futures industry SROs but also those taken by SROs as defined in Section 3(a)(26) of the Securities Exchange Act of 1934 (''1934 Act''), including settled disciplinary actions.

II. Revised Guidance

As stated above, the Commission has determined to revise the Guidance Letter. From this point forward, NFA should cease using Rule 1.63 as the basis to evaluate the impact of an FB or FT applicant's or registrant's disciplinary history on his or her fitness to be registered. Instead, as *Clark* stated, when reviewing disciplinary history to assess the fitness to be registered of an FB, FT, or applicant in either category, a pattern of exchange disciplinary actions alleging serious rule violations that result in significant sanctions will trigger the ''other good cause'' provision of Section 8a(3)(M). The ''pattern'' should consist of at least two final exchange disciplinary actions, whether settled or adjudicated.

NFA also should consider initiating proceedings to affect the registration of the FB or FT, even if there is only a single exchange action against the FB or FT, if the exchange action was based on allegations of particularly egregious misconduct or involved numerous instances of misconduct occurring over a long period of time. If, however, a proceeding is initiated based on a single exchange action that was disposed of by settlement, NFA may have to prove up the underlying misconduct. Furthermore, traditional principles of collateral estoppel apply to adjudicated actions, whether they are being considered individually or as part of a pattern.[7]

As provided by the Guidance Letter, ''exchange disciplinary actions'' would continue to include disciplinary actions taken by both futures industry SROs and SROs as defined in Section 3(a)(26) of the 1934 Exchange Act. Furthermore, NFA should review an applicant's or registrant's disciplinary history for the past five years.[8] At least one of the actions forming the

[1] Registration Actions by National Futures Association With Respect to Floor Brokers, Floor Traders and Applicants for Registration in Either Category, 62 FR 36050 (July 3, 1997).

[2] *See* letters submitted by James Bowe, former president of the New York Board of Trade (''NYBOT''), dated October 13, 1999, Christopher Bowen, general counsel of the New York Mercantile Exchange (''NYMEX''), dated October 18, 1999, and the Joint Compliance Committee (''JCC''), dated February 2, 2000. The JCC consists of senior compliance officials from all domestic futures exchanges and the NFA (*i.e.,* the domestic self-regulatory organizations (''SROs'')). In addition, staff from the Contract Markets Section of the Commission's Division of Trading and Markets attend the JCC meetings as observers. The JCC was established to aid in the development of improved compliance systems through joint efforts and information-sharing among the SROs. Commission staff have also discussed this issue with SRO staff.

[3] 7 U.S.C. 12a(2) and (3) (1994).

[4] *In the Matter of Clark,* [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,032 (Apr. 22, 1997), *aff'd sub nom., Clark* v. *Commodity Futures Trading Commission,* No. 97–4228 (2d Cir. June 4, 1999) (unpublished).

[5] Commission rules referred to in this letter are found at 17 CFR Ch. 1.

[6] Rule 1.63 provides, among other things, that a person is ineligible from serving on SRO disciplinary committees, arbitration panels, oversight panels or governing boards if that person, *inter alia,* entered into a settlement agreement within the past three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

Rule 1.63(a)(6) defines a ''disciplinary offense'' to include:

(i) any violation of the rules of an SRO except those rules related to (A) decorum or attire, (B) financial requirements, or (C) reporting or record-keeping unless resulting in fines aggregating more than $5,000 within any calendar year; (ii) any rule violation described in subparagraphs (A) through (C) above that involves fraud, deceit or conversion or results in a suspension or expulsion; (iii) any violation of the Act or the regulations promulgated thereunder; or (iv) any failure to exercise supervisory responsibility with respect to an act described in paragraphs (i) through (iii) above when such failure is itself a violation of either the rules of an SRO, the Act or the regulations promulgated thereunder.

[7] *Clark* at 44,929.

[8] The Commission generally looked at a five-year period of disciplinary history. On occasion, however, the Commission examined a longer period of an applicant's or registrant's disciplinary history. For example, the Commission revoked the registration of one FB on the basis of exchange disciplinary cases that extended back six years, *see Clark,* 2 Comm. Fut. L. Rep. (CCH) ¶ 27,032, and denied an application for registration as an FT on the basis of exchange disciplinary cases that extended back seven years, *see In the Matter of Castellano,* [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,360 (Nov. 23, 1988), *summarily aff'd* (May 29, 1990), *reh. denied* [1990–1992 Transfer Binder] Comm. Fut. L. Rep. ¶ 24,870 (June 26, 1990), *aff'd sub nom. Castellano v. CFTC,* Docket No. 90–2298 (7th Cir. Nov. 20, 1991).

pattern, however, must have become final after *Clark* was decided by the Commission on April 22, 1997. Finally, ''serious rule violations'' consist of, or are substantially related to, charges of fraud, customer abuse, other illicit trading practices, or the obstruction of an exchange investigation.

Congress, the courts and the Commission have indicated the importance of considering an applicant's history of exchange disciplinary actions in assessing that person's fitness to register.[9] Furthermore, NFA's review of exchange disciplinary actions within the context of the registration process should not simply mirror the disciplinary actions undertaken by the exchanges. The two processes are separate matters that involve separate considerations. As part of their ongoing self-regulatory obligations, exchanges must take disciplinary action[10] and such disciplinary matters necessarily focus on the specific misconduct that forms the allegation. In a statutory disqualification action, however, NFA must determine whether the disciplinary history of an FB, FT or applicant over the preceding five years should impact his or her registration. Additionally, NFA possesses industry-wide perspective and responsibilities. As such, NFA, rather than an individual exchange, should decide registration status issues, since those issues affect an individual's status within the industry as a whole, well beyond the jurisdiction of a particular exchange.

The Commission also wants to clarify to the fullest extent possible that its power to delegate the authority to deny or condition the registration of an FB, FT, or an applicant for registration in either category permits exchanges to disclose to NFA all evidence underlying exchange disciplinary actions, notwithstanding the language of Section 8c(a)(2) of the Act.[11] The Commission's power to delegate stems from Section 8a(10) of the Act, which permits delegation of registration functions, including statutory disqualification actions, to any person in accordance with rules adopted by such person and submitted to the Commission for approval or for review under Section 17(j) of the Act, ''notwithstanding any other provision of law.'' Certainly, Section 8c(a)(2) qualifies as ''any other provision of law.'' Furthermore, the effective discharge of the delegated function requires NFA to have access to the exchange evidence. Thus, the exercise of the delegated authority pursuant to Section 8a(10) permits the exchanges to disclose all evidence underlying disciplinary actions to NFA.[12]

This letter supersedes the Guidance Letter to the extent discussed above. In all other aspects, the Guidance Letter and other guidance provided by the Commission or its staff remain in effect. Therefore, NFA should continue to follow Commission precedent when selecting conditions or restrictions to be imposed. For example, NFA should impose a dual trading ban where customer abuse is involved and any conditions or restrictions imposed should be for a two-year period. Furthermore, NFA should require sponsorship for conditioned FBs or FTs when their disciplinary offenses involve noncompetitive trading and fraud.

Nothing in the Notice and Order or this letter affects the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions, including review of the sufficiency of conditions or restrictions imposed by NFA, to review the determination by NFA not to take action to affect an existing registration, or to take its own action to address a statutory disqualification. Moreover, the Commission Order contemplates that to allow for appropriate Commission oversight of NFA's exercise of this delegated authority, NFA will provide for the Commission's review quarterly schedules of all applicants cleared for registration and all registrants whose registrations are maintained without adverse action by NFA's Registration, Compliance, Legal Committee despite potential statutory disqualifications.

The Commission will continue to monitor NFA activities through periodic rule enforcement reviews, and NFA remains subject to the present requirement that it monitor compliance with the conditions and restrictions imposed on conditioned and restricted registrants.

Sincerely,
Jean A. Webb,
Secretary of the Commission.

16. Part 3 is amended by adding Appendix B to read as follows:

Appendix B to Part 3—Statement of Acceptable Practices With Respect to Ethics Training

(a) The provisions of Section 4p(b) of the Act (7 U.S.C. 6p(b) (1994)) set forth requirements regarding training of registrants as to their responsibilities to the public. This section requires the Commission to issue regulations requiring new registrants to attend ethics training sessions within six months of registration, and all registrants to attend such training on a periodic basis. The awareness and maintenance of professional ethical standards are essential elements of a registrant's fitness. Further, the use of ethics training programs is relevant to a registrant's maintenance of adequate supervision, a requirement under Rule 166.3.

(b)(1) The Commission recognizes that technology has provided new, faster means of sharing and distributing information. In view of the foregoing, the Commission has chosen to allow registrants to develop their own ethics training programs. Nevertheless, futures industry professionals may want guidance as to the role of ethics training. Registrants may wish to consider what ethics training should be retained, its format, and how it might best be implemented. Therefore, the Commission finds it appropriate to issue this Statement of Acceptable Practices regarding appropriate training for registrants, as interpretative guidance for intermediaries on fitness and supervision. Commission registrants may look to this Statement of Acceptable Practices as a ''safe harbor'' concerning acceptable procedures in this area.

(2) The Commission believes that section 4p(b) of the Act reflects an intent by Congress that industry professionals be aware, and remain abreast, of their continuing obligations to the public under the Act and the regulations thereunder. The text of the Act provides guidance as to the nature of these responsibilities. As expressed in section 4p(b) of the Act, personnel in the industry have an obligation to the public to observe the Act, the rules of the Commission, the rules of any appropriate self-regulatory organizations or contract markets (which would also include registered derivatives transaction execution facilities), or other applicable federal or state laws or regulations. Further, section 4p(b) acknowledges that registrants have an obligation to the public to observe ''just and equitable principles of trade.''

(3) Additionally, section 4p(b) reflects Congress' intent that registrants and their personnel retain an up-to-date knowledge of these requirements. The Act requires that registrants receive training on a periodic basis. Thus, it is the intent of Congress that Commission registrants remain current with regard to the ethical ramifications of new technology, commercial practices, regulations, or other changes.

(c) The Commission believes that training should be focused to some extent on a person's registration category, although there will obviously be certain principles and issues common to all registrants and certain general subjects that should be taught. Topics to be addressed include:

(1) An explanation of the applicable laws and regulations, and the rules of self-regulatory organizations or contract markets and registered derivatives transaction execution facilities;

(2) The registrant's obligation to the public to observe just and equitable principles of trade;

(3) How to act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market;

(4) How to establish effective supervisory systems and internal controls;

(5) Obtaining and assessing the financial situation and investment experience of customers;

(6) Disclosure of material information to customers; and

(7) Avoidance, proper disclosure and handling of conflicts of interest.

[9] Letter dated July 14, 1995, from Mary L. Schapiro to R. Patrick Thompson, President, New York Mercantile Exchange (unpublished). *See also Castellano, supra* note 8.

[10] *See* Rule 1.51(a)(7).

[11] Section 8c(a)(2) states, in relevant part, that ''[A]n exchange * * * shall not disclose the evidence therefor, except to the person who is suspended, expelled, disciplined, or denied access, and to the Commission.''

[12] Of course, the Commission could request records from the exchange and forward them to NFA. The Commission believes that this is an unnecessary administrative process and that NFA should obtain the records it needs to carry out the delegated function of conducting disciplinary history reviews directly from the exchanges. In this context and pursuant to Commission orders authorizing NFA to institute adverse registration actions, NFA should be viewed as standing in the shoes of the Commission.

(d) An acceptable ethics training program would apply to all of a firm's associated persons and its principals to the extent they are required to register as associated persons. Additionally, personnel of firms that rely on their registration with other regulators, such as the Securities and Exchange Commission, should be provided with ethics training to the extent the Act and the Commission's regulations apply to their business.

(e) As to the providers of such training, the Commission believes that classes sponsored by independent persons, firms, or industry associations would be acceptable. It would also be permissible to conduct in-house training programs. Further, registrants should ascertain the credentials of any ethics training providers they retain. Thus, persons who provide ethics training should be required to provide proof of satisfactory completion of the proficiency testing requirements applicable to the registrant and evidence of three years of relevant industry or pedagogical experience in the field. This industry experience might include the practice of law in the fields of futures or securities, or employment as a trader or risk manager at a brokerage or end-user firm. Likewise, the Commission believes that registrants should employ as ethics training providers only those persons they reasonably believe in good faith are not subject to any investigations or to bars to registration or to service on a self-regulatory organization governing board or disciplinary panel.

(f)(1) With regard to the frequency and duration of ethics training, it is permissible for a firm to require training on whatever periodic basis and duration the registrant (and relevant self-regulatory organizations) deems appropriate. It may even be appropriate not to require any such specific requirements as, for example, where ethics training could be termed ongoing. For instance, a small entity, sole proprietorship, or even a small section in an otherwise large firm, might satisfy its obligation to remain current with regard to ethics obligations by distribution of periodicals, legal cases, or advisories. Use of the latest information technology, such as Internet websites, can be useful in this regard. In such a context, there would be no structured classes, but the goal should be a continuous awareness of changing industry standards. A corporate culture to maintain high ethical standards should be established on a continuing basis.

(2) On the other hand, larger firms which transact business with a larger segment of the public may wish to implement a training program that requires periodic classwork. In such a situation, the Commission believes it appropriate for registrants to maintain such records as evidence of attendance and of the materials used for training. In the case of a floor broker or floor trader, the applicable contract market or registered derivatives transaction execution facility should maintain such evidence on behalf of its member. This evidence of ethics training could be offered to demonstrate fitness and overall compliance during audits by self-regulatory organizations, and during reviews of contract market or registered derivatives transaction execution facility operations.

(g) The methodology of such training may also be flexible. Recent innovations in information technology have made possible new, fast, and cost-efficient ways for registrants to maintain their awareness of events and changes in the commodity interest markets. In this regard, the Commission recognizes that the needs of a firm will vary according to its size, personnel, and activities. No format of classes will be required. Rather, such training could be in the form of formal class lectures, video presentation, Internet transmission, or by simple distribution of written materials. These options should provide sufficiently flexible means for adherence to Congressional intent in this area.

(h) Finally, it should be noted that self-regulatory organizations and industry associations will have a significant role in this area. Such organizations may have separate ethics and proficiency standards, including ethics training and testing programs, for their own members.

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

17. The authority citation for Part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

18. Section 4.10 is amended by revising paragraph (e)(1) to read as follows:

§ 4.10 Definitions.

* * * * *

(e)(1) *Principal,* when referring to a person that is a principal of a particular entity, shall have the same meaning as the term ''principal'' under § 3.1(a) of this chapter.

* * * * *

19. Section 4.24 is amended by revising paragraphs (f)(1)(v) and (h)(2) to read as follows:

§ 4.24 General disclosures required.

* * * * *

(f) * * *

(1) * * *

(v) Each principal of the persons referred to in this paragraph (f)(1) who participates in making trading or operational decisions for the pool or who supervises persons so engaged.

* * * * *

(h) * * *

(2) A description of the trading and investment programs and policies that will be followed by the offered pool, including the method chosen by the pool operator concerning how futures commission merchants carrying the pool's accounts shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and any material restrictions or limitations on trading required by the pool's organizational documents or otherwise. This description must include, if applicable, an explanation of the systems used to select commodity trading advisors, investee pools and types of investment activity to which pool assets will be committed;

* * * * *

20. Section 4.32 is added to read as follows:

§ 4.32 Trading on a Registered Derivatives Transaction Execution Facility for Non-Institutional Customers.

(a) A registered commodity trading advisor may enter trades on or subject to the rules of a registered derivatives transaction execution facility on behalf of a client who does not qualify as an ''institutional customer'' as defined in § 1.3(g) of this chapter, provided that the trading advisor:

(1) Directs the client's commodity interest account;

(2) Directs accounts containing total assets of not less than $25,000,000 at the time the trade is entered; and

(3) Discloses to the client that the trading advisor may enter trades on or subject to the rules of a registered derivatives transaction execution facility on the client's behalf.

(b) The commodity interest account of a client described in paragraph (a) of this section must be carried by a registered futures commission merchant.

21. Section 4.34 is amended by revising paragraphs (f)(1)(ii) and (h) to read as follows:

§ 4.34 General disclosures required.

* * * * *

(f) * * *

(1) * * *

(ii) Each principal of the trading advisor who participates in making trading or operational decisions for the trading advisor or supervises persons so engaged.

* * * * *

(h) *Trading program.* A description of the trading program, which must include the method chosen by the commodity trading advisor concerning how futures commission merchants carrying accounts it manages shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and the types of commodity interests and other interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such

trading established by the trading advisor or otherwise.

* * * * *

PART 140—ORGANIZATION, FUNCTIONS AND PROCEDURES OF THE COMMISSION

22. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 2, 12a.

23. Section 140.91 is amended by adding paragraph (a)(7) to read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Trading and Markets.

(a) * * *

(7) All functions reserved to the Commission in § 1.25 of this chapter.

* * * * *

PART 155—TRADING STANDARDS

24. The authority citation for Part 155 continues to read as follows:

Authority: 7 U.S.C. 6b, 6c, 6g, 6j and 12a unless otherwise noted.

25. Section 155.3 is amended by revising paragraph (b)(2) to read as follows:

§ 155.3 Trading standards for futures commission merchants.

* * * * *

(b) * * *

(2) Knowingly take, directly or indirectly, the other side of any order of another person revealed to the futures commission merchant or any of its affiliated persons by reason of their relationship to such other person, except with such other person's prior consent and in conformity with contract market rules approved by or certified to the Commission.

* * * * *

26. Section 155.4 is amended by revising paragraph (b)(2) to read as follows:

§ 155.4 Trading standards for introducing brokers.

* * * * *

(b) * * *

(2) Knowingly take, directly or indirectly, the other side of any order of another person revealed to the introducing broker or any of its affiliated persons by reason of their relationship to such other person, except with such other person's prior consent and in conformity with contract market rules approved by or certified to the Commission.

* * * * *

27. Section 155.6 is added to read as follows:

§ 155.6 Trading standards for the transaction of business on registered derivatives transaction execution facilities.

(a) A futures commission merchant, or affiliated person thereof, transacting business on behalf of a customer who does not qualify as an ''institutional customer'' as defined in § 1.3(g) of this chapter on a registered derivatives transaction execution facility shall comply with the provisions of § 155.3.

(b) No futures commission merchant, introducing broker or affiliated person thereof shall misuse knowledge of any institutional customer's order for execution on a registered derivatives transaction execution facility.

Issued in Washington, D.C. on October 16, 2001 by the Commission.

Jean A. Webb,

Secretary of the Commission,

[FR Doc. 01–26523 Filed 10–22–01; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that U.S.S. *Tempest* (PC 2) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 17, 2000.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Department of the Navy, Office of the Judge Advocate General, 1322 Patterson Avenue, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that U.S.S. *Tempest* (PC 2) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(c) pertaining to the placement of the stern light as nearly as practicable at the stern. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the light involved is located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

2. Table Three of § 706.2 is amended by revising the entry for U.S.S. *Tempest* to read as follows:

TABLE 3

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters; 3(b) annex 1	Stern light, distance forward of stern in in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters; 2(K) annex 1
TEMPEST ...	PC 2	.....	.....	.....	.....	28.26 [1]	3.01	1.1 below

[1] Only when towing.

Dated: September 7, 2000.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 01–26640 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS HOWARD (DDG 83) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 24, 2000.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS HOWARD (DDG 83) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, Annex I paragraph 2(f)(ii) pertaining to the vertical placement of the task lights, Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights, and Annex I paragraph 3(c) pertaining to the horizontal placement of the task lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS HOWARD:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Horizontal distance (in meters) from the fore and aft centerline of the vessel in the athwartship direction
* * * * * * *		
USS HOWARD	DDG 83	1.88
* * * * * * *		

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS HOWARD:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Obstruction angle relative ship's headings
* * * * *	*	*
USS HOWARD	DDG 83	103.20 thru 112.50°
* * * * *	*	*

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS HOWARD:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions.	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*	*	*
USS HOWARD	DDG 83	X	X	X	14.0
* * *	*	*	*	*	*

Dated: October 24, 2000.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Editorial Note: This document was received at the Office of the Federal Register on October 18, 2001.

[FR Doc. 01–26638 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS BULKELEY (DDG 84) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 15, 2001.

FOR FURTHER INFORMATION CONTACT: Captain Richard T. Evans, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS BULKELEY (DDG 84) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS BULKELEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Horizontal distance (in meters) from the fore and aft centerline of the vessel in the athwartship direction
* * * * * * *		
USS BULKELEY	DDG 84	1.90
* * * * * * *		

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS BULKELEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Obstruction angle relative ship's headings
* * * * * * *		
USS BULKELEY	DDG 84	104.74 thru 112.50°
* * * * * * *		

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS BULKELEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a).	Percentage horizontal separation attained
* * * * * * *					
USS BULKELEY	DDG 84	X	X	X	14.1
* * * * * * *					

Dated: June 15, 2001.

Richard T. Evans,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 01–26639 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS LASSEN (DDG 82) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 8, 2000.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS LASSEN (DDG 82) is a vessel of the Navy which, due

to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, Annex I paragraph 2(f)(ii) pertaining to the vertical placement of the task lights, Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights, and Annex I paragraph 3(c) pertaining to the horizontal placement of the task lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS LASSEN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Horizontal distance (in meters) from the fore and aft centerline of the vessel in the athwartship direction
* * * * * * *		
USS LASSEN	DDG 82	1.93
* * * * * * *		

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS LASSEN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * * * *		
USS LASSEN	DDG 82	102.30 thru 112.50°
* * * * * * *		

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS LASSEN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * * * * * *					
USS LASSEN	DDG 82	X	X	X	13.7
* * * * * * *					

Dated: November 8, 2000.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Editorial Note: This document was received at the Office of the Federal Register on October 18, 2001.

FR Doc. 01–26641 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS IWO JIMA (LHD 7) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 28, 2001.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS IWO JIMA (LHD 7) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex I, section 2(g), pertaining to the distance of the sidelights above the hull; Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship; and the horizontal distance between the forward and after masthead lights; and Annex I, section 3(b), pertaining to the positioning of the sidelights in relationship to the forward masthead light, without interfering with its special functions as an amphibious assault ship. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Two of § 706.2 is amended by adding the following entry for USS IWO JIMA:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE TWO

Vessel	No.	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I [6]	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii) [6]	Aft anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS IWO JIMA	LHD 7						2.97	88.80	

[6] Blank (or no entry) under this column indicates full compliance with the specific COLREGS requirement.

3. Table Five of § 706.2 is amended by adding the following entry for USS IWO JIMA:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS IWO JIMA	LHD 7		X	X	40.9

Dated: November 8, 2000.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Editorial Note: This document was received at the Office of the Federal Register on October 18, 2001.

[FR Doc. 01–26642 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), acting pursuant to authority delegated from the Secretary of the Navy: has determined that USS NIMITZ (CVN 68) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval aircraft carrier. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 8, 2001.

FOR FURTHER INFORMATION CONTACT: Captain Richard T. Evans, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Department of the Navy, Office of the Judge Advocate General, 1322 Patterson Avenue, Suite 3000, SE, Washington Navy Yard, DC 20374, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. The Secretary of the Navy previously certified that USS NIMITZ (CVN 68) is a vessel of the Navy which, due to its special construction and purpose, cannot fully with 72 COLREGS. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has amended that certification to reflect that certain anchor lights on USS NIMITZ (CVN 68), previously certified as not in compliance with 72 COLREGS, now comply with the applicable 72 COLREGS requirements, to wit: the forward and aft anchor lights are now located on the centerline of the ship, the required height above the hull, as required by Rules 21(e), 30(a)(i), and 30 (a)(ii).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [AMENDED]

2. Table Two of § 706.2 is amended by revising the entry for USS NIMITZ (CVN 68):

TABLE 2

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a) (ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS NIMITZ	CVN 68	31.0	.....	.....	.....	.....	0.7	.....	.....

Dated: June 8, 2001.

Richard T. Evans,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 01–26643 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final Rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS ROOSEVELT (DDG 80) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 30, 2001.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, 1322 Patterson Avenue, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS ROOSEVELT (DDG 80) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following

specific provision of the 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 3(a) pertaining the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 16 of § 706.2 is amended by revising, in numerical order, the following entry for U.S.S. ROOSEVELT:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * *	*	*
USS ROOSEVELT	DDG 80	109.34 thru 112.50°.
* * * * *	*	*

3. Table Five of § 706.2 is amended by revising, in numerical order, the following entry for U.S.S. ROOSEVELT:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*	*	*
USS ROOSEVELT	DDG 80	X	X	X	14.6
* * *	*	*	*	*	*

Dated: May 30, 2001.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 01–26644 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final Rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS OSCAR AUSTIN (DDG 79) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS OSCAR AUSTIN (DDG 79) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and

the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS OSCAR AUSTIN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * *	*	*
USS OSCAR AUSTIN	DDG 79	107.94 thru 112.50°.
* * * * *	*	*

3. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS OSCAR AUSTIN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*	*	*
USS OSCAR AUSTIN	DDG 79	X	X	X	14.7
* * *	*	*	*	*	*

Dated: January 10, 2001.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 01–26647 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS WINSTON S. CHURCHILL (DDG 81) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 9, 2001.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C.

1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS WINSTON S. CHURCHILL (DDG 81) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, and Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS WINSTON S. CHURCHILL:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * *	*	*
USS WINSTON S. CHURCHILL	DDG 81	103.72 thru 112.50°.
* * * * *	*	*

3. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS WINSTON S. CHURCHILL:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage hor-izontal separa-tion attained
* * *	*	*	*	*	*
USS WINSTON S. CHURCHILL	DDG 81	X	X	X	14.0
* * *	*	*	*	*	*

Dated: January 9, 2001.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 01–26646 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy has determined that USS RAMAGE (DDG 61) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship.

The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 29, 2001.

FOR FURTHER INFORMATION CONTACT: Commander G. A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Department of the Navy, Office of the Judge Advocate General, 1322 Patterson Avenue, Suite 3000, Washington Navy Yard, DC, 20374, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS RAMAGE (DDG 61) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to 1public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [AMENDED]

2. Table Five of § 706.2 is amended by revising the entry for USS RAMAGE (DDG 61) to read as follows:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS RAMAGE	DDG 61	X	X	X	19.2

Dated: May 29, 2001.

G.A. Cervi,

CDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law)

[FR Doc. 01–26645 Filed 10–22–01; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[Alaska 001; FRL –7082–4]

Outer Continental Shelf Air Regulations; Consistency Update for Alaska

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Final rule; Removal of amendment and reinstatement of regulatory text.

SUMMARY: On March 1, 2001, the EPA published a direct final rule (66 FR 12982), and an accompanying proposed rule (66 FR 12986) updating the Outer Continental Shelf (''OCS'') Air Regulations as they apply to OCS sources off the coast of Alaska.

The direct final rule indicated that the rule was effective April 16, 2001, unless EPA received adverse comment on the rule by April 2, 2001. The Federal Register action also indicated that if adverse comment was received, EPA would publish a withdrawal of the final rule.

On March 9, 2001, EPA received adverse comments from the International Association of Drilling Contractors. Accordingly, EPA is removing the amendment made by that final rule due to the adverse public comments received and reinstating the previous regulatory text. In a subsequent action, EPA will summarize and respond to the comments received on the OCS Air Regulations as they apply to OCS sources off the coast of Alaska.

DATES: This rule is effective October 23, 2001. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 23, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Dan Meyer, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, Telephone: (206) 553–4150.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 24, 2001.

Charles E. Findley,

Acting Regional Administrator, Region 10.

Title 40 of the Code of Federal Regulations, part 55, is amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraph (e)(2)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) *State of Alaska Requirements Applicable to OCS Sources,* January 18, 1997.

* * * * *

3. Appendix A to CFR part 55 is amended by revising paragraph (a)(1) under the heading ''Alaska'' to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

Alaska

(a) ***

(1) The following requirements are contained in the *State of Alaska Requirements Applicable to OCS Sources*, January 18, 1997.

Alaska Administrative Code—Department of Environmental Conservation.

The following sections of Title 18, Chapter 50:

Article 1. Ambient Air Quality Management

18 AAC 50.005. Purpose and Applicability of Chapter (effective 1/18/97)
18 AAC 50.010. Ambient Air Quality Standards (effective 1/18/97)
18 AAC 50.015. Air Quality Designations, Classifications, And Control Regions (effective 1/18/97)
Table 1. Air Quality Classifications
18 AAC 50.020. Baseline Dates, Maximum Allowable Increases, And Maximum Allowable Ambient Concentrations (effective 1/18/97)
Table 2. Baseline Dates
Table 3. Maximum Allowable Increases
AAC 50.025. Visibility and Other Special Protection Areas with the exception of (b) and (c) (effective 1/18/97)
18 AAC 50.030. State Air Quality Control Plan (effective 1/18/97)
18 AAC 50.035. Documents, Procedures, and Methods Adopted by Reference (effective 1/18/97)2
18 AAC 50.045. Prohibitions (effective 1/18/97)
18 AAC 50.050. Incinerator Emission Standards (effective 1/18/97)
Table 4. Particulate Matter Standards for Incinerators
18 AAC 50.055. Industrial Processes and Fuel-burning Equipment (effective 1/18/97)
18 AAC 50.065. Open Burning (effective 1/18/97)
(a) General Requirements
(b) Black Smoke Prohibited
(c) Toxic and Acid Gases and Particulate Matter Prohibited
(d) Adverse Effects Prohibited
(e) Air Quality Advisory
(i) Firefighter Training: Fuel Burning
(j) Public Notice
(k) Complaints
18 AAC 50.070. Marine Vessel Visible Emission Standards (effective 1/18/97)
18 AAC 50.080. Ice Fog Standards (effective 1/18/97)
18 AAC 50.100. Nonroad Engines (effective 1/18/97)
18 AAC 50.110. Air Pollution Prohibited (effective 5/26/72)

Article 2. Program Administration

18 AAC 50.201. Ambient Air Quality Investigation (effective 1/18/97)
18 AAC 50.205. Certification (effective 1/18/97)
18 AAC 50.210. Potential to Emit (effective 1/18/97)
18 AAC 50.215. Ambient Air Quality Analysis Methods (effective 1/18/97)
18 AAC 50.220. Enforceable Test Methods (effective 1/18/97)
18 AAC 50.225. Owner-requested Limits (effective 1/18/97)
18 AAC 50.230. Preapproved Limits (effective 1/18/97)
18 AAC 50.235. Unavoidable Emergencies and Malfunctions (effective 1/18/97)
18 AAC 50.240. Excess Emissions (effective 1/18/97)

Article 3. Permit Procedures and Requirements

18 AAC 50.300. Construction Permits: Classifications (effective 1/18/97)
(a) [untitled]
(b) Ambient Air Quality Facilities
(c) Prevention of Significant Deterioration Major Facilities
(d) Nonattainment Major Facilities
(e) Major Facility Near a Nonattainment Area
(f) Hazardous Air Contaminant Major Facilities
(g) Port of Anchorage Facilities
(h) Modifications
18 AAC 50.305. Construction Permit Provisions Requested by the Owner or Operator (effective 1/18/97)
18 AAC 50.310. Construction Permits: Application (effective 1/18/97)
(a) Application Required
(b) Operating Permit Coordination
(c) General Information
(d) Prevention of Significant Deterioration Information
Table 6. Significant Concentrations
(e) Excluded Ambient Air Monitoring
(f) Nonattainment Information
(g) Demonstration Required Near A Nonattainment Area
(h) Hazardous Air Contaminant Information
(j) Nonattainment Air Contaminant Reductions
(k) Revising Permit Terms
(l) Requested Limits
(m) Stack Injection
18 AAC 50.320. Construction Permits: Content and Duration (effective 1/18/97)
18 AAC 50.325. Operating Permits: Classifications (effective 1/18/97)
18 AAC 50.330. Operating Permits: Exemptions (effective 1/18/97)
18 AAC 50.335. Operating Permits: Application (effective 1/18/97)
(a) Application Required
(b) Identification
(c) General Emission Information
(d) Fees
(e) Regulated Source Information
(f) Facility-wide Information: Ambient Air Quality
(g) Facility-wide Information: Owner Requested Limits
(h) Facility-wide Information: Emissions Trading
(i) Compliance Information
(j) Proposed Terms and Conditions
(k) Compliance Certifications
(l) Permit Shield
(m) Supporting Documentation
(n) Additional Information
(o) Certification of Accuracy and Completeness
(p) Renewals
(q) Insignificant Sources
(r) Insignificant Sources: Emission Rate Basis
(s) Insignificant Sources: Category Basis
(t) Insignificance Sources: Size or Production Rate Basis
(u) Insignificant Sources: Case-by-Case Basis
(v) Administratively Insignificant Sources
18 AAC 50.340. Operating Permits: Review and Issuance (effective 1/18/97)
(a) Review for Completeness
(b) Evaluation of Complete Applications
(c) Expiration of Application Shield
(d) Preliminary Decision
(e) Public Comment
(f) Record of Public Comment
(g) Final Permit Decision
(i) Permit Continuity
18 AAC 50.345. Operating Permits: Standard Conditions (effective 1/18/97)
18 AAC 50.350. Operating Permits: Content (effective 1/18/97)
(a) Purpose of Section
(b) Standard Requirements
(c) Fee Information
(d) Source-Specific Permit Requirements
(e) Facility-Wide Permit Requirements
(f) Other Requirements
(g) Monitoring Requirements
(h) Records
(i) Reporting Requirements
(j) Compliance Certification
(k) Compliance Plan and Schedule
(l) Permit Shield
18 AAC 50.355. Operating Permits: Changes to a Permitted Facility (effective 1/18/97)
18 AAC 50.360. Operating Permits: Facility Changes that Violate a Permit Condition (effective 1/18/97)
18 AAC 50.365. Operating Permits: Facility Changes that do not Violate a Permit Condition (effective 1/18/97)
18 AAC 50.370. Operating Permits: Administrative Revisions (effective 1/18/97)
18 AAC 50.375. Operating Permits: Minor and Significant Permit Revisions (effective 1/18/97)
18 AAC 50.380. General Operating Permits (effective 1/18/97)

Article 4. User Fees

18 AAC 50.400. Permit Administration Fees (effective 1/18/97)

18 AAC 50.410. Emission Fees (effective 1/18/97)
18 AAC 50.420. Billing Procedures (effective 1/18/97)

Article 9. General Provisions

18 AAC 50.910. Establishing Level of Actual Emissions (effective 1/18/97)
18 AAC 50.990. Definitions (effective 1/18/97)

* * * * *

[FR Doc. 01–26684 Filed 10–22–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257 and 258

[FRL–7076–4]

RIN 2050–AE86

Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In order to help accelerate the pace of lead-based paint removal from residences, and thereby reduce exposure to children and adults from the health risks associated with lead, EPA is taking direct final action to revise the definition of ''municipal solid waste landfill unit'' in both the Criteria for Classification of Solid Waste Disposal Facilities and Practices and the Criteria for Municipal Solid Waste Landfills. EPA is also adding two new definitions for ''construction and demolition (C&D) landfill'' and ''residential lead-based paint waste.'' This rule will expressly allow residential lead-based paint waste to be disposed of in construction and demolition landfills by clearly stating that a construction and demolition landfill accepting residential lead-based paint waste, and no other household waste, is not a municipal solid waste landfill unit. Today's action does not prevent a municipal solid waste landfill unit from continuing to receive residential lead-based paint waste.

DATES: This rule is effective on January 22, 2002 unless EPA receives adverse comment by November 23, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2001–LBPP–FFFFF to: (1) if using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by the docket number F–2001–LBPP–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

You can view supporting materials for this rule in the Resource Conservation and Recovery Act (RCRA) Information Center (RIC). The RIC is located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA, and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. The Docket Identification Number for this notice is F–2001–LBPF–FFFFF.

To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For information on specific aspects of this rule, contact Sue Nogas, Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; (703) 308–7251, *nogas.sue@epa.gov*.

SUPPLEMENTARY INFORMATION: The index to the rule docket and some supporting materials are available on the Internet. You can find these materials at *http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/pb-paint.htm*.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. The rule expressly allows another environmentally safe waste disposal option (*i.e.*, C&D landfills) for residential LBP waste, an option that may be less expensive than MSWLFs in certain areas of the U.S. For that reason, EPA believes this rule may hasten the pace with which LBP hazards are removed from homes, thus reducing the risk of lead poisoning in children. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to revise the definition of municipal solid waste landfill unit and add the definitions of construction and demolition landfill and residential lead-based paint waste. We are publishing the proposal to give the public the opportunity to comment on today's action, although we do not expect to receive comments. This rule will be effective on January 22, 2002 without further notice unless we receive adverse comment by November 23, 2001. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Affected Entities: You may be potentially affected by this direct final rule if you generate residential lead-based paint (LBP) waste as a result of LBP activities (including abatement, rehabilitation, renovation and remodeling) in homes, residences, and other households. By ''households,'' we mean single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

Affected categories and entities would include:

Category	Examples of affected entities
Individuals and firms who generate residential LBP waste	Contractors and do-it-yourselfers who generate and dispose of residential LBP waste as a result of abatement, rehabilitation, renovation and remodeling activities in homes, residences, and other households.
Construction and demolition waste disposal firms.	Owners or operators of construction and demolition landfills that accept residential LBP waste for disposal.

This table is not intended to be exhaustive, but rather lists the types of entities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in this table could also be affected. (Please see Sections X.A. and X.B. of this preamble for further discussion of affected entities. Also, in the docket for today's rule, see ''Economic Analysis of EPA's Direct Final Rule Amending 40 CFR parts 257 and 258.'') If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Acronyms

Acronym	Definition
CDC	Centers of Disease Control and Prevention.
C&D	Construction and Demolition.
CFR	Code of Federal Regulations.
EA	Economic Analysis.
EPA	Environmental Protection Agency.
FR	Federal Register.
HUD	U.S. Department of Housing and Urban Development.
IQ	Intelligence Quotient.
LBP	Lead-Based Paint.
MSWLF	Municipal Solid Waste Landfill.
OMB	Office of Management and Budget.
OPPTS	Office of Prevention, Pesticides, and Toxic Substances.
OSWER	Office of Solid Waste and Emergency Response.
RCRA ...	Resource Conservation Recovery Act.
RIC	RCRA Docket Information Center.
TC	Toxicity Characteristic.
TSCA ...	Toxic Substances Control Act.
USEPA	United States Environmental Protection Agency.

Outline

I. Legal Authority
II. Why are Lead and Lead-Based Paint A Concern?
III. Congressional Response to Lead Hazards: Title X
IV. RCRA as a Barrier to Cost-Effective LBP Abatements, and Stakeholders' Requests for Regulatory Relief from EPA
V. EPA's Implementation of Title X and Response to Stakeholders' Requests
A. 1998 Proposed Rules
1. TSCA Proposal
2. RCRA Proposal
B. Contractor-Generated Residential Lead-Based Paint Memorandum
VI. What Does Today's Rule Do?
A. Revision to the Definition of a Municipal Solid Waste Landfill Unit
B. Addition of Construction and Demolition Landfill Definition
C. Addition of Residential Lead-Based Paint Waste Definition
VII. Analytic Basis for Today's Rule
VIII. Other Applicable Federal, State, Tribal, and Local Requirements
IX. How do States and Tribes Implement this Rule?
X. How does this Rule Comply with Applicable Statutes and Executive Orders?
A. Executive Order 12866: Regulatory Planning and Review
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. National Technology Transfer and Advancement Act of 1995
I. Executive Order 12898: Environmental Justice Strategy
J. Congressional Review Act
K. Executive Order 13211: Energy Effects

I. Legal Authority

EPA is promulgating this rule pursuant to section 1008(a)(3), 2002(a), 4004(a) and 4010(c) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6907(a), 6912(a), 6944(a), 6949a(c). We are also correcting a typographical error in the existing statement of authority in part 257 by amending the citation to 42 U.S.C. 6949(c) to read ''6949a(c).''

II. Why Are Lead and Lead-Based Paint a Concern?

The Centers for Disease Control and Prevention (CDC) have estimated that approximately 900,000 children, or about 4.4% of children under the age of 6 years old, may have unacceptably high levels of lead in their blood. (See: ''Update: Blood Lead Levels—United States, 1991–1994.'' Morbidity and Mortality Weekly Report, Vol.46, No. 7, February 21, 1997. CDC, U.S. Department of Health and Human Services.) Children are more susceptible than adults to the toxic effects of lead because their nervous systems are still developing and their bodies more readily absorb lead once exposed to it. (For a fuller discussion of this issue, see 66 FR 1206–1240, January 5, 2001). The most common sources of residential lead exposure include contaminated dust and paint chips from deteriorated lead-based paint (LBP) in older homes, activities that disturb LBP (such as abatement, deleading, home renovation and remodeling), lead-contaminated drinking water, and lead-contaminated soil around homes and play areas. It is estimated that approximately 38 million homes in the United States contain interior LBP. (See ''Economic Analysis of EPA's Direct Final Rule Amending 40 CFR parts 257 and 258,'' p. 31.

III. Congressional Response to Lead Hazards: Title X

In response to this health threat, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act of 1992 (hereinafter referred to as Title X of the Housing and Community Development Act of 1992, or as Title X). Among other provisions, Title X amended the Toxic Substances Control Act (TSCA) and directed the Environmental Protection Agency (EPA) to develop and finalize standards governing: (1) The training and certification of individuals engaged in LBP activities; (2) the accreditation of training programs; and (3) the process by which LBP activities are conducted by certified individuals. Congress also directed EPA to identify by regulation LBP hazards, lead-contaminated dust, and lead-contaminated soil. As a result of the enactment of Title X, there is an increasing effort to reduce the hazards posed by LBP (especially to children) in residential housing and other buildings.

IV. RCRA as a Barrier to Cost-Effective LBP Abatements, and Stakeholders' Requests for Regulatory Relief From EPA

The Resource Conservation and Recovery Act (RCRA) was enacted in 1976 to address management of solid waste, including industrial and municipal wastes. Subtitle C of RCRA governs the generation, transportation, treatment, storage and disposal of hazardous waste. A solid waste is a ''hazardous waste'' if it exhibits one or more of the characteristics of hazardous waste pursuant to 40 CFR part 261, subpart C (toxicity, ignitability,

corrosivity, and reactivity) or if it is listed as a hazardous waste in part 261 subpart D. Subtitle D of RCRA addresses the management of nonhazardous solid waste (including municipal and nonmunicipal waste). Subtitle D was amended in 1984 to address two classes of hazardous wastes exempt from Subtitle C hazardous waste requirements: conditionally exempt small quantity generator (CESQG) waste and household hazardous waste. Household waste is defined in 40 CFR 258.2 as ''any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).'' Household waste is excluded from RCRA hazardous waste regulations at 40 CFR 261.4(b)(1).

Abatements, renovations, and remodeling activities in housing units with LBP can generate large quantities of residential LBP waste. In cases where the waste exhibits the toxicity characteristic for lead, the waste would be classified as a hazardous waste subject to the comprehensive ''cradle to grave'' hazardous waste management regulations of RCRA Subtitle C, unless they qualify for an exemption. Lead abatement contractors and public housing agencies argued that the application of these hazardous waste rules to residential LBP waste poses a barrier to the cost-effective abatement of lead hazards. EPA and HUD met to review the disposal requirements for lead-based paint waste and to consider regulatory relief from the applicability of RCRA Subtitle C to waste generated from residential LBP activities. Additionally, several States and advocacy groups (such as the Alliance to End Childhood Lead Poisoning) expressed concern that the RCRA requirements were considerably reducing the number of residential LBP abatements by imposing significant waste disposal costs. They argued that the benefits of handling lead-based paint waste as a hazardous waste were outweighed by the potential risk to children resulting from the disincentive the RCRA regulations created for lead-based paint abatement. They requested that EPA consider ways to minimize management and disposal costs and provide an appropriate regulatory framework that would both accelerate the pace of lead abatements (by lowering costs) and ensure that waste from such activities be managed and disposed of reliably, effectively, and in a manner which protects human health and the environment. They further contended that any regulatory relief that would avoid the cost of managing LBP waste as a hazardous waste would allow public housing authorities to use cost savings to perform additional abatements, thus reducing current and future exposure of children to residential lead-based paint.

V. EPA's Implementation of Title X and Response to Stakeholders' Requests

A. 1998 Proposed Rules

In order to facilitate efforts to address lead-based paint hazards to children and respond to stakeholders' requests for regulatory relief, EPA analyzed waste characterization, laboratory leachate, and the risk and cost of disposal for lead-based paint debris. Based on those analyses, EPA published two proposals on December 18, 1998—the TSCA Proposed Rule (''Management and Disposal of Lead-Based Paint Debris''), and the RCRA Proposed Rule (''Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris''). The Agency believed that these rules, if finalized, would help reduce the costs associated with the management and disposal of LBP debris, increasing the number of LBP abatements, while continuing to protect human health and the environment.

1. TSCA Proposal (''Management and Disposal of Lead-Based Paint Debris'')

Under the mandate of Title X of TSCA, we proposed new TSCA management and disposal standards for LBP debris generated by contractors from pre-1978 homes and public and commercial buildings (63 FR 70190–70233, December 18, 1998.) These standards would allow the disposal of contractor-generated LBP debris in a variety of facilities, including construction and demolition (C&D) landfills. EPA based the C&D landfill disposal option on the results of the groundwater risk analysis performed to support the proposal. The results showed that the potential impact to groundwater resources from the disposal of LBP debris in C&D landfills would be negligible. (For further details, see ''USEPA. June 1998, Groundwater Pathway Analysis for Lead-Based Paint (LBP) Architectural Debris; Background Document'' in the docket for today's rule. Also, see Section VII of this preamble.) The TSCA proposal has not been finalized.

The preamble to the proposed TSCA rule also clarified that the RCRA Subtitle C household waste exclusion in 40 CFR 261.4(b)(1) applies to residential LBP waste generated by do-it-yourselfers in their homes (see 63 FR 70241–70242). This clarification remains in place.

2. RCRA Proposal (''Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris'')

In 1998, EPA proposed to temporarily suspend the applicability of the Toxicity Characteristic (TC) rule to contractor-generated LBP debris that would be subject to the TSCA management and disposal standards cited above. The Agency proposed this suspension in order to avoid duplication with other statutes implemented by EPA as mandated under RCRA Section 1006(b)(1).

B. Contractor-Generated Residential Lead-Based Paint Memorandum

On July 31, 2000, EPA issued a memorandum clarifying the regulatory status of waste generated as a result of LBP activities (including abatement, renovation and remodeling, and rehabilitation) in homes and other residences.

Specifically, the memorandum clarified that contractors can manage residential LBP waste as household waste and thus are not subject to RCRA Subtitle C requirements. This means contractors can dispose residential LBP waste as household waste in municipal solid waste landfills or municipal solid waste combustors, according to State and local requirements. Dumping and open burning of residential LBP waste are not allowed. (See RCRA Sections 1008 and 4004.)

By interpreting residential LBP waste as a household waste under 40 CFR 261.4(b)(1), the July 2000 memorandum could be construed as allowing land disposal of LBP waste only in municipal solid waste landfill units complying with the requirements of 40 CFR part 258. This is because a ''municipal solid waste landfill unit'' is defined in 40 CFR 258.2 as receiving ''household waste.'' Therefore, under section 258.2, a C&D landfill that receives residential LBP waste could be deemed to be receiving household waste and may need to comply with EPA's Municipal Solid Waste Landfill Criteria found in 40 CFR part 258. Today's rule is designed to expressly state that C&D landfills can receive residential LBP waste without becoming subject to the requirements for a MSWLF in part 258.

Please note that the memorandum does not affect the regulatory status of nonresidential LBP waste, such as that generated during the abatement or

renovation and remodeling of a commercial building. In addition, the memorandum does not cover residential demolition and deconstruction. EPA does not consider demolition and deconstruction waste to be household waste, since it is not similar to those wastes generated by a consumer in the home in the course of daily living. (For more information visit, *http://www.epa.gov/lead/hhwmemo-july00fnl.pdf* for a direct link to the memorandum. See ''Regulatory Status of Waste Generated by Contractors and Residents from Lead-Based Paint Activities Conducted in Households'' by visiting http://www.epa.gov/lead/fslbp.htm, or call the RCRA Hotline at 1–800–424–9346.)

The Agency evaluated if and how to finalize the 1998 RCRA and TSCA proposals. EPA decided to use alternative policy and regulatory vehicles (i.e., the July 31, 2000 policy memorandum and today's rule) in order to expeditiously accomplish some of the same goals of the 1998 proposals for certain key noncontroversial aspects. The Agency has no further plan to finalize the 1998 RCRA proposal.

VI. What Does Today's Rule Do?

A. Revision to the Definition of a Municipal Solid Waste Landfill Unit

Today's rule expressly allows construction and demolition landfills to receive residential lead-based paint waste, by adding a statement to the definition of MSWLF unit. The definition of MSWLF unit in 40 CFR 257.2 and 258.2 is amended by inserting at the end of the definition, the sentence, ''A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.'' As previously explained, the existing definition of a MSWLF unit includes language which states that a disposal unit ''that receives household waste'' is a municipal solid waste landfill unit. This language can be construed to prohibit the disposal of any household waste into a facility that is not designed and operated in conformance with 40 CFR part 258 regulations. Today, we are amending the definition of MSWLF unit, in order to distinguish residential lead-based paint waste, which has been determined to be a household waste, from other types of household waste, for purposes of disposal.

The amended definition will now read, ''Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may continue to receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately-owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.''

It is important to understand that today's change to the definition of a municipal solid waste landfill unit does not in any way affect these disposal units. This change is being made simply to distinguish residential lead-based paint waste from other household wastes. Today's amendment does not alter what a MSWLF can or cannot receive. MSWLFs can continue to receive residential LBP waste as household waste. Today's rule expressly provides that an additional land-based waste disposal option exists for residential LBP waste. Furthermore, this rule in no way affects or changes the operation and design requirements for municipal solid waste landfills or any other MSWLF criteria.

B. Addition of Construction and Demolition Landfill Definition

As stated above, the revised definition of ''municipal solid waste landfill unit'' allows a subset of household waste—residential LBP waste—to be disposed of in construction and demolition landfills as well as MSWLF units. Today's rule will also add a definition of a construction and demolition landfill in order to expressly allow only C&D landfills, and no other types of land disposal units that meet the criteria of 40 CFR part 257 to receive this subset of household waste.

Based on a groundwater risk analysis used to support the TSCA proposal, we believe that the disposal of residential LBP debris in C&D landfills is appropriate and would not pose adverse health risks to residents living near C&D landfills. (For more information, see Section VII of this preamble.)

A C&D landfill will be defined in 40 CFR part 257 as follows: ''Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements of subparts A or B of this part that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) other than conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter), or industrial solid waste (defined in § 258.2 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.'' A parallel definition is also being added to 40 CFR part 258.

EPA proposed a similar definition of C&D landfill in the TSCA proposal, and received no germane comments on the definition during the public comment period.

C. Addition of Residential Lead-Based Paint Waste Definition

Today's rule adds a definition of ''residential lead-based paint waste'' in order to clarify the scope of the waste stream addressed by today's rule. This definition of residential lead-based paint waste states: ''Residential lead-based paint waste means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.'' Not included in the residential LBP waste definition are residential LBP demolition and deconstruction waste, and LBP waste from nonresidential structures such as public and commercial buildings, warehouses, bridges, water towers, and transmission towers.

In drafting this definition, we included these particular LBP activities because they are those limited to residences and that could pose lead hazards to occupants, especially to children. We included these particular waste types (i.e., debris, chips, dust, and sludges) because they are those that are typically generated during the named LBP activities.

VII. Analytic Basis for Today's Rule

The technical basis for today's rule is the analytical data and groundwater risk analysis used to support the 1998 TSCA proposal. (See ''USEPA. June 1998, Groundwater Pathway Analysis for Lead-Based Paint (LBP) Architectural Debris; Background Document'' in the docket for today's rule.) Based on that data and analysis, EPA is concluding that residential LBP waste is not hazardous household waste when disposed of in C&D landfills. What follows is a discussion of that data and analysis and how they support today's rule.

In the groundwater risk analysis used to support the 1998 TSCA proposal, we

assumed that all lead-based paint from the entire pre-1978 U.S. housing stock would be disposed of in C&D landfills, and that the LBP would be removed from housing while it was still attached to architectural (i.e., building) components that are removed during LBP activities. Examples of architectural components are doors, window frames, moldings, painted plaster boards, concrete, and bricks. We assumed that the components would be removed with intact LBP because we believed that component removal, if cost-effective, would be preferred over paint scraping and other paint removal options, since the latter pose worker and occupant exposure concerns. This assumption was necessary due to the lack of data indicating what portion of pre-1978 housing would undergo paint removal vs. component removal and what types and quantities of LBP waste are generated at what frequency from various residential LBP activities. Also, in the groundwater analysis, we used the term ''LBP debris'' to refer to architectural components with intact LBP.

To estimate lead loading from residential LBP debris in C&D landfills around the country, we relied upon the 1990 Report to Congress prepared by the U.S. Department of Housing and Urban Development (HUD). The Report estimated total quantities of building components from pre-1978 homes in the U.S. From the amount of painted surfaces per housing unit reported in the HUD Report, we estimated the total quantities of building materials with LBP that would be disposed of in the landfills.

Then, in our groundwater risk analysis, we used leachate data, calculated the potential lead concentration in groundwater, and estimated risks from the disposal of LBP debris in C&D landfills. We also assumed that all of the lead from the LBP debris (which in this analysis meant the equivalent of all of the lead in all of the lead-based paint from the entire pre-1978 U.S. housing stock) would eventually end up in the leachate. The lead concentration in C&D landfill leachate varied depending on the landfill size. These lead concentrations served as inputs to the groundwater modeling we conducted to simulate the subsurface movement of landfill leachate and the resultant potential contamination of groundwater with lead.

The results from this analysis show that the lead concentration in groundwater would potentially exceed the drinking water action level of 0.015 mg/L for lead in less than 1% of the receptor wells in the vicinity of C&D landfills receiving LBP debris during the first 2,000 years after disposal. During the first 10,000 years after disposal of LBP debris, the drinking water action level would be exceeded in fewer than 5% of the receptor wells.

Based on these groundwater modeling results and the general geochemical behavior of lead in a subsurface environment, the Agency concluded that, on a national scale, the disposal of LBP debris in C&D landfills would, in general, be protective of human health and the environment at the 95th percentile protection level. This level of protectiveness is at the high end (i.e., most protective) of the levels that the Agency has used in regulating hazardous wastes under the RCRA program. (See 63 FR 70203, December 18, 1998.) When deciding whether to regulate industrial solid wastes as hazardous wastes, the Agency has considered a 90th percentile or higher level as the appropriate protection level and so has not regulated wastes satisfying this level of protection as hazardous wastes. Thus, in the 1998 TSCA proposal, we concluded that the disposal of LBP debris in C&D landfills is appropriate and would not pose adverse health risks to residents living near C&D landfills. Note that the Agency received many public comments addressing various aspects of the groundwater risk analysis. The comments were generally supportive of the proposed provision to allow LBP debris to be disposed of in C&D landfills and provided no data supporting a contrary decision.[1]

EPA believes that the technical basis for the 1998 TSCA proposal, as discussed above, also supports today's rule. This is because our groundwater risk analysis assumed that the total mass of lead-based paint from pre-1978 U.S. housing was disposed of in C&D landfills, and that all of the lead from that lead-based paint ended up in the C&D landfill leachate. Hence, it was irrelevant to the results of the analysis whether or not the LBP entered the C&D landfills by being attached to architectural components (i.e., as LBP debris), or rather did so in the form of other types of LBP waste, such as chips, dusts, and sludges.

In conclusion, we have determined that residential LBP waste from abatement, rehabilitation, renovation and remodeling activities does not pose a substantial hazard to human health and the environment when disposed of in C&D landfills. The disposal of residential LBP waste in C&D landfills is therefore an appropriate and legal disposal option.

VIII. Other Applicable Federal, State, Tribal, and Local Requirements

Today's rule will not alter the authority of State, local and Tribal governments to regulate LBP waste more stringently than does EPA. The generators of residential LBP waste should contact State environmental agencies to determine if there are additional or more stringent disposal requirements for residential LBP waste. Also, generators should comply with applicable HUD and/or TSCA regulations when addressing residential LBP hazards.

IX. How Do States and Tribes Implement This Rule?

Because today's rule is less stringent than existing federal criteria, States are not required to amend permit programs which have been determined to be adequate under 40 CFR part 239. States have the option to amend statutory or regulatory definitions pursuant to today's direct final rule. If a state chooses to amend its permit program pursuant to today's action, the State must notify the Regional Administrator of the modification as provided by 40 CFR 239.12.

Today's amendments are directly applicable to landfills in States without an approved permit program under Part 239 and in Indian Country. We also encourage Tribes to adopt today's amendments into their programs in order to promote lead-based paint abatement activities in homes and other residences in Indian Country.

X. How Does This Rule Comply With Applicable Statutes and Executive Orders?

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the other provisions of the Executive Order. The Order defines a significant regulatory action as one that is likely to result in

[1] All comments and data received in response to the 1998 TSCA proposal may be accessed via Docket Control OPPTS–62160, located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. The TSCA Nonconfidential Information Center telephone number is 202–260–7099. For a summary of the comments, especially those related to the groundwater risk analysis, see ''Summary of Comments on: Management and Disposal of Lead-Based Paint Debris; Proposed Rule, and Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris; Proposed Rule'' in the docket for today's rule.

a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

EPA has performed a full economic analysis, ''Economic Analysis of EPA's Direct Final Rule Amending 40 CFR Part 257 and 258,'' which is available in the docket for today's rule. The EA concludes that this rule will impose no additional costs to parties, but may result in cost savings and incremental public health benefits. The rule authorizes the disposal of residential LBP waste in C&D landfills, where previously, under the July 31, 2000 policy memorandum, disposal was authorized only in MSWLFs. As a result, EPA believes that, in those parts of the country where it is cheaper to transport and dispose of residential LBP waste in C&D landfills compared to MSWLFs, some residential LBP waste will be diverted from MSWLFs to C&D landfills. Where this occurs, generators will benefit from lower waste management and disposal costs.

EPA assumes that only residential LBP waste generators in the Midwest, Northeast, and South regions will shift disposal from MSWLFs to C&D landfills, based on an analysis of the relative costs of MSWLF and C&D landfill disposal by region. EPA further assumes that the percentage of residential LBP waste that is affected is proportional to the share of these three regions in the number of housing units with LBP, which is 84.4 percent. Under these assumptions, an estimated 0.87 million tons of residential LBP waste will be diverted from MSWLFs to C&D landfills annually. This represents 0.73 percent of the total volume of all waste disposed of in MSWLFs annually. This shift in disposal would save residential LBP waste generators in the Midwest, Northeast, and South regions up to an estimated $16.76 million annually. The savings accruing to generators of residential LBP abatement waste is estimated at $0.79 million per year, while the savings accruing to generators of residential renovation and remodeling waste is $15.98 million per year.

EPA estimates that of the $0.79 million in savings that could accrue to generators of residential LBP abatement waste, an estimated 39.7 percent, or $0.31 million, will be generated annually in the public housing sector. EPA assumes that in the public sector, any savings in residential LBP waste management and disposal costs will be used to conduct additional LBP abatements. Given an average cost for LBP abatement in public housing units of $3,650, the $0.31 million in annual savings would fund an additional 86 abatements each year. This ensuing increase in LBP abatement projects would result in a more rapid reduction in the potential for exposure to the hazards of LBP, especially for children. These hazards include decreased intelligence (i.e., lower IQ), behavioral problems, reduced physical stature and growth, and impaired hearing.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards established for industries as described in the North American Industry Classification System (see http://www.sba.gov/size/NAICS-cover-page.html; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any new requirements on small entities. The rule will provide an additional non-mandatory option for the disposal of residential LBP waste.

C. Paperwork Reduction Act

Today's rule is in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule does not require the collection of information from the States, Federal Agencies, or industry. Therefore, we do not need to prepare an Information Collection Request.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local, and Tribal governments, and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objective of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for

State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained in Section IX of this preamble, none of today's revisions are more stringent or broaden the scope of the existing Federal requirements. Therefore, States are not required to adopt the revision to the definition of MSWLF unit nor the additional definitions of construction and demolition (C&D) landfill and residential lead-based paint waste in today's rule. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's rule expressly provides an additional option for disposal of certain waste applicable in Indian Country, but does not create any mandate on Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866. However, this rule will affect decisions involving the environmental health or safety risks to children. It will benefit children by allowing environmentally protective disposal of residential lead-based paint waste in C&D landfills, which is less costly than disposal in MSWLFs in certain areas of the U.S., therefore reducing the cost of lead abatements. Reducing the cost of LBP abatements will also reduce the amount of time needed to complete abatements in public housing. Lower abatement costs may increase the amount of private homes undergoing abatements. By reducing costs associated with the disposal of LBP waste, the Agency believes that the number of abatements may marginally increase, thus resulting in a reduction of the number of children exposed to LBP.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. Today's rule does not involve technical standards, voluntary or otherwise. Therefore, the NTTAA does not apply to today's rule.

I. Executive Order 12898: Environmental Justice Strategy

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

Today's rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities. On the contrary, since the rule will reduce the cost of performing LBP abatements in certain regions of the U.S., EPA assumes that the savings will afford public housing authorities, in particular, the opportunity to conduct additional abatements of LBP hazards in affected housing units. Tenants of public housing units are possibly more likely to be minority and lower-income households, and the rule should have the effect of providing a differential benefit to such populations.

J. Congressional Review Act

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 [January 22, 2002].

K. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects

40 CFR Part 257

Environmental protection, Waste treatment and disposal.

40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 28, 2001.

Christine Todd Whitman,

Administrator.

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 257—[AMENDED]

1. The authority citation for part 257 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a), and 6949a(c); 33 U.S.C. 1345(d) and (e).

2. Section 257.2 is amended:

a. By adding in alphabetical order the definitions for ''Construction and demolition (C&D) landfill'' and ''Residential lead-based paint waste''.

b. By revising the definition of ''Municipal solid waste landfill (MSWLF) unit''.

The revision and additions read as follows:

§ 257.2 Definitions.

* * * * *

Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements of subparts A or B of this part that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) other than conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter), or industrial solid waste (defined in § 258.2 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

* * * * *

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

* * * * *

Residential lead-based paint waste means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

* * * * *

PART 258—[AMENDED]

1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

2. Section 258.2 is amended:

a. By adding in alphabetical order the definitions for ''Construction and demolition (C&D) landfill'' and ''Residential lead-based paint waste''.

b. By revising the definition of ''Municipal solid waste landfill (MSWLF) unit'' .

The revision and additions read as follows:

§ 258.2 Definitions.

* * * * *

Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements of part 257, subparts A or B of this chapter that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) other than conditionally exempt small quantity generator waste, (defined in § 261.5 of this chapter), or industrial solid waste (defined in this section). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

* * * * *

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under § 257.2 of this chapter. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

* * * * *

Residential lead-based paint waste means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

* * * * *

[FR Doc. 01–26094 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 126

[USCG–2001–10164]

RIN 2115–AG17

Alternate Compliance Program; Incorporation of Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: By this direct final rule, the Coast Guard is amending regulations to incorporate Offshore Supply Vessels (OSVs) into the Alternate Compliance Program (ACP). The action will improve the flexibility of regulations governing OSVs by providing an alternative method to fulfill the requirements for vessel design, inspection, and certification without compromising existing safety standards.

DATES: This rule is effective January 22, 2002, unless an adverse comment, or notice of intent to submit an adverse comment, reaches the Docket Management Facility on or before December 24, 2001. If an adverse comment, or notice of intent to submit an adverse comment, is received, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–10164), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and related material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington DC, 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Lieutenant Benjamin Nicholson, United States Coast Guard Office of Design and Engineering Standards (G-MSE), at 202–267–0143, or e-mail him at *BNicholson@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–10164), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

We are publishing this direct final rule, amending 46 CFR part 126, because we do not expect an adverse comment. An ''adverse'' comment explains why this rule or a part of it would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change. If no adverse comment or notice of intent to submit an adverse comment is received by December 24, 2001 this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule before it becomes effective. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

Background and Purpose

The Coast Guard is amending 46 CFR part 126 (subchapter L) to authorize Offshore Supply Vessels (OSVs) to be eligible for the Alternate Compliance Program (ACP). Recent interest by the offshore industry to construct OSVs in compliance with international standards, specifically the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS), has provided the impetus for this regulatory amendment. Current regulations permit tank vessels, passenger vessels, cargo vessels, miscellaneous vessels, and mobile offshore drilling units to enroll in the ACP. OSVs are presently not authorized to participate in the program.

OSVs were not originally included in the ACP's framework because they were not generally intended or designed for international service. During development of the ACP in the mid 1990's, industry did not demonstrate an interest in conforming OSVs to SOLAS requirements. The operational climate of the offshore industry has since changed and the Coast Guard sees a legitimate need to amend the regulations.

This rule expands the ACP's applicability. The ACP is intended to provide regulatory flexibility for U.S. Flag vessels while providing a progressive level of safety that is aligned with recognized international standards. Furthermore, the ACP allows the Coast Guard to be more efficient with its resources; thus enabling the allocation of resources to high-risk marine safety concerns.

The Coast Guard has been a proponent for increasing regulatory flexibility while also progressively improving marine safety. The ACP has proven successful over the last five years and its expansion to include OSVs has the potential to significantly increase the program's vessel enrollment as well as to provide a stimulus for SOLAS conformity within the OSV fleet. The Coast Guard considers this amendment to be a safe and non-controversial course of action.

Discussion of Rule

This rule does not change any substantive requirements of the existing regulations. This rule applies to U.S. Flag OSVs certificated for international voyages and classed by a recognized classification society that is authorized by the Coast Guard to participate in the ACP as specified in 46 CFR part 8.

Specifically, this rule is intended to amend 46 CFR part 126, subpart B, concerning the compliance standards for a Certificate of Inspection (COI) for OSVs. This rule provides a means of alternate compliance for OSVs in place of compliance with the subchapter's other applicable provisions. Under this rule, the owner or operator of a vessel subject to plan review and inspection under subchapter L for initial issuance or renewal of a COI may comply with the ACP provisions of 46 CFR part 8 including approved classification society rules and supplements as referenced.

Regulatory Evaluation

This rule is not considered to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)[44 FR 11040 (February 26, l979)]. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. It will not impose any costs on the public because it enables a voluntary alternative to another prescribed method of inspection.

Small Entities

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

This rule does not change any requirements in the regulations. It is simply updating information to facilitate continuation of the Coast Guard's Alternate Compliance Program. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the ''Regulatory Information'' section of the preamble.

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(d) and (e) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with section 2.B.2. and figure 2–1 of the NEPA implementing Procedures, Commandant Instruction M16475.1D, concerning regulations that are based on vessel inspection and equipment aspects. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 126

Authority delegation, Hazardous materials transportation, Marine safety, Offshore Supply Vessels, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 126 as follows:

PART 126—[AMENDED]

1. The citation of authority for part 126 continues to read as follows:

Authority: 46 U.S.C. 3205, 3306, 3307; 33 U.S.C. 1321(j); E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. Add § 126.235 to read as follows:

§ 126.235 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection (CG–841 rev. 3/85) may comply with the

Alternate Compliance Program provisions of 46 CFR part 8.

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G-MSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202) 267–6925; or fax (202) 267–4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

Dated: August 1, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–26563 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–115; CC Docket No. 96–149; FCC 01–247]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: This document is intended to clarify the status of the Commission's CPNI rules after the Tenth Circuit's opinion and explains how parties may obtain customer consent for use of their CPNI.

FOR FURTHER INFORMATION CONTACT: Marcy Greene, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–2410.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Clarification Order in CC Docket Nos. 96–115 and 96–149, FCC 01–247, adopted August 28, 2001, and released September 7, 2001. The complete text of this Clarification Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's website at *http://www.fcc.gov.*

Synopsis of the Clarification Order

1. In the *Customer Proprietary Network Information (CPNI) Order* (63 FR 20364, April 24, 1998), the Commission stated that section 222(c)(1) of the Act allows a carrier to use, without the customer's prior approval, the customer's CPNI derived from the complete service that the customer subscribes to from that carrier and its affiliates, for marketing purposes within the existing service relationship. This is known as the ''total service approach.'' The Commission also concluded that carriers must notify the customer of the customer's rights under section 222 and then obtain express written, oral or electronic customer approval—a ''notice and opt-in'' approach—before a carrier may use CPNI to market services outside the customer's existing service relationship with that carrier. US West appealed this order to the Tenth Circuit. On August 16, 1999, the Commission adopted the *CPNI Reconsideration Order* (64 FR 53242, October 1, 1999) in response to a number of petitions for reconsideration, forbearance, and clarification of the *CPNI Order.* The *CPNI Reconsideration Order,* among other things, further clarified the total service approach. It also retained the opt-in approach.

2. After the Commission adopted the *CPNI Reconsideration Order,* the Tenth Circuit issued its decision in *US WEST* v. *FCC,* vacating a portion of the *CPNI Order* ''and the regulations adopted therein.'' In *US WEST* v. *FCC,* US WEST contended that the opt-in approach for customer approval in the *CPNI Order* violated the First and Fifth Amendments of the Constitution. The Tenth Circuit first questioned whether the government had demonstrated that the interests it put forward in regulating CPNI—protecting customer privacy and fostering competition—are substantial. The court agreed that the government had asserted a substantial interest in protecting customers' privacy, but declined to find that promoting competition was a significant consideration in Congress' enactment of section 222. The court nonetheless concluded that the government did not demonstrate that the CPNI regulations requiring opt-in customer approval ''directly and materially advanc[ed] its interests in protecting privacy and promoting competition.'' The court concluded that the Commission's determination that an opt-in requirement would best protect a consumer's privacy interests was not narrowly tailored as required by the First Amendment because the Commission had failed to adequately consider an opt-out option.

Effect of the US WEST Decision on the CPNI Rules

3. The court's opinion in *US WEST* v. *FCC* analyzed only the constitutionality of the Commission's interpretation of the customer approval requirement of section 222(c)(1) of the Act by enacting the opt-in regime discussed above. As the Commission has found previously, the court's vacatur order related only to the discrete portions of the *CPNI Order* and rules requiring opt-in customer approval. Had the court intended to take the unusual step of vacating portions of the order and rules not before it, the Commission believes it would have said so explicitly. Accordingly, we conclude that the court sought to eliminate only the specific section of our rules that was before it, and that its vacatur order applied only to § 64.2007(c), the only provision inextricably tied to the opt-in mechanism. The remainder of the Commission's CPNI rules remain in effect.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26579 Filed 10–22–01; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, and 1852

Miscellaneous Administrative Revisions to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to conform the NASA FAR Supplement with the FAR as a result of changes made by FAC's 97–20, 97–22 and 97–26, and make editorial and miscellaneous changes dealing with NASA internal and administrative matters.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, (202) 358–1645, e-mail: *celeste.dalton@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

FAC 97–20 amended various FAR subparts and clauses to implement sections 501(c), 502(a)(2), and 604(d) of the Veterans Entrepreneurship and Small Business Development Act of 1999, which established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. FAC 97–22 amended FAR Subpart 32.4 to change certain terminology (e.g., change the word ''bank'' to ''financial institution''), and updated references in FAR Subpart 42.2 to the Defense Contract Management Agency. FAC 97–26 designated Federal Business Opportunities (''FedBizOpps'') as the Governmentwide Point of Entry (GPE) as the single point of universal electronic public access to Governmentwide procurement opportunities. This final rule makes changes to the NFS necessary to conform to the changes in FAC's 97–20, 97–22 and 97–26. Miscellaneous changes dealing with NASA internal and administrative matters included in this rule are: revisions to NASA's acquisition planning, award fee, letter contract, and undefinitized contract action (UCA) coverage to ensure that the use of letter contracts and UCAs is minimized and properly authorized; revised procedures for electronic submission of Master Buy Plans; clarification of authority to approve D&Fs under the Economy Act where the servicing agency is not subject to the FAR; update of terminology used in the clause addressing restrictions on printing and duplicating; update internal procedures under NASA research announcements; and update of award fee evaluation factors to include veteran-owned small business and service-disabled veteran-owned small business concerns. This rule also makes amendments to the NFS to update references and make editorial changes.

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, and 1852

Government procurement.

Tom Luedtke,
Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, 1845, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, 1845, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Revise section 1804.402 to read as follows:

1804.402 General.

(b) NASA security policies and procedures are prescribed in NPD 1600.2A, NASA Security Policy; NPG 1600.6A, Communications Security Procedures and Guidelines; NPG 1620.1, Security Procedures and Guidelines; NPG 2810.1 and NPD 2810.1 Security of Information Technology.

3. Revise sections 1804.570–1 and 1804.570–2 to read as follows:

1804.570–1 General.

The NASA Acquisition Internet Service (NAIS) provides an electronic means for posting procurement synopses, solicitations, and associated information on the NAIS Internet site which in turn, automatically posts relevant information onto the Governmentwide point of entry (GPE).

1804.570–2 Electronic Posting System.

(a) The NAIS Electronic Posting System (EPS) enables the NASA procurement staff to—

(1) Electronically create and post synopses on the NAIS Internet site and the GPE; and

(2) Post solicitation documents, including solicitation amendments or cancellations, and other procurement information on the NAIS Internet site with linked references on the GPE.

(b) The EPS maintains an on-line index linking the posted synopses and solicitations for viewing and downloading.

(c) The EPS shall be used to—

(1) Create and post all synopses in accordance with FAR part 5 and NFS 1805; and

(2) Post all competitive solicitation files, excluding large construction and other drawings, for acquisitions exceeding $25,000.

(d) The NAIS is the official site for solicitation postings which in turn, automatically posts relevant information onto the Government-wide point of entry (GPE). In the event supporting materials, such as program libraries, cannot be reasonably accommodated by the NAIS, Internet sites external to NAIS may be established after coordination with the contracting officer. Such sites must be linked from the NAIS business opportunities index where the solicitation resides. External sites should not duplicate any of the files residing on the NAIS.

1804.7103 [Amended]

4. Amend section 1804.7103 in the first sentence of paragraph (b) by removing ''number'' and adding ''numbers'' in its place.

PART 1807—ACQUISITION PLANNING

5. Revise paragraph (b)(10) of section 1807.105 to read as follows:

1807.105 Contents of written acquisition plans.

* * * * *

(b) (10) Address contract management issues, including—

(A) Planned delegations of administrative functions; and

(B) When contract changes are anticipated, the plan to manage such changes and the specific measures that will be taken to minimize the issuance of undefinitized contract actions.

* * * * *

6. Revise section 1807.7103 to read as follows:

1807.7103 Format of Master Buy Plan.

In accordance with the requirements of 1807.7102–1 and 1807.7102–2, installations must prepare Master Buy Plans and amendments to Master Buy Plans in accordance with the Master Buy Plan Database (MBPD) instructions at http://www/hq.nasa.gov/office/procurement/regs/Table1807.doc and submit them in accordance with the MBPD User Manual Instructions listed at *http://ec.msfc.nasa.gov/hq/ library/mbp.User Guide.html.*

7. Delete Table 1807–1.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8. Revise section 1808.802 to read as follows:

1808.802 Policy.

(b)(i) The Headquarters Chief Information Officer (Code AO) is the NASA central printing authority.

(ii) Requests for approval to contract for printing supplies or services shall be addressed to Code AO. Approval to contract for such supplies or services is restricted to those requirements meeting the following conditions:

(A) An individual order is under $1,000;

(B) The order is not of a continuing or repetitive nature; and,

(C) The Public Printer certifies it cannot be provided more economically through the GPO.

PART 1815—CONTRACTING BY NEGOTIATIONS

1815.404–2 [Amended]

9. Amend section 1815.404–2 in the last sentence of paragraph (C) by removing ''DCMC'' and adding ''DCMA'' in its place.

1815.604 [Amended]

10. In section 1815.604, amend paragraph (a) by removing the URL ''*http://ec.msfc.nasa.gov/msfc/nasahdbk.html*'' and adding ''*http://ec.msfc.nasa.gov/hq/library/unSol-Prop.html*'' in its place.

PART 1816—TYPES OF CONTRACTS

1816.104–70 [Amended]

11. Amend section 1816.104–70 in the first sentence of paragraph (a) by removing ''FAR 37.101'' and adding ''FAR 2.101'' in its place.

12. Amend section 1816.405–274 by revising paragraphs (g)(1) and (g)(4); redesignating paragraphs (h) and (i) as (i) and (j) respectively; and adding new paragraph (h) to read as follows:

1816.405–274 Award fee evaluation factors.

* * * * *

(g)(1) The contractor's performance against the subcontracting plan incorporated in the contract shall be evaluated. Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, HUBZone small business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business concerns.

* * * * *

(4) The evaluation weight given to the contractor's performance against the considerations in paragraphs (g)(1) through (g)(3) of this section should be significant (up to 15 percent of available award fee). The weight should motivate the contractor to focus management attention to subcontracting with small, HUBZone, women-owned, veteran-owned, and service-disabled veteran-owned small business concerns, and with small disadvantaged business concerns in designated NAICS Major Groups to the maximum extent practicable, consistent with efficient contract performance.

(h) When contract changes are anticipated, the contractor's responsiveness to requests for change proposals should be evaluated. This evaluation should include the contractor's submission of timely, complete proposals and cooperation in negotiating the change.

* * * * *

13. Add section 1816.603–2 to read as follows:

1816.603–2 Application.

(a) Centers must ensure that NASA liabilities and commitments are minimized under letter contracts. When a letter contract is justified and program requirements can be severed into smaller, discreet efforts, the work authorized by the letter contract must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the letter contract and must be acquired through a separate fully priced and definitized contract action.

PART 1817—SPECIAL CONTRACTING METHODS

14. Add paragraph (c) to the end of section 1817.503 to read as follows:

1817.503 Determinations and findings requirements.

* * * * *

(c) The Associate Administrator for Procurement as the agency senior procurement executive will approve all D&F's for a servicing agency not covered by the Federal Acquisition Regulations. This approval may not be delegated below the senior procurement executive level.

PART 1819—SMALL BUSINESS PROGRAMS

1819.201 [Amended]

15. Amend section 1819.201 in the first sentence of paragraph (a)(i) by adding ''veteran-owned small business, service-disabled veteran-owned small business,'' before the word ''HUBZone''; and in paragraph (a)(ii) by adding ''service-disabled veteran-owned small business,'' before the word ''HUBZone''.

1819.20 [Removed]

16. Delete section 1819.202.

17. Amend Subpart 1819.3 by revising the subpart heading to read as follows:

Subpart 1819.3—Determination of Small Business Status for Small Business Programs

1819.705–470 [Amended]

18. Amend section 1819.705–470 in the last sentence by adding ''veteran-owned small business, service-disabled veteran-owned small business,'' before the word ''HUBZone''.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Part 1822 [Amended]

19. Amend Part 1822 by removing ''(Code JLR)'' and adding ''(Code JR)'', and removing ''Code JLR'' and adding ''Code JR'' in each occurrence.

PART 1832—CONTRACT FINANCING

20. Amend section 1832.006–2 by revising the section heading to read as follows:

1832.006–2 Definition.

1832.410 [Amended]

21. Amend section 1832.410 in paragraph (b)(ii) by removing ''bank'' each time it appears, and adding ''financial institution'' in its place.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

22. Amend section 1835.016–71 by revising paragraph (b)(1); redesignating paragraphs (c)(2)(i)(B) through (c)(2)(i)(G) as paragraphs (c)(2)(i)(C) through (c)(2)(i)(H); adding new paragraph (c)(2)(i)(B) and in paragraph (d)(4) by removing ''best and final offers'' and adding ''final proposal revisions'' in its place. The revisions read as follows:

1835.016–71 NASA Research Announcements.

* * * * *

(b) *Issuance.* (1) Before issuance, each field-generated NRA shall be approved by the installation director or designee, with the concurrence of the procurement officer, and each Headquarters-generated NRA shall be approved by the cognizant Program Associate Administrator or designee, with the concurrence of the Headquarters Offices of General Counsel (Code GK) and Procurement (Code HS). In addition, the issuing office shall obtain input from the cognizant offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, and security. Input shall also be obtained from the appropriate systems safety organization

for NRA's that may involve potentially hazardous operations such as those related to flight and/or mission critical ground systems. The NRA approval authority shall designate the selection official.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) The following statement concerning safety:

''Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including employees working under NASA instruments), and (4) high-value equipment and property.

* * * * *

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEEER CONTRACTS

1836.602–1 [Amended]

23. Amend section 1836.602–1 by removing the paragraph designation ''(a)(7)'' and adding ''(a)(6)'' in its place.

PART 1837—SERVICE CONTRACTING

1837.104 [Amended]

24. Amend section 1837.104 in the last sentence of paragraph (b) by removing ''NPD 3000.1, Management of Human Resources'' and adding ''NPG 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants'' in its place.

1837.203 [Amended]

25.–26. Amend section 1837.203(c) by deleting ''NPD 3000.1, Management of Human Resources'' and adding ''NPG 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants'' in its place.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1842.302 [Amended]

27. Amend section 1842.302 by removing ''DCMC'' and adding ''DCMA'' in its place.

28. Amend section 1842.7301 by revising paragraphs (e)(1) introductory text and (e)(1)(ii) to read as follows:

1842.7301 NASA external audit follow-up system.

* * * * *

(e)(1) The terms ''resolution'' and ''corrective action/disposition'' are defined as follows:

* * *

(ii) Corrective action/disposition—Management action responsive to an agreed upon audit recommendation.

* * * * *

PART 1843—CONTRACT MODIFICATIONS

1843.205–70 [Amended]

29. Amend section 1843.205–70 by deleting the last sentence of paragraph (a)(1).

30. Revise section 1843.7002 to read as follows:

1843.7002 Policy.

(a) Undefinitized contract actions may be issued only on an exception basis, and centers must ensure that NASA liabilities and commitments are minimized. When an undefinitized contract action is justified and program requirements can be severed into smaller, discreet efforts, the work authorized by the undefinitized contract action must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the undefinitized contract action and must be acquired through a separate fully priced and definitized contract action.

(b) The contract file for each UCA shall be documented to justify issuance and shall include a Government estimate for the changed requirements.

31. Amend section 1843.7003 by revising paragraph (a) and the first sentence of paragraph (b)(1) to read as follows:

1843.7003 Procedures.

(a)(1) Issuance of undefinitized contract actions with a Government estimated cost or price over $100,000 must be approved in writing by the Center Director.

(2) All other undefinitized contract actions must be approved in writing by the procurement officer.

(3) In emergency situations, approval may be given orally and subsequently confirmed in writing.

(4) The approval authorities in paragraphs (a)(1) and (2) of this section are not delegable.

(b)(1) Undefinitized contract actions exceeding $100,000 must be issued as bilateral agreements setting forth a ceiling price or ''not to exceed'' estimated cost figure for the changed contractual requirements.* * *

* * * * *

32. Revise the introductory text of paragraph (a) of section 1843.7004 to read as follows:

1843.7004 Exceptions.

(a) Exceptions to the requirement for Center Director or procurement officer approval of undefinitized contract actions are—

* * * * *

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

1844.302–70 [Amended]

33. Amend section 1844.302–70 by removing ''DCMC'' in the heading and adding ''DCMA'' in its place; removing ''Command (DCMC)'' in the introductory text and adding ''Agency (DCMA)'' in its place; and removing ''DCMC'' each time it appears in paragraphs (c) and (e) and adding ''DCMA'' in its place.

1844.302–71 [Amended]

34.–35. Amend section 1844.302–71 in the introductory text to by removing ''DCMC'' each time it appears and adding ''DCMA'' in its place.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.204–74 [Amended]

36. Amend the clause at section 1852.204–74 by revising the date of the clause to read October 2001 and removing ''Government and'' from the introductory text of paragraph (a)(4) and adding ''and Government'' in its place.

37. Revise section 1852.208–81 to read as follows:

1852.208–81 Restrictions on Printing and Duplicating.

As prescribed in 1808.870, insert the following clause:

Restrictions on Printing and Duplicating October 2001

(a) The Contractor may duplicate or copy any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101–9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term ''printing'' includes the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) The Contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10–¾ by 14–¼ inches. A ''production

unit'' is one sheet, size 8–½ x 11 inches (215 x 280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (c) of this clause are unallowable without prior written approval of the Contracting Officer. If the Contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating or copying, it immediately shall provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations, NFS 1808.802, and NPG 1490.5, NASA Procedures and Guidelines for Printing, Duplicating, and Copying Management.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

38. Amend Alternate I to the provision at section 1852.223–73 by revising the date to read October 2001 and removing ''Contractor'' in the second sentence and adding ''Contracting'' in its place.

39. Amend section 1852.243–70 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

1852.243–70 Engineering Change Proposals.

* * * * *

Engineering Change Proposals October 2001

(a) Definitions.

''ECP'' means an Engineering Change Proposal (ECP) which is a proposed engineering change and the documentation by which the change is described, justified, and submitted to the procuring activity for approval or disapproval.

(b) Either party to the contract may originate ECPs. Implementation of an approved ECP may occur by either a supplemental agreement or, if appropriate, as a written change order to the contract.

* * * * *

[FR Doc. 01–26624 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 66, No. 205
Tuesday, October 23, 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

Agricultural Marketing Service

7 CFR Part 75

[Docket Number LS–01–07]

Increase in Fees for Voluntary Federal Seed Testing and Certification Services and Establishment of a Fee for Preliminary Test Reports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the hourly fee rate charged for voluntary Federal seed testing and certification services and establish a fee for issuing preliminary test reports. The fee rate needs to be increased to cover increases in salaries of Federal employees, rent, supplies, replacement equipment, and other increased Agency costs. A new fee needs to be established to recover the cost of providing preliminary test reports.

DATES: Comments must be received on or before December 24, 2001.

ADDRESSES: Send written comments to Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC–East, Beltsville, MD 20705–2325. Comments may be faxed to (301) 504–8098.

State that your comments refer to Docket No. LS–01–07 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC–East, Beltsville, Maryland 20725–2325; telephone: (301) 504–9430, Fax: (301) 504–8098; E-mail: Richard.Payne2@usda.gov.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

This rule has been reviewed by the Office of Management and Budget (OMB) and determined to be not significant for purposes of Executive Order 12866.

B. Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The AMS provides, under the authority of the Agricultural Marketing Act (AMA) of 1946, a voluntary, user-fee funded seed testing and certification service to approximately 65 businesses per year. Many of the users of the testing and certification services would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Over ninety-five percent of the samples tested in this program represent seed and grain scheduled for export. Grain is examined for the presence of specified weed and crop seeds upon request of the USDA's Grain Inspection, Packers and Stockyards Administration. A Federal Seed Analysis Certificate, containing purity, germination, noxious-weed seed examination, and other test results is issued upon completion of the testing. The Federal Seed Analysis Certificate is required documentation for shipments of seed and grain from the United States entering certain countries.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2002 revenues for seed testing and certification services are projected at $138,000, costs are projected at $149,000, and the trust fund balance is projected to be $92,000 or 7.4 months of operating reserve. With a fee increase, FY 2002 revenues are projected at $160,000, costs are projected at $151,000, and the trust fund balance is projected to be $113,000 or 9.0 months of operating reserve.

This action will raise the hourly rate charged to users of the seed testing and certification services. This proposed fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees for 2001 and projected increases in 2002, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

The AMS estimates that this proposed rule will yield an additional $22,000 during FY 2002. The hourly rate for seed testing and certification services will increase by approximately 17 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual firms will be, on average, approximately $13.00 per Federal Seed Analysis Certificate issued. There will also be an increase of $1.90 for each duplicate certificate issued. In addition, this action will establish a fee of $13.00 to recover the cost of issuing preliminary test reports.

C. Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

D. Paperwork Reduction Act

The information collection requirements that appear in Part 75 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0140 under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Background and Proposed Changes

The Secretary of Agriculture is authorized by the AMA of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal seed testing and certification services to facilitate the orderly marketing of seed and grain and to enable consumers to obtain the quality of seed and grain they desire.

The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews programs to determine if fees are adequate and if costs are reasonable. This action will increase the hourly fee rate and charges for voluntary seed testing and certification services provided to the seed and grain industries to reflect the costs currently associated with providing the services.

A recent review of the current hourly fee rate, effective March 1, 2001, revealed that anticipated revenue will not cover increased program costs. Without a fee increase, FY 2002 revenues for seed testing and certification services are projected at $138,000, costs are projected at $149,000, and the trust fund balance is projected to be $92,000 or 7.4 months of operating reserve. With a fee increase, FY 2002 revenues are projected at $160,000, costs are projected at $151,000, and the trust fund balance is projected to be $113,000 or 9.0 months of operating reserve.

The hourly fee for service is established by distributing the projected annual program operating costs over the estimated revenue hours of service provided to users of the service. Revenue hours include the time spent conducting tests, keeping sample logs, preparing Federal Seed Analysis Certificates and storing samples. As program operating costs continue to rise, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law. Program operating costs include the salaries and fringe benefits of seed analysts, supervision, training, and all administrative costs of operating the program.

Employee salaries and benefits account for approximately 75 percent of the total budget. A general and locality salary increase of 3.81 percent for Federal employees involved in the seed testing and certification service became effective in January 2001 and has materially affected program costs. Another general and locality salary increase is expected in January 2002.

This proposed fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees for 2001 and projected increases in 2002, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

In view of these increases in costs, the Agency is proposing to increase the hourly rate charged to applicants for the service, including the issuance of Federal Seed Analysis Certificates from $44.40 to $52.00. The fee for issuing additional duplicate certificates will increase from $11.10 to $13.00 and a fee of $13.00 will be established for issuing preliminary reports.

The proposed action will recover the costs associated with providing the voluntary testing service to the seed and grain industry. Although the proposed user-fee increase will increase costs to individual firms, the cost for providing the seed testing and certification services will increase by an average of only $13.00 per Federal Seed Analysis Certificate and $1.90 for each duplicate certificate. It is estimated that the total revenue generated will increase by approximately $22,000 annually.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and recordkeeping requirements, Seeds, Vegetables.

For the reasons set forth in the preamble, 7 CFR Part 75 is proposed to be amended as follows:

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

1. The authority citation for Part 75 continues to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

§ 75.41 [Amended]

2. In § 75.41, ''$44.40'' is removed and ''$52.00'' is added in its place.

3. In § 75.43, a new paragraph (c) is added to read as follows:

§ 75.43 Laboratory testing.

* * * * *

(c) The charge for a preliminary report issued prior to completion of testing shall be $13.00 and billed in accordance with paragraph (a) of this section.

§ 75.47 [Amended]

4. In § 75.47, ''$11.10'' is removed and ''$13.00'' is added in its place.

Dated: October 17, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 01–26592 Filed 10–22–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. AO–313–A44; DA–01–07]

Milk in the Central Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider proposals that would amend certain pooling and related provisions of the Central order. Proposals include amending the pool supply plant and pool supply plant system provisions of the order, eliminating the provision for a cooperative supply plant and amending the portion of the producer milk definition that specifies the percentage of a handler's milk that may be diverted to nonpool plants. Another proposed amendment to the order's pooling provisions would allow milk diverted to a nonpool plant before the producer's milk is delivered to a pool plant to be considered producer milk and allow the producer's milk to retain its association with the market for any months during which the handler fails to pool the producer's milk under any order. Other proposals would provide for establishing separate pooling provisions by state of origin for milk from areas outside the Central order marketing area, preventing the pooling of milk that is already pooled on a State marketwide order and increasing minimum partial payments to producers and cooperative associations. Proponents have requested that these issues be handled on an emergency basis.

DATES: The hearing will convene at 8:30 a.m. on Wednesday, November 14, 2001.

ADDRESSES: The hearing will be held at the Hilton Hotel-Kansas City Airport, 8801 N.W. 112th Street, Kansas City, Missouri 64153; (816) 891–8900.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202)720–2357, e-mail address connie.brenner@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact Bob

Vander Linden at 913–495–9313 or Dave Stukenberg at 913–495–9326; email econ.staff@fmmacentral.com before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Hilton Hotel—Kansas City Airport, 8801 N.W. 112th Street, Kansas City, Missouri 64164; (816) 891–8900; beginning at 8:30 a.m., on Wednesday, November 14, 2001, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any of the proposed amendments.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with three copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

PART 1032—[Amended]

The authority citation for 7 CFR Part 1032 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by: Dairy Farmers of America, Prairie Farms Cooperative, and Swiss Valley Farms:

Proposal No. 1

Amend the pool supply plant provision to reduce the percentage of milk physically received at a supply plant that must be shipped to distributing plants during the fall months from 35 to 25 percent and from 25 to 20 percent during all other months of the year, with the fall months changed from September through November and January to August through November. In addition, handlers would not be able to use shipments under § 1000.9(c) or § 1032.13(c) to qualify plants located outside the marketing area. While qualifying shipments would be expanded to include shipments to any plant that is part of a distributing plant unit, they would also be limited by excluding shipments to distributing plants regulated under other Federal orders. These provisions are proposed to be amended to read as follows:

§ 1032.7 Pool Plant.

* * * * *

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 25 percent during the months of August through November and 20 percent in all other months of the Grade A milk received from dairy farmers (except dairy farmers described in § 1032.12(b)) and handlers described in § 1000.9(c), including milk diverted pursuant to § 1032.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (a), (b) or (e) of this section.

(2) The operator of a pool plant located in the marketing area may include as qualifying shipments milk delivered directly from producer's farms pursuant to § 1000.9(c) or § 1032.13(c). Handlers may not use shipments pursuant to § 1000.9(c) or § 1032.13(c) to qualify plants located outside the marketing area.

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage.

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

* * * * *

Proposal No. 2

Remove the provision for a cooperative supply plant, as follows:

§ 1032.7 Pool Plant.

* * * * *

(d) Removed and reserved.

* * * * *

Proposal No. 3

Revise the provision for a system of supply plants by providing for increased shipping percentages (5 percent higher than for individual supply plants in the

months of August through November and 3 percent higher in all other months) by adding a new paragraph (f)(1) and redesignating paragraphs § 1032.7(f)(1) through (4) as paragraphs § 1032.7(f)(2) through (5) to read as follows:

§ 1032.7 Pool plant.

* * * * *

(f) * * *

(1) The applicable percentage requirements for each unit shall be 30 percent for the months of August through November, and 23 percent in all other months.

* * * * *

Proposal No. 4

Amend the provision authorizing the market administrator to adjust shipping percentages to remove the reference to paragraph (d) by revising the first sentence of paragraph (g) to read as follows:

§ 1032.7 Pool Plant.

* * * * *

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments.

* * * * *

Proposal No. 5

Relax the diversion limits for the fall months from 65 to 75 percent of producer receipts and change those months by including August and removing January; relax the diversion limits for the rest of the year from 75 to 80 percent of producer receipts. Diversion limits would apply to all months. Paragraph (d)(2) would read as follows:

§ 1032.13 Producer Milk.

* * * * *

(d) * * *

(2) The quantity of milk diverted to a nonpool plant by a pool plant operator or by a cooperative association pursuant to § 1000.9(c) may not exceed 75 percent of the producer milk receipts reported by the handler pursuant to § 1032.30 for the months of August through November and 80 percent of the remaining months' producer milk receipts reported by the handler pursuant to § 1032.30 provided that not less than 25 percent of such receipts in the months of August through November and 20 percent of the remaining months' receipts are delivered to plants described in § 1032.7(a), (b) and (e). These percentages are subject to any adjustments that may be made pursuant to § 1032.13(d)(5);

* * * * *

Proposal No. 6

Increase the partial payment rate to producers and cooperative associations from the lowest class price for the preceding month to 110 percent of that price in paragraphs (a)(1) and (c)(1) of § 1032.73 to read as follows:

§ 1032.73 Payments to producers and to cooperative associations.

(a) * * *

(1) *Partial Payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than 110 percent times the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

* * * * *

(c) * * *

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than 110 percent times the lowest announced class prices per hundredweight for the preceding month;

* * * * *

Proposed by: Dairy Farmers of America:

Proposal No. 7

Amend the pool supply plant and producer milk definitions to require milk from ''distant'' locations to be reported by individual state units that would each be subject to the performance standards applicable to supply plants and producer milk in the applicable paragraphs in §§ 1032.7 and 1032.13 to read as follows:

§ 1032.7 Pool Plant.

* * * * *

(c) * * *

(4) If milk is delivered to a plant physically located outside the States of Colorado, Illinois, Iowa, Kansas, Minnesota (or certain designated counties), Missouri, Nebraska, Oklahoma, South Dakota and Wisconsin (or certain designated counties) by producers also located outside the area specified in this paragraph, producer receipts at such plant shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1032.30.

(ii) At least the required minimum percentage specified in § 1032.7(c) of the producer milk of each unit of the handler shall be delivered to plants described in § 1032.7 (a), (b) or (e), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1032.7(f); and

(iii) The percentages of 1032.7(c)(4) are subject to any adjustments that may be made pursuant to § 1032.7(g).

* * * * *

§ 1032.13 Producer Milk.

Subject to the conditions of paragraph (e) of this section, ''producer milk'' means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

* * * * *

(e) Milk receipts from producers whose farms that are physically located outside the States of Colorado, Illinois, Iowa, Kansas, Minnesota (or certain designated counties), Missouri, Nebraska, Oklahoma, South Dakota and Wisconsin (or certain designated counties) such producers shall be organized by individual state units and each unit shall be subject to the following requirements:

(1) Each unit shall be reported separately pursuant to § 1032.30.

(2) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1032.7(c), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1032.13(d)(2); and

(3) The percentages of § 1032.13(d)(2) are subject to any adjustments that may be made pursuant to § 1032.13(d)(5).

Proposed by: Anderson-Erickson Dairy Company, Associated Milk Producers, Inc., Family Dairies USA, First District Association, Foremost Farms, Swiss Valley Dairy, Milwaukee Cooperative Milk Producers, Manitowoc Milk Producers Cooperative, and Mid-West Dairymen's Company:

Proposal No. 8

Amend paragraph (d)(6) of the ''Producer Milk'' definition to exclude

milk that is pooled under any other marketwide equalization pool to read as follows:

§ 1032.13 Producer milk.

* * * * *

(d) * * *

(6) *Provided, however,* that diverted milk pursuant to this paragraph shall not include milk subject to the minimum pricing provisions of another federal order or milk which qualifies for inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government.

Proposed by: Associated Milk Producers Inc., Foremost Farms USA, Land O'Lakes, First District Association, Family Dairies USA, Midwest Dairymen's Co., Manitowoc Milk Producers Cooperative, and Milwaukee Cooperative Milk Producers:

Proposal No. 9

Amend paragraph (d)(1) of the ''Producer Milk'' definition to allow milk diverted to a nonpool plant before the producer's milk is delivered to a pool plant to be considered producer milk and allow the producer's milk to retain its association with the market for any months during which the handler fails to pool the producer's milk under any order to read as follows:

§ 1032.13 Producer Milk.

* * * * *

(d) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer has been physically received as producer milk at a pool plant during the first month the dairy farmer is a producer and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's milk shall not be eligible for diversion unless milk of the dairy farmer has been physically received as producer milk at a pool plant.

Proposed by: Dairy Programs, Agricultural Marketing Service:

Proposal No. 10

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of the Central Marketing Area or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Programs, Agricultural Marketing Service (Washington office) and the Office of the Market Administrator of the Central Milk Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: October 17, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 01–26593 Filed 10–22–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products and Commercial and Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The Department of Energy (DOE or Department) will hold a public meeting to explore potential new products to be included in the existing appliance standards program and/or voluntary programs. This meeting will continue the September 11, 2001, public meeting where DOE discussed the priorities of the existing appliance standards program, possible expansion of the scope of the program, and criteria and the process for applying the criteria in considering new products for either standards or voluntary programs. In addition, the Department is interested in receiving comments on the preliminary data sheets for potential new products and recommendations as to whether or not these products should be further considered for a standard and/or for a voluntary program such as Energy Star.

DATES: The public meeting will be held on Tuesday, November 6, 2001, from 9:00 a.m. to 4:00 p.m. Written comments should be submitted by November 20, 2001.

ADDRESSES: The meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945 so that the necessary procedures can be completed.)

A list identifying the proposed priority for standards rulemakings that are currently mandated by statute, a list of possible new products that have been identified by various stakeholders, comments on the August 28, 2001, **Federal Register** notice of the September 11, 2001, public meeting, including the transcript and presentation material from the September 11, 2001, public meeting, and preliminary data sheets for potential new products can be found on the DOE website at: http://www.eren.doe.gov/buildings/codes_standards/index.htm

Written comments are welcome, especially following the meeting. Please submit written comments to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617. You should label comments both on the envelope and on the documents and submit them for DOE receipt by November 20, 2001. Please submit one signed copy and a computer diskette (WordPerfect 8) or 10 copies (no telefacsimiles). The

Department will also accept electronically-mailed comments, e-mailed to Brenda.Edwards-Jones@ee.doe.gov, but you must supplement such comments with a signed hard copy.

Copies of the agenda and attendees of the public meeting, the public comments received, the list of current rulemakings and possible new products, and this notice may be read at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9611, email: *michael.raymond@ee.doe.gov* pertaining to priority setting for current rulemakings, and Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371, email: *bryan.berringer@ee.doe.gov* pertaining to possible new products, or Francine Pinto, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–7432, email: *francine.pinto@hq.doe.gov*

SUPPLEMENTARY INFORMATION: On May 2001, the National Energy Policy Development Group (NEPD Group) reported a National Energy Policy to the President. One of the recommendations called for the President to direct the Secretary of Energy to take steps to improve the energy efficiency of appliances. The recommendation included supporting the existing appliance standards program, setting higher standards where technologically feasible and economically justified, and expanding the scope of the program to include additional consumer products and commercial and industrial equipment where technically feasible and economically justified.

The **Federal Register** notice dated August 28, 2001 (66 FR 45188), announced the September 11, 2001, public meeting and requested written comments be submitted by October 11, 2001. The September 11 public was to discuss the priorities of the existing appliance standards program and any possible expansion of the scope of the program to include additional consumer products and commercial and industrial equipment. However, as a result of the tragic events of September 11, 2001, the public meeting was cut short. At the September 11 public meeting, the interested parties discussed the criteria DOE should consider in deciding whether to expand the scope of the program, including the factors, data and analysis methods that might be used by DOE in its decision making process. Following the September 11 public meeting, DOE received written comments supporting adding a new factor, impact on innovation to the existing priority setting criteria.

DOE developed the list of possible new commercial and residential products from various independent sources which was presented at the September 11 public meeting. DOE has incorporated an additional criterion suggested at the September 11 public meeting, and developed preliminary data sheets for potential new products. This list as well as a listing of current rulemakings and the preliminary data sheets can be found on the following web-site: http://www.eren.doe.gov/buildings/codes_standards/index.htm

The November 6, 2001, public meeting will be to: continue the discussion of the possible expansion of the scope of the program, and review the comments received in response to the August 28, 2001, notice of public meeting; discuss how these comments should be incorporated into the process; review the preliminary data sheets developed; and discuss how these products should be considered for prioritization. The outcome of the meeting would be to screen out products which do not merit further consideration for either a standard and/or voluntary program.

The meeting will be conducted in an informal, conference style. There will not be any discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by the U.S. antitrust laws.

After the meeting and expiration of the period for submitting written statements, the Department will begin consideration of the comments received.

If you would like to participate in the meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information regarding the energy conservation program for consumer products and commercial and industrial equipment, please contact Ms. Brenda Edwards-Jones at (202) 586–2945.

Issued in Washington, DC, on October 17, 2001.

David K. Garman,

Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 01–26672 Filed 10–22–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142499–01]

RIN 1545–BA24

Catch-Up Contributions for Individuals Age 50 or Over

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would provide guidance concerning the requirements for retirement plans providing catch-up contributions to individuals age 50 or older pursuant to the provisions of section 414(v). These proposed regulations would affect section 401(k) plans, section 408(p) SIMPLE IRA plans, section 408(k) simplified employee pensions, section 403(b) tax-sheltered annuity contracts, and section 457 eligible governmental plans, and would affect participants eligible to make elective deferrals under these plans or contracts. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for February 21, 2002, must be received by January 31, 2002.

ADDRESSES: Send submissions to: CC:IT&A:RU (REG–142499–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:IT&A:RU (REG–142499–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/reglist.html.* The public hearing will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111

Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, R. Lisa Mojiri-Azad or John T. Ricotta at (202) 622–6060 (not a toll-free number); concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Donna Poindexter, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations under section 414(v) of the Internal Revenue Code of 1986 (Code). Section 414(v) was added by section 631 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (Public Law 107–16), enacted on June 7, 2001. Under section 414(v), an individual age 50 or over is permitted to make additional elective deferrals (up to a dollar limit provided in that section) under a plan that otherwise permits elective deferrals if certain requirements provided under that section are satisfied. Section 414(v) also provides that a plan will not violate any provision of the Code by permitting these additional elective deferrals to be made.

Explanation of Provisions

These proposed regulations would implement new section 414(v) by providing that an employer plan is not treated as violating any provision of the Code solely because the plan permits a catch-up eligible participant (as defined in these proposed regulations) to make catch-up contributions. Catch-up contributions generally are elective deferrals made by a catch-up eligible participant that exceed an otherwise applicable limit and that are treated as catch-up contributions under the plan, but only to the extent they do not exceed the maximum amount of catch-up contributions permitted for the taxable year. An employer is not required to provide for catch-up contributions in any of its plans, even if the plans provide for elective deferrals. If, however, any plan of an employer provides for catch-up contributions, all plans of the employer that provide elective deferrals must comply with the universal availability requirements described below.

A. Eligibility for Catch-up Contributions

Under these proposed regulations, a participant is a catch-up eligible participant, and thus is permitted to make catch-up contributions, if the participant is otherwise eligible to make elective deferrals under the plan and is age 50 or older. For purposes of this rule, a participant who is projected to attain age 50 before the end of a calendar year is deemed to be age 50 as of January 1 of that year. The effect of this rule is that all participants who will attain age 50 during a calendar year are treated the same beginning January 1 of that year, without regard to whether the participant survives to his or her 50th birthday or terminates employment during the year and without regard to the employer's choice of plan year.

A catch-up eligible participant can make catch-up contributions under a section 401(k) plan, a SIMPLE IRA plan as defined in section 408(p), a simplified employee pension as defined in section 408(k) (SEP), a plan or contract that satisfies the requirements of section 403(b), or a section 457 eligible governmental plan, as long as the participant can otherwise make elective deferrals under the plan or contract. For this purpose, elective deferrals include not only elective deferrals defined in section 402(g)(3), but also any contribution to a section 457 eligible governmental plan.

B. Determination of Catch-up Contribution

In describing section 631 of EGTRRA, the Conference report states that ''the otherwise applicable dollar limit on elective deferrals under a section 401(k) plan, section 403(b) annuity, SEP, or SIMPLE, or deferrals under a section 457 plan is increased for individuals who have attained age 50 by the end of the year.'' Conf. Rep. No. 107–84, at 236 (2001). The legislative history to section 631 of EGTRRA indicates that the intent of Congress in enacting section 414(v) was to allow a catch-up eligible participant to make additional elective deferrals over and above any otherwise applicable limit, up to the catch-up contribution limit for the taxable year. The proposed regulations would provide that elective deferrals made by a catch-up eligible participant are treated as catch-up contributions if they exceed any otherwise applicable limit, to the extent they do not exceed the maximum dollar amount of catch-up contributions permitted under section 414(v). However, the regulations would not require that a participant have made elective deferrals in excess of an otherwise applicable limit in order to be a catch-up eligible participant. A plan providing for $1,000 of catch-up contributions in 2002 could allow a participant who is over age 50 to make elective deferrals in an amount projected to exceed the otherwise applicable limit by $1,000 at any time during 2002.

Under the proposed regulations, catch-up contributions would be determined by reference to three types of limits: statutory limits, employer-provided limits, and the actual deferral percentage (ADP) limit. A statutory limit is a limit contained in the Code on elective deferrals or annual additions permitted to be made under the plan or contract (without regard to section 414(v)). Statutory limits include the requirement under section 401(a)(30) that the plan limit all elective deferrals within a calendar year under the plan and other plans (or contracts) maintained by members of a controlled group to the amount permitted under section 402(g).

An employer-provided limit is a limit on the elective deferrals an employee can make under the plan (without regard to section 414(v)) that is contained in the terms of the plan, but that is not a statutory limit. For example, a limit on elective deferrals of highly compensated employees to 10% of pay is an employer-provided limit. The condition that a employer-provided limit be contained in the terms of the plan is intended to correspond with the requirements of § 1.401–1 that a qualified plan have a definite written program and provide for a definite predetermined formula for allocating contributions made to the plan.

For a section 401(k) plan that would fail the ADP test of section 401(k)(3) if it did not correct under section 401(k)(8), the ADP limit is the highest dollar amount of elective deferrals that may be retained in the plan by a highly compensated employee after the application of section 401(k)(8)(C) (without regard to section 414(v)). For example, if after ADP testing, elective deferrals by highly compensated employees in excess of $8,000 would be required to be distributed or recharacterized as employee contributions under the statutory correction set forth under section 401(k)(8)(C), then the ADP limit is $8,000. Similar rules apply in the case of a SEP.

The amount of elective deferrals in excess of an applicable limit is generally determined as of the end of a plan year by comparing the total elective deferrals for the plan year with the applicable limit for the plan year. For example, if a plan limits elective deferrals to 10% of compensation, then whether the participant has elective deferrals in excess of 10% of compensation is determined at the end of the plan year. Similarly, elective deferrals in excess of the ADP limit are determined as of the end of the plan year. For a limit that is determined on the basis of a year other

than a plan year (such as the calendar year limit on elective deferrals under section 401(a)(30)), the determination of whether elective deferrals are in excess of the applicable limit is made on the basis of such other year.

If a plan provides for separate employer-provided limits on separate portions of compensation during the plan year, the determination of the amount of elective deferrals in excess of the employer-provided limit is still made on an annual basis, with the applicable limit for the year equal to the sum of the dollar limits that apply to the separate portions of compensation. This situation may occur, for example, when the plan sets a deferral percentage limit for each payroll period.

If the plan limits elective deferrals for separate portions of the plan year, then, solely for purposes of determining the amount that is in excess of an employer-provided limit, the plan may provide, as an alternative rule, that the applicable limit for the plan year is the product of the employee's plan year compensation and the time-weighted average of the deferral percentage limits. For example, if a plan using this time-weighted average limits deferrals to 8 percent of compensation during the first half of the year and 10 percent of compensation for the second half of the year, the applicable limit will be 9 percent of each employee's plan year compensation.

Under the proposed regulations, elective deferrals in excess of an applicable limit would be treated as catch-up contributions only to the extent that such elective deferrals do not exceed the catch-up contribution limit for the taxable year reduced by elective deferrals previously treated as catch-up contributions for the taxable year. The catch-up contribution limit for a taxable year is generally the applicable dollar catch-up limit for such taxable year, except that an elective deferral will not be treated as a catch-up contribution to the extent that the elective deferral, when added to all other elective deferrals for the taxable year under all plans of the employer, exceeds the participant's compensation (determined in accordance with section 415(c)(3)).

These proposed regulations would include a timing rule for purposes of determining when elective deferrals in excess of an applicable limit are treated as catch-up contributions. This rule is necessary because the maximum amount of catch-up contributions is based on a participant's taxable year, but the determination of whether an elective deferral is in excess of an applicable limit is determined on the basis of a taxable year, plan year, or limitation year, depending on the underlying limit. Under the proposed regulations, whether these elective deferrals in excess of an applicable limit can be treated as catch-up contributions would be determined as of the last day of the relevant year, except that if the limit is determined on a taxable or calendar year basis, then whether elective deferrals in excess of the limit can be treated as catch-up contributions would be determined at the time they are deferred. This timing rule is most significant for a plan with a plan year that is not the calendar year. For example, in a plan with a plan year ending on June 30, 2005, elective deferrals in excess of the employer-provided limit or the ADP limit for the plan year ending June 30, 2005, would be treated as catch-up contributions as of the last day of the plan year, up to the catch-up contribution limit for 2005. Any amounts deferred after June 30, 2005, that are in excess of the section 401(a)(30) limit for the 2005 calendar year would also be treated as catch-up contributions at the time they are deferred, up to the catch-up contribution limit for 2005 reduced by elective deferrals treated as catch-up contributions as of June 30, 2005.

C. Treatment of Catch-up Contributions

If an elective deferral is treated as a catch-up contribution, it is not subject to otherwise applicable limits under the plan and the plan will not be treated as failing otherwise applicable nondiscrimination requirements because of the making of catch-up contributions. The proposed regulations would provide guidance on how catch-up contributions under the plan are taken into account for purposes of these various requirements under the Code. Under the proposed regulations, catch-up contributions would not be taken into account in applying the limits of section 401(a)(30), 401(k)(11), 402(h), 402A(c)(2), 403(b), 404(h), 408(k), 408(p), 415, or 457 to other contributions or benefits under the plan offering catch-up contributions or under any other plan of the employer.

For purposes of ADP testing, the proposed regulations would provide that any elective deferral for the plan year that is treated as a catch-up contribution because it is in excess of a statutory limit or an employer-provided limit is disregarded for purposes of calculating the participant's actual deferral ratio (i.e., catch-up contributions are subtracted from the participant's elective deferrals for the plan year prior to determining the participant's actual deferral ratio). This subtraction applies without regard to whether the catch-up eligible participant is a highly compensated employee or a nonhighly compensated employee. If, after running the ADP test, a plan needs to take corrective action under section 401(k)(8), the plan must determine the amount of elective deferrals that are catch-up contributions because they are in excess of the ADP limit. The elective deferrals that are treated as catch-up contributions must be retained by the plan. The plan would not be treated as failing section 401(k)(8) by reason of this retention of catch-up contributions. Excess contributions treated as catch-up contributions would nevertheless be treated as excess contributions for purposes of section 411(a)(3)(G). Therefore, if the plan does not provide for matching contributions on catch-up contributions, any matching contributions related to excess contributions treated as catch-up contributions can be forfeited. The approach under the proposed regulations would exclude those catch-up contributions that can be identified before ADP testing, and allow the plan to treat elective deferrals as catch-up contributions for those participants who would be limited under the plan (because the plan otherwise would be required to distribute some of their elective deferrals), while minimizing changes to current plan administration.

Catch-up contributions with respect to the current plan year are not taken into account for purposes of section 416 or 410(b). However, catch-up contributions made to the plan in prior years are taken into account in determining whether a plan is top-heavy under section 416, and for purposes of average benefit percentage testing to the extent prior years' contributions are taken into account (i.e., if accrued to date calculations are used).

A plan does not fail the requirements of section 401(a)(4) merely because it permits only catch-up eligible participants to make catch-up contributions. Similarly, if a plan applies a single matching formula to elective deferrals whether or not they are catch-up contributions, the matching formula as applied to catch-up eligible participants is not treated as a separate benefit, right, or feature under § 1.401(a)(4)–4 from the matching formula as applied to the other participants. However, the matching contributions under the matching formula must satisfy the actual contribution percentage test under section 401(m)(2) taking into account all matching contributions, including matching contributions on catch-up contributions.

D. Universal Availability

Under the proposed regulations, a plan that offers catch-up contributions would satisfy the requirements of section 401(a)(4) only if all catch-up eligible participants are provided with the effective opportunity to make the same dollar amount of catch-up contributions. Therefore, if an employer provides for catch-up contributions under a section 401(k) plan, all other employer plans in the controlled group that provide for elective deferrals, including plans not subject to section 401(a)(4), must provide catch-up eligible participants with the same effective opportunity to make catch-up contributions. This universal availability requirement applies solely with respect to catch-up eligible participants. Because the definition of catch-up eligible participants requires that the participant be eligible to make elective deferrals under a plan without regard to section 414(v), the universal availability requirement will not require plans that do not otherwise provide for elective deferrals to provide for catch-up contributions.

In order to provide catch-up eligible participants with an effective opportunity to make catch-up contributions, the plan would have to permit each catch-up eligible participant to make sufficient elective deferrals during the year so that the participant has the opportunity to make elective deferrals up to the otherwise applicable limit plus the catch-up contribution limit. An effective opportunity could be provided in several different ways. For example, a plan that limits elective deferrals on a payroll-by-payroll basis might also provide participants with an effective opportunity to make catch-up contributions that is administered on a payroll-by-payroll basis (i.e., by allowing catch-up eligible participants to increase their deferrals above the otherwise applicable limit by a pro-rata portion of the catch-up limit for the year). However, as discussed above, whether these elective deferrals are treated as catch-up contributions would not be determined until the end of the year.

A plan would not fail the universal availability requirement solely because an employer-provided limit did not apply to all employees or different employer-provided limits apply to different groups of employees. As under current law, a plan could provide for different employer-provided limits for different groups of employees, as long as each limit satisfies the nondiscriminatory availability requirements of § 1.401(a)(4)–4 for benefits, rights, and features. Thus, for example, a plan could provide for an employer-provided limit that applies to highly compensated employees, even though no employer-provided limit applies to nonhighly compensated employees. However, a plan is not permitted to provide lower employer-provided limits for catch-up eligible participants.

The proposed regulations would provide several exceptions to this universal availability requirement. First, the proposed regulations would provide for coordination between catch-up contributions under section 414(v) and the provisions of section 457(b)(3) in accordance with section 414(v)(6)(C). The proposed regulations would also provide transition rules for collectively bargained employees and newly-acquired plans.

E. Participants in Multiple Plans

As discussed in Section B above, the intent of section 414(v) is to permit a catch-up eligible participant to make elective deferrals in an amount equal to the catch-up contribution limit for the year in addition to the amount of elective deferrals that the participant would otherwise have been allowed to defer under the plan or plans in which the catch-up eligible participant participated. Many of the statutory limits that would otherwise limit the participant's elective deferrals are applied on an aggregated basis, for example, across all plans within a controlled group. Accordingly, the proposed regulations would provide that, for purposes of determining whether elective deferrals are in excess of a statutory limit, all elective deferrals in excess of the statutory limit are aggregated in the same manner as the underlying limit and the aggregate amount of elective deferrals treated as catch-up contributions because they exceed the statutory limit must not exceed the applicable dollar catch-up limit.

For example, compliance with section 401(a)(30) is determined based on elective deferrals under all section 401(k) plans and all section 403(b) contracts sponsored by the employer. Therefore, all section 401(k) plans and section 403(b) contracts in the controlled group of the employer would be aggregated for purposes of determining the total amount of elective deferrals in excess of the section 401(a)(30) limit. The amount of elective deferrals treated as catch-up contributions by reason of exceeding the section 401(a)(30) limit under the aggregated plans or contracts must not exceed the dollar amount of the catch-up limit for the taxable year.

In calculating the actual deferral ratio (ADR) (as defined in § 1.401(k)–1(g)) for a highly compensated employee who participates in more than one section 401(k) plan of the employer during the year, all section 401(k) plans are treated as one section 401(k) plan. Consistent with this approach, if a highly compensated employee participates in more than one section 401(k) plan of an employer, in determining the elective deferrals in excess of an employer-provided limit, the proposed regulations would take into account the elective deferrals and employer-provided limits under all section 401(k) plans in which the employee participates. In such a case, the proposed regulations would provide that in determining whether an employee's elective deferrals exceed an employer-provided limit, the applicable limit for the plan year is the sum of the dollar amounts of the limits under the separate plans and the employee's elective deferrals under all these plans are combined to determine if that aggregate employer-provided limit is exceeded.

When the elective deferrals in excess of a statutory or employer-provided limit would be determined based on more than one plan, the aggregate amount of elective deferrals in excess of that limit made under all section 401(k) plans of the employer in which a catch-up eligible participant who is a highly compensated employee participates would be treated as elective deferrals in excess of an applicable limit under each of those section 401(k) plans. In the case of a highly compensated employee, all elective deferrals that exceed a statutory or employer-provided limit and are treated as catch-up contributions under the section 401(k) plans of the employer in which the catch-up eligible participant participates are subtracted from the participant's elective deferrals for purposes of determining the participant's ADR. However, if any of the section 401(k) plans corrects through distribution of excess contributions under section 401(k)(8) in order to comply with section 401(k)(3), only the catch-up contributions made under that plan are permitted to be subtracted from elective deferrals for purposes of this correction.

When the elective deferrals in excess of a statutory or employer-provided limit are determined on an aggregated basis, it must be determined under which plan the elective deferrals in excess of the limit were made. The plan under which the elective deferrals in excess of the limit were made may be determined in any manner that is not

inconsistent with the manner in which such amounts were actually deferred under the plans. For example, if a catch-up eligible participant participates in a section 401(k) plan only during the first 6 months of the year and during the second 6 months of the year, while participating in a section 403(b) contract, the participant's contributions reach and exceed the section 401(a)(30) limit for the year, then all elective deferrals in excess of the section 401(a)(30) limit for the year could be treated as made to the section 403(b) contract.

F. Excludability of Catch-up Contributions

Catch-up contributions are generally not treated as exceeding the applicable dollar amount of section 402(g)(1). The proposed regulations would also provide that a catch-up eligible participant who participates in multiple plans may treat an elective deferral as a catch-up contribution (up to the maximum amount of catch-up contributions permitted for the taxable year) because it exceeds the catch-up eligible participant's section 402(g) limit for the taxable year. This rule would allow a catch-up eligible participant who participates in plans of two or more employers an exclusion from gross income for elective deferrals that exceed the section 402(g) limit, even though the elective deferrals do not exceed an applicable limit for either employer's plan. The treatment by an individual of such elective deferrals as catch-up contributions will not have any impact on either employer's plan. This treatment is parallel to the treatment of excess deferrals for an individual under age 50 who exceeds the section 402(g) limit in the plans of two unrelated employers. Accordingly, the proposed regulations would not provide for the ADP test to be rerun to disregard elective deferrals that an individual treats as catch-up contributions because they exceed the section 402(g) limit. However, the total amount of elective deferrals in excess of the applicable dollar limit in section 402(g)(1)(B) that are not includible in income because they are treated as catch-up contributions cannot exceed that limit by more than the catch-up contribution limit for the taxable year.

Proposed Effective Date

The regulations are proposed to apply to contributions in taxable years beginning on or after January 1, 2002. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. In addition to the other requests for comments set forth in this document, the IRS and Treasury also request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 21, 2002, at 10 a.m. in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 31, 2002.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are R. Lisa Mojiri-Azad and John T. Ricotta of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Paragraph 2. Section 1.414(v)–1 is added to read as follows:

§ 1.414(v)–1 Catch-up contributions.

(a) *Catch-up contributions*—(1) *General rule.* An applicable employer plan shall not be treated as failing to meet any requirement of the Internal Revenue Code solely because the plan permits a catch-up eligible participant to make catch-up contributions in accordance with section 414(v) and this section. With respect to an applicable employer plan, catch-up contributions are elective deferrals made by a catch-up eligible participant that exceed any of the applicable limits set forth in paragraph (b) of this section and that are treated under the applicable employer plan as catch-up contributions, but only to the extent they do not exceed the catch-up contribution limit described in paragraph (c) of this section (determined in accordance with the special rules for employers that maintain multiple applicable employer plans in paragraph (f) of this section, if applicable). The definitions in paragraphs (a)(2) through (5) of this section apply for purposes of this section.

(2) *Applicable employer plan.* The term applicable employer plan means a section 401(k) plan, a SIMPLE IRA plan

as defined in section 408(p), a simplified employee pension plan as defined in section 408(k) (SEP), a plan or contract that satisfies the requirements of section 403(b), or a section 457 eligible governmental plan.

(3) *Elective deferral.* The term elective deferral means an elective deferral within the meaning of section 402(g)(3) or any contribution to a section 457 eligible governmental plan.

(4) *Catch-up eligible participant*—(i) *General rule.* The term catch-up eligible participant means an employee who—

(A) Is eligible to make elective deferrals during the plan year under an applicable employer plan (without regard to section 414(v) or this section); and

(B) Is age 50 or older.

(ii) *Projection of age 50.* For purposes of paragraph (a)(4)(i)(B) of this section, a participant who is projected to attain age 50 before the end of a calendar year is deemed to be age 50 as of January 1 of such year.

(5) *Other definitions.* (i) The terms employer, employee, section 401(k) plan, and highly compensated employee have the meanings provided in § 1.410(b)–9.

(ii) The term section 457 eligible governmental plan means an eligible deferred compensation plan described in section 457(b) that is established and maintained by an eligible employer described in section 457(e)(1)(A).

(b) *Elective deferrals that exceed an applicable limit*—(1) *Applicable limits.* An applicable limit for purposes of determining catch-up contributions for a catch-up eligible participant is any of the following:

(i) *Statutory limit.* A statutory limit is a limit on elective deferrals or annual additions permitted to be made (without regard to section 414(v) and this section) with respect to an employee for a year provided in section 401(a)(30), 402(h), 403(b)(1)(E), 404(h), 408(k), 408(p), 415, or 457, as applicable.

(ii) *Employer-provided limit.* An employer-provided limit is any limit on the elective deferrals an employee is permitted to make (without regard to section 414(v) and this section) that is contained in the terms of the plan, but which is not required under the Internal Revenue Code. Thus, for example, a plan provision that limits highly compensated employees to a deferral percentage of 10% of compensation is an employer-provided limit that is an applicable limit with respect to the highly compensated employees.

(iii) *Actual deferral percentage (ADP) limit.* In the case of a section 401(k) plan that would fail the ADP test of section 401(k)(3) if it did not correct under section 401(k)(8), the ADP limit is the highest amount of elective deferrals that can be retained in the plan by a highly compensated employee under the rules of section 401(k)(8)(C). In the case of a SEP with a salary reduction arrangement (within the meaning of section 408(k)(6)) that would fail the requirements of section 408(k)(6)(A)(iii) if it did not correct in accordance with section 408(k)(6)(C), the ADP limit is the highest amount of elective deferrals that can be made by a highly compensated employee under the rules of section 408(k)(6).

(2) *Contributions in excess of applicable limit*—(i) *Plan year limits.* Except as provided in paragraph (b)(2)(ii) of this section, the amount of elective deferrals in excess of an applicable limit is determined as of the end of the plan year by comparing the total elective deferrals for the plan year with the applicable limit for the plan year. In the case of a plan that provides for separate employer-provided limits on elective deferrals for separate portions of plan compensation within the plan year, the applicable limit for the plan year is the sum of the dollar amounts of the limits for the separate portions. This plan provision may occur, for example, when the plan sets a deferral percentage limit for each payroll period. If the plan limits elective deferrals for separate portions of the plan year, then, solely for purposes of determining the amount that is in excess of an employer-provided limit, the plan may provide, as an alternative rule, that the applicable limit for the plan year is the product of the employee's plan year compensation and the time-weighted average of the deferral percentage limits. Thus, for example, if a plan that provides for use of a time-weighted average limits deferrals to 8 percent of compensation during the first half of the plan year and 10 percent of compensation for the second half of the plan year, the applicable limit is 9 percent of each employee's plan year compensation.

(ii) *Other year limit.* In the case of an applicable limit which is applied on the basis of a year other than the plan year (e.g., the calendar year limit on elective deferrals under section 401(a)(30)), the determination of whether elective deferrals are in excess of the applicable limit is made on the basis of such other year.

(c) *Catch-up contribution limit*—(1) *General rule.* Elective deferrals with respect to a catch-up eligible participant in excess of an applicable limit under paragraph (b) of this section are treated as catch-up contributions under this section as of a date within a taxable year only to the extent that such elective deferrals do not exceed the catch-up contribution limit described in this paragraph (c), reduced by elective deferrals previously treated as catch-up contributions for the taxable year, determined in accordance with paragraph (c)(3) of this section. The catch-up contribution limit for a taxable year is generally the applicable dollar catch-up limit for such taxable year, as set forth in paragraph (c)(2) of this section. However, an elective deferral is not treated as a catch-up contribution to the extent that the elective deferral, when added to all other elective deferrals for the taxable year under any applicable employer plan of the employer, exceeds the participant's compensation (determined in accordance with section 415(c)(3)) for the taxable year.

(2) *Applicable dollar catch-up limit*—(i) *In general.* The applicable dollar catch-up limit for an applicable employer plan, other than an applicable employer plan described in section 401(k)(11) or a SIMPLE IRA plan as defined in section 408(p), is determined under the following table:

For taxable years beginning in	Applicable dollar catch-up limit
2002	$1,000
2003	2,000
2004	3,000
2005	4,000
2006	5,000

(ii) *SIMPLE plan.* The applicable dollar catch-up limit for an applicable employer plan described in section 401(k)(11) or a SIMPLE IRA plan as defined in section 408(p) is determined under the following table:

For taxable years beginning in	Applicable dollar catch-up limit
2002	$500
2003	1,000
2004	1,500
2005	2,000
2006	2,500

(iii) *Cost of living adjustments.* For taxable years after 2006, the applicable dollar catch-up limit is the applicable dollar catch-up limit for 2006 described in paragraph (c)(2)(i) or (ii) of this section increased at the same time and in the same manner as adjustments under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase that is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(3) *Timing rules.* For purposes of determining the maximum amount of permitted catch-up contributions for a catch-up eligible participant during a taxable year, the determination of whether an elective deferral is a catch-up contribution is made as of the last day of the plan year (or in the case of section 415, as of the last day of the limitation year), except that, with respect to elective deferrals in excess of an applicable limit that is tested on the basis of the taxable year or calendar year (e.g., the section 401(a)(30) limit on elective deferrals), the determination of whether such elective deferrals are treated as catch-up contributions is made at the time they are deferred.

(d) *Treatment of catch-up contributions*—(1) *Contributions not taken into account for certain limits.* Catch-up contributions shall not be taken into account in applying the limits of section 401(a)(30), 401(k)(11), 402(h), 402A(c)(2), 403(b), 404(h), 408(k), 408(p), 415, or 457 to other contributions or benefits under an applicable employer plan or any other plan of the employer.

(2) *Contributions not taken into account for certain nondiscrimination tests*—(i) *Application of ADP test.* Elective deferrals that are treated as catch-up contributions with respect to a section 401(k) plan because they exceed a statutory or employer-provided limit described in paragraph (b)(1)(i) or (ii) of this section, respectively, are subtracted from the catch-up eligible participant's elective deferrals for the plan year for purposes of determining the actual deferral ratio (ADR) (as defined in § 1.401(k)–1(g)) of a catch-up eligible participant. Similarly, elective deferrals that are treated as catch-up contributions with respect to a SEP because they exceed a statutory or employer-provided limit described in paragraph (b)(1)(i) or (ii) of this section, respectively, are subtracted from the catch-up eligible participant's elective deferrals for the plan year for purposes of determining the deferral percentage under section 408(k)(6)(D) of a catch-up eligible participant.

(ii) *Adjustment of elective deferrals for correction purposes.* For purposes of the correction of excess contributions in accordance with section 401(k)(8)(C), elective deferrals under the plan treated as catch-up contributions for the plan year are subtracted from the catch-up eligible participant's elective deferrals under the plan for the plan year.

(iii) *Excess contributions treated as catch-up contributions.* A section 401(k) plan that satisfies the ADP test of section 401(k)(3) through correction under section 401(k)(8) must retain any elective deferrals that are treated as catch-up contributions pursuant to paragraph (c) of this section because they exceed the ADP limit in paragraph (b)(1)(iii) of this section. In addition, a section 401(k) plan is not treated as failing to satisfy section 401(k)(8) merely because elective deferrals described in the preceding sentence are not distributed or recharacterized as employee contributions. Similarly, a SEP is not treated as failing to satisfy section 408(k)(6)(A)(iii) merely because catch-up contributions are not treated as excess contributions with respect to a catch-up eligible participant under the rules of section 408(k)(6)(C). Notwithstanding the fact that elective deferrals described in this paragraph (d)(2)(iii) are not distributed, such elective deferrals are still considered to be excess contributions under section 401(k)(8), and accordingly, matching contributions with respect to such elective deferrals may be forfeited under the rules of section 411(a)(3)(G).

(iv) *Application for top-heavy.* Catch-up contributions with respect to the current plan year are not taken into account for purposes of section 416. Thus, if the only contributions made for a plan year for key employees are catch-up contributions, the applicable percentage under section 416(c)(2) is 0%, and no top-heavy minimum contribution under section 416 is required for the year. However, catch-up contributions for prior years are taken into account for purposes of section 416. Thus, catch-up contributions for prior years are included in the account balances that are used in determining whether the plan is top-heavy under section 416(g).

(v) *Application for section 410(b).* Catch-up contributions with respect to the current plan year are not taken into account for purposes of section 410(b). Thus, catch-up contributions are not taken into account in determining the average benefit percentage under § 1.410(b)–5 for the year if benefit percentages are determined based on current year contributions. However, catch-up contributions for prior years are taken into account for purposes of section 410(b). Thus, catch-up contributions for prior years would be included in the account balances that are used in determining the average benefit percentage if allocations for prior years are taken into account.

(3) *Availability of catch-up contributions.* An applicable employer plan does not violate § 1.401(a)(4)–4 merely because the group of employees for whom catch-up contributions are currently available (i.e., the catch-up eligible participants) is not a group of employees that would satisfy section 410(b) (without regard to § 1.410(b)–5). In addition, a catch-up eligible participant is not treated as having a right to a different rate of allocation of matching contributions merely because an otherwise nondiscriminatory schedule of matching rates is applied to elective deferrals that include catch-up contributions. The rules in this paragraph (d)(3) also apply for purposes of satisfying the requirements of section 403(b)(12).

(e) *Universal availability requirement*—(1) *General rule.* An applicable employer plan that offers catch-up contributions and that is otherwise subject to section 401(a)(4) (including a plan that is subject to section 401(a)(4) pursuant to section 403(b)(12)) will not satisfy the requirements of section 401(a)(4) unless all catch-up eligible participants who participate under any applicable employer plan maintained by the employer are provided with the effective opportunity to make the same dollar amount of catch-up contributions. A plan does not fail to satisfy this effective opportunity requirement merely because the plan allows participants to defer an amount equal to a specified percentage of compensation for each payroll period and for each payroll period permits each catch-up eligible participant to defer a pro-rata share of the applicable dollar catch-up limit in addition to that amount. A plan does not fail the universal availability requirement of this paragraph (e) solely because an employer-provided limit does not apply to all employees or different limits apply to different groups of employees under paragraph (b)(2)(i) of this section. However, a plan may not provide lower employer-provided limits for catch-up eligible participants.

(2) *Exception for section 457 eligible governmental plans.* An applicable employer plan does not fail to comply with the universal availability requirement of this paragraph (e) merely because another applicable employer plan that is a section 457 eligible governmental plan does not provide for catch-up contributions to the extent set forth in section 414(v)(6)(C).

(3) *Exception for newly acquired plans.* An applicable employer plan does not fail to comply with the universal availability requirement of this paragraph (e) merely because another applicable employer plan does not provide for catch-up contributions, if—

(i) The other applicable employer plan becomes maintained by the employer by reason of a merger,

acquisition or similar transaction described in § 1.410(b)–2(f); and

(ii) The other applicable employer plan is amended to provide for catch-up contributions as soon as practicable, but no later than by the end of the period described in section 410(b)(6)(C).

(f) *Special rules for an employer that sponsors multiple plans*—(1) *General rule.* If elective deferrals under more than one applicable employer plan of an employer are aggregated for purposes of applying a statutory limit under paragraph (b)(1)(i) of this section, then the aggregate elective deferrals treated as catch-up contributions by reason of exceeding that statutory limit under all such applicable employer plans must not exceed the applicable dollar catch-up limit for the taxable year. For example, since compliance with section 401(a)(30) is determined based on elective deferrals under section 401(k) plans and section 403(b) contracts sponsored by the employer, the total amount of elective deferrals under all section 401(k) plans and section 403(b) contracts of the employer treated as catch-up contributions by reason of exceeding the section 401(a)(30) limit for a calendar year under the aggregated plans must not exceed the applicable dollar catch-up limit for such taxable year.

(2) *Highly compensated employee in more that one section 401(k) plan.* If a highly compensated employee is a participant in more than one section 401(k) plan of an employer, in determining whether the employee's elective deferrals exceed an employer-provided limit under paragraph (b)(1)(ii) of this section, the employer-provided limit for the plan year is the sum of the dollar amounts of the limits under the separate plans for that employee and the employee's elective deferrals under all section 401(k) plans of the employer are combined to determine if the employer-provided limit is exceeded.

(3) *Allocation rules.* When the amount of elective deferrals in excess of an applicable limit under paragraph (b)(1) of this section is determined under the aggregation rules of paragraph (f)(1) or (f)(2) of this section, the aggregate amount of the elective deferrals in excess of that applicable limit made under all section 401(k) plans that are aggregated for purposes of determining a highly compensated employee's ADR are treated as elective deferrals in excess of an applicable limit for purposes of applying the catch-up contribution limit under paragraph (c)(1) of this section with respect to each of these section 401(k) plans. However, the catch-up contributions are subtracted from elective deferrals for purposes of paragraph (d)(2)(ii) of this section only under the applicable employer plan under which the catch-up contributions are made. The applicable employer plan under which the elective deferrals in excess of an applicable limit are made for purposes of this paragraph (f)(3) may be determined in any manner that is not inconsistent with the manner in which such amounts were actually deferred under the plans.

(g) *Application of section 402(g)*—(1) *Exclusion of catch-up contributions.* In determining the amount of elective deferrals that are includable in gross income under section 402(g), except as provided in paragraph (g)(2) of this section, catch-up contributions are not treated as exceeding the applicable dollar amount of section 402(g)(1). For purposes of this paragraph (g), a catch-up eligible participant who makes elective deferrals under applicable employer plans of two or more employers that exceed the applicable dollar amount under section 402(g)(1) may treat the elective deferrals in excess of that applicable dollar amount as a catch-up contribution to the extent permitted in paragraph (g)(2) of this section, even though the elective deferrals do not exceed an applicable limit under either plan. Therefore, for a catch-up eligible participant who makes elective deferrals under applicable employer plans of two or more employers that exceed the applicable dollar amount under section 402(g)(1), the elective deferrals in excess of that applicable dollar amount are excludable from gross income as catch-up contributions to the extent permitted in paragraph (g)(2) of this section. Whether an elective deferral is treated as a catch-up contribution by an applicable employer plan is determined under paragraph (c) of this section and without regard to whether the employee treats an elective deferral as a catch-up contribution under this paragraph (g).

(2) *Maximum excludable amount.* If a catch-up eligible participant participates in two or more applicable employer plans during a taxable year, the total amount of elective deferrals under all plans that are not includable in gross income under this paragraph (g) because they are catch-up contributions shall not exceed the applicable dollar catch-up limit under paragraph (c)(2)(i) of this section for the taxable year.

(h) *Coordination with other catch-up provisions*—(1) *Coordination with section 457(b)(3).* In the case of an applicable employer plan that is a section 457 eligible governmental plan, the catch-up contributions permitted under this section shall not apply to a catch-up eligible participant for any taxable year for which the additional contributions permitted under section 457(b)(3) applies to such participant. For additional guidance, see regulations under section 457.

(2) *Coordination with section 402(g)(7).* [Reserved].

(i) *Examples.* The following examples illustrate the application of this section. For purposes of these examples, the limit under section 401(a)(30) is $15,000 and the applicable dollar catch-up limit is $5,000 and, except as specifically provided, the plan year is the calendar year. In addition, it is assumed that the participant's elective deferrals under all plans of the employer do not exceed the participant's section 415(c)(3) compensation and that any correction pursuant to section 401(k)(8) is made through distribution of excess contributions. The examples are as follows:

Example 1. (i) Participant A is eligible to make elective deferrals under a section 401(k) plan, Plan P. Plan P does not limit elective deferrals except as necessary to comply with sections 401(a)(30) and 415. In 2006, Participant A is 55 years old. Plan P also provides that a catch-up eligible participant is permitted to defer amounts in excess of the section 401(a)(30) limit up to the applicable dollar catch-up limit for the year. Participant A defers $18,000 during 2006.

(ii) Participant A's elective deferrals in excess of the section 401(a)(30) limit ($3,000) do not exceed the applicable dollar catch-up limit for 2006 ($5,000). Under paragraph (a)(1) of this section, the $3,000 is a catch-up contribution and, pursuant to paragraph (d)(2)(i) of this section, it is not taken into account in determining Participant A's ADR for purposes of section 401(k)(3).

Example 2. (i) Participants B and C, who are highly compensated employees earning $120,000, are eligible to make elective deferrals under a section 401(k) plan, Plan Q. Plan Q limits elective deferrals as necessary to comply with section 401(a)(30) and 415, and also provides that no highly compensated employee may make an elective deferral at a rate that exceeds 10% of compensation. However, Plan Q also provides that a catch-up eligible participant is permitted to defer amounts in excess of 10% during the plan year up to the applicable dollar catch-up limit for the year. In 2006, Participants B and C are both 55 years old and, pursuant to the catch-up provision in Plan Q, both elect to defer 10% of compensation plus a pro-rata portion of the $5,000 applicable dollar catch-up limit for 2006. Participant B continues this election in effect for the entire year, for a total elective contribution for the year of $17,000. However, in July 2006, after deferring $8,500, Participant C discontinues making elective deferrals.

(ii) Once Participant B's elective deferrals for the year exceed the section 401(a)(30) limit ($15,000), subsequent elective deferrals are treated as catch-up contributions as they

are deferred, provided that such elective deferrals do not exceed the catch-up contribution limit for the taxable year. Since the $2,000 in elective deferrals made after Participant B reaches the section 402(g) limit for the calendar year does not exceed the applicable dollar catch-up limit for 2006, the entire $2,000 is treated as a catch-up contribution.

(iii) As of the last day of the plan year, Participant B has exceeded the employer-provided limit of 10% (10% of $120,000 or $12,000 for Participant B) by an additional $3,000. Since the additional $3,000 in elective deferrals does not exceed the $5,000 applicable dollar catch-up limit for 2006, reduced by the $2,000 in elective deferrals previously treated as catch-up contributions, the entire $3,000 of elective deferrals is treated as a catch-up contribution.

(iv) In determining Participant B's ADR, the $5,000 of catch-up contributions are subtracted from Participant B's elective deferrals for the plan year under paragraph (d)(2)(i) of this section. Accordingly, Participant B's ADR is 10% ($12,000 / $120,000). In addition, for purposes of applying the rules of section 401(k)(8), Participant B is treated as having elective deferrals of $12,000.

(v) Participant C's elective deferrals for the year do not exceed an applicable limit for the plan year. Accordingly, Participant C's $8,500 of elective deferrals must be taken into account in determining Participant C's ADR for purposes of section 401(k)(3).

Example 3. (i) The facts are the same as in *Example 2,* except that Plan Q is amended to change the maximum permitted deferral percentage for highly compensated employees to 7%, effective for deferrals after April 1, 2006. Participant B, who has earned $ 40,000 in the first 3 months of the year and has been deferring at a rate of 10% of compensation plus a pro-rata portion of the $5,000 applicable dollar catch-up limit for 2006, reduces the 10% of pay deferral rate to 7% for the remaining 9 months of the year (while continuing to defer a pro-rata portion of the $5,000 applicable dollar catch-up limit for 2006). During those 9 months, Participant B earns $80,000. Thus, Participant B's total elective deferrals for the year are $14,600 ($4,000 for the first 3 months of the year plus $5,600 for the last 9 months of the year plus an additional $5,000 throughout the year).

(ii) The employer-provided limit for Participant B for the plan year is $9,600 ($4,000 for the first 3 months of the year, plus $5,600 for the last 9 months of the year). Accordingly, Participant B's elective deferrals for the year that are in excess of the employer-provided limit are $5,000 (the excess of $14,600 over $9,600), which does not exceed the applicable dollar catch-up limit of $5,000.

(iii) Alternatively, Plan Q may provide that the employer-provided limit is determined as the time-weighted average of the different deferral percentage limits over the course of the year. In this case, the time-weighted average limit is 7.75% for all participants, and the applicable limit for Participant B is 7.75% of $120,000, or $9,300. Accordingly, Participant B's elective deferrals for the year that are in excess of the employer-provided limit are $5,300 (the excess of $14,600 over $9,300). Since the amount of Participant B's elective deferrals in excess of the employer-provided limit ($5,300) exceeds the applicable dollar catch-up limit for the taxable year, only $5,000 of Participant B's elective deferrals may be treated as catch-up contributions. In determining Participant B's actual deferral ratio, the $5,000 of catch-up contributions are subtracted from Participant B's elective deferrals for the plan year under paragraph (d)(2)(i) of this section. Accordingly, Participant B's actual deferral ratio is 8% ($9,600 / $120,000). In addition, for purposes of applying the rules of section 401(k)(8), Participant B is treated as having elective deferrals of $9,600.

Example 4. (i) The facts are the same as in *Example 1.* In addition to Participant A, Participant D is a highly compensated employee who is eligible to make elective deferrals under Plan P. During 2006, Participant D, who is 60 years old, elects to defer $14,000.

(ii) The ADP test is run for Plan P (after excluding the $3,000 in catch-up contributions from Participant A's elective deferrals), but Plan P needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(B), the maximum deferrals which may be retained by any highly compensated employee in Plan P is $12,500.

(iii) Pursuant to paragraph (b)(1)(iii) of this section, the ADP limit under Plan P of $12,500 is an applicable limit. Accordingly, $1,500 of Participant D's elective deferrals exceed the applicable limit. Similarly, $2,500 of Participant A's elective deferrals (other than the $3,000 of elective deferrals treated as catch-up contributions because they exceed the section 401(a)(30) limit) exceed the applicable limit.

(iv) The $1,500 of Participant D's elective deferrals that exceed the applicable limit are less than the applicable dollar catch-up limit and are treated as catch-up contributions. Pursuant to paragraph (d)(2)(iii) of this section, Plan P must retain Participant D's $1,500 in elective deferrals and Plan P is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant D.

(v) The $2,500 of Participant A's elective deferrals that exceed the applicable limit are greater than the portion of the applicable dollar catch-up limit ($2,000) that remains after treating the $3,000 of elective deferrals in excess of the section 401(a)(30) limit as catch-up contributions. Accordingly, $2000 of Participant A's elective deferrals are treated as catch-up contributions. Pursuant to paragraph (d)(2)(iii) of this section, Plan P must retain Participant A's $2,000 in elective deferrals and Plan P is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant A. However, $500 of Participant A's elective deferrals can not be treated as catch-up contributions and must be distributed to Participant A in order to satisfy section 401(k)(8).

Example 5. (i) Participant E is a catch-up eligible employee under a section 401(k) plan, Plan R, with a plan year ending October 31, 2006. Plan R does not limit elective deferrals except as necessary to comply with section 401(a)(30) and section 415. Plan R permits all catch-up eligible participants to defer an additional amount equal to the applicable dollar catch-up limit for the year ($5,000) in excess of the section 401(a)(30) limit. Participant E did not exceed the section 401(a)(30) limit in 2005. Participant E made $3,200 of deferrals in the period November 1, 2005 through December 31, 2005 and an additional $16,000 of deferrals in the first 10 months of 2006, for a total of $19,200 in elective deferrals for the plan year.

(ii) Once Participant E's elective deferrals for the calendar year 2006 exceed $15,000, subsequent elective deferrals are treated as catch-up contributions at the time they are deferred, provided that such elective deferrals do not exceed the applicable dollar catch-up limit for the taxable year. Since the $1,000 in elective deferrals made after Participant E reaches the section 402(g) limit for the calendar year does not exceed the applicable dollar catch-up limit for 2006, the entire $1,000 is a catch-up contribution. Pursuant to paragraph (d)(2)(i) of this section, $1,000 is subtracted from Participant E's $19,200 in elective deferrals for the plan year ending October 31, 2006 in determining Participant E's ADR for that plan year.

(iii) The ADP test is run for Plan R (after excluding the $1,000 in elective deferrals in excess of the section 401(a)(30) limit), but Plan R needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(C), the maximum deferrals that may be retained by any highly compensated employee under Plan R for the plan year ending October 31, 2006 (the ADP limit) is $14,800.

(iv) Under paragraph (d)(2)(ii) of this section, elective deferrals that exceed the section 401(a)(30) limit under Plan R are also subtracted from Participant E's elective deferrals under Plan R for purposes of applying the rules of 401(k)(8). Accordingly, for purposes of correcting the failed ADP test, Participant E is treated as having contributed $18,200 of elective deferrals in Plan R. The amount of elective deferrals that would have to be distributed to Participant E in order to satisfy section 401(k)(8)(C) is $3,400 ($18,200 minus $14,800), which is less than the excess of the applicable dollar catch-up limit ($5,000) over the elective deferrals previously treated as catch-up contributions under Plan R for the taxable year ($1,000). Under paragraph (d)(2)(iii) of this section, Plan R must retain Participant E's $3,400 in elective deferrals and is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant E.

(v) Even though Participant E's elective deferrals for the calendar year 2006 have exceeded the section 401(a)(30) limit, Participant E can continue to make elective deferrals during the last two months of the calendar year, since Participant E's catch-up contributions for the taxable year have not exceeded the applicable dollar catch-up limit

for the taxable year. However, the maximum amount of elective deferrals Participant E may make for the balance of the calendar year is $600 (the $5,000 applicable dollar catch-up limit for 2006, reduced by the $4,400 ($1,000 plus $3,400) of elective deferrals previously treated as catch-up contributions during the taxable year).

Example 6. (i) The facts are the same as in *Example 5,* except that Participant E exceeded the section 401(a)(30) limit for 2005 by $1,300 prior to October 31, 2005, and made $600 of elective deferrals in the period November 1, 2005, through December 31, 2005 (which were catch-up contributions for 2005). Thus, Participant E made $16,600 of elective deferrals for the plan year ending October 31, 2006.

(ii) Once Participant E's elective deferrals for the calendar year 2006 exceed $15,000, subsequent elective deferrals are treated as catch-up contributions as they are deferred, provided that such elective deferrals do not exceed the applicable dollar catch-up limit for the taxable year. Since the $1,000 in elective deferrals made after Participant E reaches the section 402(g) limit for calendar year 2006 does not exceed the applicable dollar catch-up limit for 2006, the entire $1,000 is a catch-up contribution. Pursuant to paragraph (d)(2)(i) of this section, $1,000 is subtracted from Participant E's elective deferrals in determining Participant E's actual deferral ratio for the plan year ending October 31, 2006. In addition, the $600 of catch-up contributions from the period November 1, 2005 to December 31, 2005 are subtracted from Participant E's elective deferrals in determining Participant E's ADR. Thus, the total elective deferrals taken into account in determining Participant E's ADR for the plan year ending October 31, 2006, is $15,000 ($16,600 in elective deferrals for the current plan year, less $1,600 in catch-up contributions).

(iii) The ADP test is run for Plan R (after excluding the $1,600 in elective deferrals in excess of the section 401(a)(30) limit), but Plan R needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(C), the maximum deferrals that may be retained by any highly compensated employee under Plan R (the ADP limit) is $14,800.

(iv) Under paragraph (d)(2)(ii) of this section, elective deferrals that exceed the section 401(a)(30) limit under Plan R are also subtracted from Participant E's elective deferrals under Plan R for purposes of applying the rules of 401(k)(8). Accordingly, for purposes of correcting the failed ADP test, Participant E is treated as having contributed $15,000 of elective deferrals in Plan R. The amount of elective deferrals that would have to be distributed to Participant E in order to satisfy section 401(k)(8)(C) is $200 ($15,000 minus $14,800), which is less than the excess of the applicable dollar catch-up limit ($5,000) over the elective deferrals previously treated as catch-up contributions under Plan R for the taxable year ($1,000). Under paragraph (d)(2)(iii) of this section, Plan R must retain Participant E's $200 in elective deferrals and is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant E.

(v) Even though Participant E's elective deferrals for calendar year 2006 have exceeded the section 401(a)(30) limit, Participant E can continue to make elective deferrals during the last two months of the calendar year, since Participant E's catch-up contributions for the taxable year 2006 have not exceeded the applicable dollar catch-up limit for the taxable year. However, the maximum amount of elective deferrals Participant E may make for the balance of the calendar year is $3,800 (the $5,000 applicable dollar catch-up limit for 2006, reduced by $1,200 ($1,000 plus $200) in elective deferrals previously treated as catch-up contributions during taxable year 2006).

Example 7. (i) Participant F, who is 58 years old, is a highly compensated employee who earns $100,000. Participant F participates in a section 401(k) plan, Plan S, for the first six months of the year and then transfers to another section 401(k) plan, Plan T, sponsored by the same employer, for the second six months of the year. Plan S limits highly compensated employees' elective deferrals to 6% of compensation for the period of participation, but permits catch-up eligible participants to defer amounts in excess of 6% during the plan year, up to the applicable dollar catch-up limit for the year. Plan T limits highly compensated employee's elective deferrals to 8% of compensation for the period of participation, but permits catch-up eligible participants to defer amounts in excess of 8% during the plan year, up to the applicable dollar catch-up limit for the year. Participant F, who earned $50,000 in the first six months of the year, defers $5,000 under Plan S. Participant F also deferred $5,000 under Plan T.

(ii) Under paragraph (f)(2) of this section, the employer-provided limit for Participant F is $7,000, the sum of the employer-provided limit for Plan S ($3,000) and the employer-provided limit for Plan T ($4,000). Participant F's elective deferrals for the year are $10,000. Therefore, the amount of Participant F's elective deferrals in excess of the employer-provided limit is $3,000. Under paragraph (f)(3) of this section, the $3,000 in excess of the employer-provided limit is treated as an elective deferral in excess of that limit under both Plans S and T for purposes of applying the catch-up contribution limit under paragraph (c)(1) of this section.

(iii) Since the amount of Participant F's elective deferrals in excess of the employer-provided limit ($3,000) does not exceed the applicable dollar catch-up limit for the taxable year, the entire $3,000 of Participant F's elective deferrals are treated as catch-up contributions. In determining Participant F's actual deferral ratio, the entire $3,000 of catch-up contributions is subtracted from Participant F's elective deferrals for the plan year under paragraph (d)(2)(i) of this section. Accordingly, Participant F's actual deferral ratio is 7% ($7,000/$100,000) for both Plans S and T.

(iv) In accordance with paragraph (f)(3) of this section, it is determined that $2,000 of the excess over the employer-provided limit was made under Plan S and $1,000 of the excess over the employer-provided limit was made under Plan T. This determination is not inconsistent with the manner in which the elective deferrals were actually made. Therefore, under paragraph (d)(2)(ii) of this section, for purposes of applying the rules of section 401(k)(8), Participant F is treated as having elective deferrals of $3,000 ($5,000–$2,000) in Plan S and $4,000 ($5,000–$1,000) in Plan T.

(v) If, after applying the ADP test of section 401(k)(3), Plan S or Plan T were to require correction under section 401(k)(8), the maximum amount of elective deferrals in excess of the ADP limit that could be treated as catch-up contributions for Participant F under the Plan could not exceed $2,000, the applicable dollar catch-up limit of $5,000, reduced by the $3,000 in excess of the employer-provided limit previously treated as catch-up contributions for the taxable year.

(j) *Effective date and transition rule*— (1) *Effective date.* Section 414(v) and this section apply to contributions in taxable years beginning on or after January 1, 2002.

(2) *Transition rule for collectively bargained employees.* An applicable employer plan will not fail to satisfy the requirements of paragraph (e) of this section merely because employees eligible to make elective deferrals who are included in a unit of employees covered by a collective bargaining agreement in effect on January 1, 2002, are not permitted to make catch-up contributions until the first plan year beginning after the termination of such agreement.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–26566 Filed 10–22–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[REG–143219–01]

RIN 1545–BA27

Gasoline Tax Claims Under Section 6416(a)(4)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document invites comments from the public on issues that the IRS may address in proposed regulations relating to claims for credits or refunds of the gasoline tax. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be received by January 22, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–143219–01), room

5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–143219–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or directly to the IRS Internet site at http://www.irs.gov/tax__regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, the Regulations Unit, (202) 622–7180; concerning the proposals, Frank Boland, (202) 622–3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Under section 6416(b)(2), the person that paid the gasoline tax imposed by section 4081 to the government may receive a credit or refund of the amount of the tax if the gasoline is, by any person, exported, used or sold for use as supplies for vessels or aircraft, sold to a state or local government for its exclusive use, sold to a nonprofit educational organization for its exclusive use, or used or sold for use in the production of special fuels (exempt purposes).

Section 6102 of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act) (Public Law 100–647, 102 Stat. 3342) added section 6416(a)(4) to the Internal Revenue Code. Under section 6416(a)(4)(A), a wholesale distributor (described in section 6416(a)(4)(B)) that buys gasoline on which the tax imposed by section 4081 has been paid and sells the gasoline to its ultimate purchaser for an exempt purpose is treated as the person (and the only person) that paid the tax to the government and thus is the person eligible to claim a credit or refund of that tax.

Section 6416(a)(4)(B), as added by the 1988 Act, provides that the term wholesale distributor includes any person that sells gasoline to producers, retailers, or to users that purchase in bulk quantities and accept delivery into bulk storage tanks. For this purpose, the term producer includes a refiner, blender, or wholesale distributor of gasoline, or a dealer selling gasoline exclusively to producers of gasoline. The term wholesale distributor does not include any person that is an importer, refiner, or blender of gasoline, or is a dealer selling gasoline exclusively to producers. Section 905 of the Taxpayer Relief Act of 1997 (Public Law 105–34, 111 Stat. 788) amended section 6416(a)(4)(B) of the Code by providing that the term wholesale distributor also includes any person that makes retail sales of gasoline at 10 or more retail motor fuel outlets.

Notice 89–29 (1989–1 C.B. 669) provides rules for implementing section 6416(a)(4), as added by the 1988 Act. These include rules that allow claims by the person that actually paid the tax to the government instead of claims by the wholesale distributor if (1) tax is not included in the price of the gasoline bought by the wholesale distributor or (2) the sale by the wholesale distributor is charged on an oil company credit card issued to an exempt person.

In response to questions that have arisen concerning the application of the rules in Notice 89–29, the IRS is considering proposing regulations under section 6416(a)(4) that, when finalized, would replace the guidance provided by Notice 89–29. The IRS invites comments from the public on issues that should be addressed in the regulations, including issues relating to refund claims by persons other than the wholesale distributor.

Paul Kugler,

Associate Chief Counsel (Passthroughs and Special Industries).

[FR Doc. 01–26571 Filed 10–22–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK18

Finality of Decisions

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the adjudication regulation concerning finality of the decisions made by the Department of Veterans Affairs (VA). The intended effect of this amendment is to present the existing regulation in ''plain language''.

DATES: Comments must be received on or before December 24, 2001.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC, 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK18''. All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC, 20420, telephone (202) 273–7228. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: VA proposes to rewrite 38 CFR 3.104 in plain language. This regulation explains how a decision made by one VA field office affects other field offices as well as the VA Insurance Center. There is also a discussion of the circumstances under which VA may change a decision. The current regulation is located in subpart A of part 3. We propose to create new § 3.2120 to restate the current regulation. The new section would be located in subpart D, Universal Adjudication Rules that Apply to Benefit Claims Governed by part 3 of This Title.

Paragraph (a) of proposed new § 3.2120 informs claimants that when a Veterans Service Center makes a decision, the claimant is informed and given appeal rights. That decision is then binding on all other Veterans Service Centers. There are three exceptions to this general rule. The specific conditions under which a decision can be changed, based on the same evidence, are listed in paragraphs (a)(1) through (a)(3). Paragraphs (a)(1) and (a)(2) are restatements of the exceptions currently found in § 3.104(a). Paragraph (a)(3) incorporates new § 3.2600, Review of benefit claims decisions.

Proposed paragraph (b) of new § 3.2120 lists types of VA decisions that are made by both Veterans Service Centers and the VA Insurance Center. For clarity, we have added some examples of ''domestic relations'' issues. It explains that a decision by one Center is binding on the other Centers, as long as the facts of the case have not changed, and the instructions and criteria used to make the decision have not changed. The only exception is if VA determines the decision was based on a clear and unmistakable error, since VA will revise such decisions. This is a restatement of § 3.104(b).

This rulemaking reflects VA's goal of making government more responsive, accessible, and comprehensible to the public. The Plain Language Regulations Project was developed as a long-term comprehensive project to reorganize and rewrite in plain language the

adjudication regulations in part 3 of title 38, Code of Federal Regulations. This proposed rule is part of a series of proposed revisions to those regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act, Public Law 104–4, March 22, 1995, requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

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

Catalog of Federal Domestic Assistance Program Numbers

The catalog of Federal Domestic Assistance program numbers for this proposal are 64.100, 64.101, 64.104, 64.105, 64.109, 64.110, and 64.127.

List of Subjects in 38 CFR Part 3

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

Approved: October 12, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

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

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

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

§ 3.104 [Removed]

2. Section 3.104 is removed.

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

3. The authority citation for part 3, subpart D, continues to read as follows:

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

4. New § 3.2120 is added to read as follows:

§ 3.2120 When do VA benefit decisions become binding?

(a) When a claim is decided, and the Veterans Service Center sends the claimant written notification of that decision along with information about appeal rights, the decision is binding on all Veterans Service Centers and cannot be changed, based on the evidence in file at the time the Center notified the claimant, except:

(1) Through an appellate decision by the Board of Veterans' Appeals, the U.S. Court of Appeals for Veterans Claims, the U.S. Court of Appeals for the Federal Circuit, or the U.S. Supreme Court; or

(2) Under § 3.105, Revision of decisions; or

(3) Under § 3.2600, Review of benefit claims decisions.

(Authority: 38 U.S.C. 502, 511, 5104, 5109A)

(b) Types of decisions made by both Veterans Service Centers and the Insurance Center are listed in paragraphs (b)(1) through (b)(7) of this section. A decision of a Veterans Service Center or the Insurance Center on one of these issues is binding on all other Centers, unless the decision was the result of clear and unmistakable error. Absent such error, the issues decided cannot be reconsidered by a Veterans Service Center or the Insurance Center, if the later decision would require application of the same instructions or criteria and would be based on the same facts. The types of issues to which this paragraph (b) applies are:

(1) Line of duty;

(2) Character of discharge;

(3) Relationship;

(4) Dependency;

(5) Domestic relations issues such as marriage, divorce, adoption and child custody and support;

(6) Homicide; and

(7) Findings of fact of death or presumption of death.

(Authority: 38 U.S.C. 511)

[FR Doc. 01–26558 Filed 10–22–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257 and 258

[FRL–7076–5]

RIN 2050–AE86

Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In order to help accelerate the pace of lead-based paint removal from residences, and thereby reduce exposure to children and adults from the health risks associated with lead, EPA is proposing to revise the definition of ''municipal solid waste landfill unit'' in both the Criteria for Classification of Solid Waste Disposal Facilities and Practices and the Criteria for Municipal Solid Waste Landfills. EPA is also proposing to add two new definitions for ''construction and demolition (C&D) landfill'' and ''residential lead-based paint waste.'' This rule would expressly allow residential lead-based paint waste to be disposed of in construction and demolition landfills by clearly stating that a construction and demolition landfill accepting residential lead-based paint waste, and no other household waste, is not a municipal solid waste landfill unit. Today's action would not prevent a municipal solid waste landfill unit from continuing to receive residential lead-based paint waste.

In the ''Rules and Regulations'' section of the **Federal Register**, we are approving these definitions as a direct final rule without prior proposal because we view this rule as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by November 23, 2001.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number

F–2001–LBPP–FFFFF to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov.* Comments in electronic format should also be identified by the docket number F–2001–LBPP–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For information on specific aspects of this rule, contact Sue Nogas, Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; (703) 308–7251, *nogas.sue@epa.gov.*

SUPPLEMENTARY INFORMATION: The index and some supporting materials are available on the Internet. You can find these materials at *http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/pb-paint.htm.*

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Affected Entities

You may be potentially affected by this proposed rule if you generate residential lead-based paint (LBP) waste as a result of LBP activities (including abatement, rehabilitation, renovation and remodeling) in homes, residences, and other households. By ''households,'' we mean single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

Affected categories and entities would include:

Category	Examples of affected entities
Individuals and firms who generate residential LBP waste	Contractors and do-it-yourselfers who generate and dispose of residential LBP waste as a result of abatement, rehabilitation, renovation and remodeling activities in homes, residences, and other household.
Construction and demolition waste disposal firms	Owners or operators of construction and demolition landfills that accept residential LBP waste for disposal.

This table is not intended to be exhaustive, but rather lists the types of entities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in this table could also be affected. (Please see Sections X.A. and X.B. of this preamble for further discussion of affected entities. Also, in the docket for today's rule, see ''Economic Analysis of EPA's Direct Final Rule Amending 40 CFR part 257 and 258.'') If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Acronyms

Acronym	Definition
CDC	Centers of Disease Control and Prevention.
C&D	Construction and Demolition.
CFR	Code of Federal Regulations.
EA	Economic Analysis.
EPA	Environmental Protection Agency.
FR	Federal Register.
HUD	U.S. Department of Housing and Urban Development.
IQ	Intelligence Quotient.
LBP	Lead-Based Paint.
MSWLF	Municipal Solid Waste Landfill.
OMB	Office of Management and Budget.
OPPTS	Office of Prevention, Pesticides, and Toxic Substances.
OSWER	Office of Solid Waste and Emergency Response.
RCRA	Resource Conservation Recovery Act.
RIC	RCRA Docket Information Center.
TC	Toxicity Characteristic.
TSCA	Toxic Substances Control Act.
USEPA	United States Environmental Protection Agency.

Outline

I. Legal Authority
II. Why are Lead and Lead-Based Paint Concern?
III. Congressional Response to Lead Hazards: Title X
IV. RCRA as a Barrier to Cost-Effective LBP Abatements, and Stakeholders' Requests for Regulatory Relief from EPA
V. EPA's Implementation of Title X and Response to Stakeholders' Requests
A. 1998 Proposed Rules
1. TSCA Proposal
2. RCRA Proposal
B. Contractor-Generated Residential Lead-Based Paint Memorandum
VI. What Would Today's Proposed Rule Do?
A. Revision to the Definition of a Municipal Solid Waste Landfill Unit
B. Addition of Construction and Demolition Landfill Definition
C. Addition of Residential Lead-Based Paint Waste Definition
VII. Analytic Basis for Today's Proposed Rule

VIII. Other Applicable Federal, State, Tribal, and Local Requirements
IX. How Would States and Tribes Implement this Rule?
X. How Would this Rule Comply with Applicable Statutes and Executive Orders?
A. Executive Order 12866: Regulatory Planning and Review
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. National Technology Transfer and Advancement Act of 1995
I. Executive Order 12898: Environmental Justice Strategy
J. Executive Order 13211: Energy Effects

I. Legal Authority

EPA is proposing this rule pursuant to section 1008(a)(3), 2002(a), 4004(a) and 4010(c) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6907(a), 6912(a), 6944(a), 6949a(c). We are also proposing to correct a typographical error in the existing statement of authority in part 257 by amending the citation to 42 U.S.C. 6949(c) to read ''6949a(c).''

II. Why Are Lead and Lead-Based Paint a Concern?

The Centers for Disease Control and Prevention (CDC) have estimated that approximately 900,000 children, or about 4.4% of children under the age of 6 years old, may have unacceptably high levels of lead in their blood. (See: ''Update: Blood Lead Levels—United States, 1991–1994.'' Morbidity and Mortality Weekly Report, Vol. 46, No. 7, February 21, 1997. CDC, U.S. Department of Health and Human Services.) Children are more susceptible than adults to the toxic effects of lead because their nervous systems are still developing and their bodies more readily absorb lead once exposed to it. (For a fuller discussion of this issue, see 66 FR 1206–1240, January 5, 2001). The most common sources of residential lead exposure include contaminated dust and paint chips from deteriorated lead-based paint (LBP) in older homes, activities that disturb LBP (such as abatement, deleading, home renovation and remodeling), lead-contaminated drinking water, and lead-contaminated soil around homes and play areas. It is estimated that approximately 38 million homes in the United States contain interior LBP. (See ''Economic Analysis of EPA's Direct Final Rule Amending 40 CFR Part 257 and 258,'' p. 31.

III. Congressional Response to Lead Hazards: Title X

In response to this health threat, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act of 1992 (hereinafter referred to as Title X of the Housing and Community Development Act of 1992, or as Title X). Among other provisions, Title X amended the Toxic Substances Control Act (TSCA) and directed the Environmental Protection Agency (EPA) to develop and finalize standards governing: (1) the training and certification of individuals engaged in LBP activities; (2) the accreditation of training programs; and (3) the process by which LBP activities are conducted by certified individuals. Congress also directed EPA to identify by regulation LBP hazards, lead-contaminated dust, and lead-contaminated soil. As a result of the enactment of Title X, there is an increasing effort to reduce the hazards posed by LBP (especially to children) in residential housing and other buildings.

IV. RCRA as a Barrier to Cost-Effective LBP Abatements, and Stakeholders' Requests for Regulatory Relief From EPA

The Resource Conservation and Recovery Act (RCRA) was enacted in 1976 to address management of solid waste, including industrial and municipal wastes. Subtitle C of RCRA governs the generation, transportation, treatment, storage and disposal of hazardous waste. A solid waste is a ''hazardous waste'' if it exhibits one or more of the characteristics of hazardous waste pursuant to 40 CFR part 261, subpart C (toxicity, ignitability, corrosivity, and reactivity) or if it is listed as a hazardous waste in part 261 subpart D. Subtitle D of RCRA addresses the management of nonhazardous solid waste (including municipal and nonmunicipal waste). Subtitle D was amended in 1984 to address two classes of hazardous wastes exempt from Subtitle C hazardous waste requirements: conditionally exempt small quantity generator (CESQG) waste and household hazardous waste. Household waste is defined in 40 CFR 258.2 as ''any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).'' Household waste is excluded from RCRA hazardous waste regulations at 40 CFR 261.4(b)(1).

Abatements, renovations, and remodeling activities in housing units with LBP can generate large quantities of residential LBP waste. In cases where the waste exhibits the toxicity characteristic for lead, the waste would be classified as a hazardous waste subject to the comprehensive ''cradle to grave'' hazardous waste management regulations of RCRA Subtitle C, unless they qualify for an exemption. Lead abatement contractors and public housing agencies argued that the application of these hazardous waste rules to residential LBP waste poses a barrier to the cost-effective abatement of lead hazards. EPA and HUD met to review the disposal requirements for lead-based paint waste and to consider regulatory relief from the applicability of RCRA Subtitle C to waste generated from residential LBP activities. Additionally, several States and advocacy groups (such as the Alliance to End Childhood Lead Poisoning) expressed concern that the RCRA requirements were considerably reducing the number of residential LBP abatements by imposing significant waste disposal costs. They argued that the benefits of handling lead-based paint waste as a hazardous waste were outweighed by the potential risk to children resulting from the disincentive the RCRA regulations created for lead-based paint abatement. They requested that EPA consider ways to minimize management and disposal costs and provide an appropriate regulatory framework that would both accelerate the pace of lead abatements (by lowering costs) and ensure that waste from such activities be managed and disposed of reliably, effectively, and in a manner which protects human health and the environment. They further contended that any regulatory relief that would avoid the cost of managing LBP waste as a hazardous waste would allow public housing authorities to use cost savings to perform additional abatements, thus reducing current and future exposure of children to residential lead-based paint.

V. EPA's Implementation of Title X and Response to Stakeholders' Requests

A. 1998 Proposed Rules

In order to facilitate efforts to address lead-based paint hazards to children and respond to stakeholders' requests for regulatory relief, EPA analyzed waste characterization, laboratory leachate, and the risk and cost of disposal for lead-based paint debris. Based on those analyses, EPA published two proposals on December 18, 1998—the TSCA Proposed Rule (''Management

and Disposal of Lead-Based Paint Debris''), and the RCRA Proposed Rule (''Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris''). The Agency believed that these rules, if finalized, would help reduce the costs associated with the management and disposal of LBP debris, increasing the number of LBP abatements, while continuing to protect human health and the environment.

1. TSCA Proposal (''Management and Disposal of Lead-Based Paint Debris'')

Under the mandate of Title X of TSCA, we proposed new TSCA management and disposal standards for LBP debris generated by contractors from pre-1978 homes and public and commercial buildings (63 FR 70190–70233, December 18, 1998). These standards would allow the disposal of contractor-generated LBP debris in a variety of facilities, including construction and demolition (C&D) landfills. EPA based the C&D landfill disposal option on the results of the groundwater risk analysis performed to support the proposal. The results showed that the potential impact to groundwater resources from the disposal of LBP debris in C&D landfills would be negligible. (For further details, see ''USEPA. June 1998, Groundwater Pathway Analysis for Lead-Based Paint (LBP) Architectural Debris; Background Document'' in the docket for today's rule. Also, see Section VII of this preamble.) The TSCA proposal has not been finalized.

The preamble to the proposed TSCA rule also clarified that the RCRA Subtitle C household waste exclusion in 40 CFR 261.4(b)(1) applies to residential LBP waste generated by do-it-yourselfers in their homes (see 63 FR 70241–70242). This clarification remains in place.

2. RCRA Proposal (''Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris'')

In 1998, EPA proposed to temporarily suspend the applicability of the Toxicity Characteristic (TC) rule to contractor-generated LBP debris that would be subject to the TSCA management and disposal standards cited above. The Agency proposed this suspension in order to avoid duplication with other statutes implemented by EPA as mandated under RCRA Section 1006(b)(1).

B. Contractor-Generated Residential Lead-Based Paint Memorandum

On July 31, 2000, EPA issued a memorandum clarifying the regulatory status of waste generated as a result of LBP activities (including abatement, renovation and remodeling, and rehabilitation) in homes and other residences.

Specifically, the memorandum clarified that contractors can manage residential LBP waste as household waste and thus are not subject to RCRA Subtitle C requirements. This means contractors can dispose residential LBP waste as household waste in municipal solid waste landfills or municipal solid waste combustors, according to State and local requirements. Dumping and open burning of residential LBP waste are not allowed. (See RCRA Sections 1008 and 4004.)

By interpreting residential LBP waste as a household waste under 40 CFR 261.4(b)(1), the July 2000 memorandum could be construed as allowing land disposal of LBP waste only in municipal solid waste landfill units complying with the requirements of 40 CFR part 258. This is because a ''municipal solid waste landfill unit'' is defined in 40 CFR 258.2 as receiving ''household waste.'' Therefore, under section 258.2, a C&D landfill that receives residential LBP waste could be deemed to be receiving household waste and may need to comply with EPA's Municipal Solid Waste Landfill Criteria found in 40 CFR part 258. Today's rule is designed to expressly state that C&D landfills can receive residential LBP waste without becoming subject to the requirements for a MSWLF in part 258.

Please note that the memorandum does not affect the regulatory status of nonresidential LBP waste, such as that generated during the abatement or renovation and remodeling of a commercial building. In addition, the memorandum does not cover residential demolition and deconstruction. EPA does not consider demolition and deconstruction waste to be household waste, since it is not similar to those wastes generated by a consumer in the home in the course of daily living. (For more information visit, *http://www.epa.gov/lead/hhwmemo-july00fnl.pdf* for a direct link to the memorandum. See ''Regulatory Status of Waste Generated by Contractors and Residents from Lead-Based Paint Activities Conducted in Households'' by visiting *http://www.epa.gov/lead/fslbp.htm,* or call the RCRA Hotline at 1–800–424–9346.)

The Agency evaluated if and how to finalize the 1998 RCRA and TSCA proposals. EPA decided to use alternative policy and regulatory vehicles (*i.e.*, the July 31, 2000 policy memorandum and today's rule) in order to expeditiously accomplish some of the same goals of the 1998 proposals for certain key noncontroversial aspects. The Agency has no further plans to finalize the 1998 RCRA proposal.

VI. What Would Today's Proposed Rule Do?

A. Revision to the Definition of a Municipal Solid Waste Landfill Unit

Today's rule would expressly allow construction and demolition landfills to receive residential lead-based paint waste, by adding a statement to the definition of MSWLF unit. The definition of MSWLF unit in 40 CFR 257.2 and 258.2 would be amended by inserting at the end of the definition, the sentence, ''A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.'' As previously explained, the existing definition of a MSWLF unit includes language which states that a disposal unit ''that receives household waste'' is a municipal solid waste landfill unit. This language can be construed to prohibit the disposal of any household waste into a facility that is not designed and operated in conformance with 40 CFR part 258 regulations. Today, we are proposing to amend the definition of MSWLF unit, in order to distinguish residential lead-based paint waste, which has been determined to be a household waste, from other types of household waste, for purposes of disposal.

The amended definition would read, ''Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may continue to receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately-owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.''

It is important to understand that today's proposed change to the definition of a municipal solid waste

landfill unit would not in any way affect these disposal units. This change would simply distinguish residential lead-based paint waste from other household wastes. Today's amendment would not alter what a MSWLF can or cannot receive. MSWLFs can continue to receive residential LBP waste as household waste. The proposed rule would expressly provide an additional land-based waste disposal option for residential LBP waste. Furthermore, this rule would in no way affect or change the operation and design requirements for municipal solid waste landfills or any other MSWLF criteria.

B. Addition of Construction and Demolition Landfill Definition

As stated above, the revised definition of ''municipal solid waste landfill unit'' would allow a subset of household waste—residential LBP waste—to be disposed of in construction and demolition landfills as well as MSWLF units. Today's proposed rule would also add a definition of a construction and demolition landfill in order to expressly allow only C&D landfills, and no other types of land disposal units that meet the criteria of 40 CFR part 257 to receive this subset of household waste.

Based on a groundwater risk analysis used to support the TSCA proposal, we believe that the disposal of residential LBP debris in C&D landfills is appropriate and would not pose adverse health risks to residents living near C&D landfills. (For more information, see Section VII of this preamble.)

A C&D landfill would be defined in 40 CFR part 257 as follows: ''Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements of subparts A or B of this part that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) other than conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter), or industrial solid waste (defined in § 258.2 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.'' A parallel definition would also be added to 40 CFR part 258.

EPA proposed a similar definition of C&D landfill in the TSCA proposal, and received no germane comments on the definition during the public comment period.

C. Addition of Residential Lead-Based Paint Waste Definition

Today's proposed rule would also add a definition of ''residential lead-based paint waste'' in order to clarify the scope of the waste stream addressed by today's rule. The proposed definition of residential lead-based paint waste states: ''Residential lead-based paint waste means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.'' Not included in the proposed definition of residential LBP waste are residential LBP demolition and deconstruction waste, and LBP waste from nonresidential structures such as public and commercial buildings, warehouses, bridges, water towers, and transmission towers.

In drafting this definition, we included these particular LBP activities because they are those limited to residences and that could pose lead hazards to occupants, especially to children. We included these particular waste types (*i.e.*, debris, chips, dust, and sludges) because they are those that are typically generated during the named LBP activities.

VII. Analytic Basis for Today's Proposed Rule

The technical basis for today's proposal is the analytical data and groundwater risk analysis used to support the 1998 TSCA proposal. (See ''USEPA. June 1998, Groundwater Pathway Analysis for Lead-Based Paint (LBP) Architectural Debris; Background Document'' in the docket for today's rule.) Based on that data and analysis, EPA has concluded that residential LBP waste is not hazardous household waste when disposed of in C&D landfills. What follows is a discussion of that data and analysis and how they support today's proposed rule.

In the groundwater risk analysis used to support the 1998 TSCA proposal, we assumed that all lead-based paint from the entire pre-1978 U.S. housing stock would be disposed of in C&D landfills, and that the LBP would be removed from housing while it was still attached to architectural (*i.e.*, building) components that are removed during LBP activities. Examples of architectural components are doors, window frames, moldings, painted plaster boards, concrete, and bricks. We assumed that the components would be removed with intact LBP because we believed that component removal, if cost-effective, would be preferred over paint scraping and other paint removal options, since the latter pose worker and occupant exposure concerns. This assumption was necessary due to the lack of data indicating what portion of pre-1978 housing would undergo paint removal vs. component removal and what types and quantities of LBP waste are generated at what frequency from various residential LBP activities. Also, in the groundwater analysis, we used the term ''LBP debris'' to refer to architectural components with intact LBP.

To estimate lead loading from residential LBP debris in C&D landfills around the country, we relied upon the 1990 Report to Congress prepared by the U.S. Department of Housing and Urban Development (HUD). The Report estimated total quantities of building components from pre-1978 homes in the U.S. From the amount of painted surfaces per housing unit reported in the HUD Report, we estimated the total quantities of building materials with LBP that would be disposed of in the landfills.

Then, in our groundwater risk analysis, we used leachate data, calculated the potential lead concentration in groundwater, and estimated risks from the disposal of LBP debris in C&D landfills. We also assumed that all of the lead from the LBP debris (which in this analysis meant the equivalent of all of the lead in all of the lead-based paint from the entire pre-1978 U.S. housing stock) would eventually end up in the leachate. The lead concentration in C&D landfill leachate varied depending on the landfill size. These lead concentrations served as inputs to the groundwater modeling we conducted to simulate the subsurface movement of landfill leachate and the resultant potential contamination of groundwater with lead.

The results from this analysis show that the lead concentration in groundwater would potentially exceed the drinking water action level of 0.015 mg/L for lead in less than 1% of the receptor wells in the vicinity of C&D landfills receiving LBP debris during the first 2,000 years after disposal. During the first 10,000 years after disposal of LBP debris, the drinking water action level would be exceeded in fewer than 5% of the receptor wells.

Based on these groundwater modeling results and the general geochemical behavior of lead in a subsurface environment, the Agency concluded that, on a national scale, the disposal of LBP debris in C&D landfills would, in

general, be protective of human health and the environment at the 95th percentile protection level. This level of protectiveness is at the high end (*i.e.*, most protective) of the levels that the Agency has used in regulating hazardous wastes under the RCRA program. (See 63 FR 70203, December 18, 1998.) When deciding whether to regulate industrial solid wastes as hazardous wastes, the Agency has considered a 90th percentile or higher level as the appropriate protection level and so has not regulated wastes satisfying this level of protection as hazardous wastes. Thus, in the 1998 TSCA proposal, we concluded that the disposal of LBP debris in C&D landfills is appropriate and would not pose adverse health risks to residents living near C&D landfills. Note that the Agency received many public comments addressing various aspects of the groundwater risk analysis. The comments were generally supportive of the proposed provision to allow LBP debris to be disposed of in C&D landfills and provided no data supporting a contrary decision.[1]

EPA believes that the technical basis for the 1998 TSCA proposal, as discussed above, also supports today's proposed rule. This is because our groundwater risk analysis assumed that the total mass of lead-based paint from pre-1978 U.S. housing was disposed of in C&D landfills, and that all of the lead from that lead-based paint ended up in the C&D landfill leachate. Hence, it was irrelevant to the results of the analysis whether or not the LBP entered the C&D landfills by being attached to architectural components (*i.e.*, as LBP debris), or rather did so in the form of other types of LBP waste, such as chips, dusts, and sludges.

In conclusion, we have determined that residential LBP waste from abatement, rehabilitation, renovation and remodeling activities does not pose a substantial hazard to human health and the environment when disposed of in C&D landfills. The disposal of residential LBP waste in C&D landfills is therefore an appropriate and legal disposal option.

[1] All comments and data received in response to the 1998 TSCA proposal may be accessed via Docket Control OPPTS–62160, located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW, Washington, DC 20460. The TSCA Nonconfidential Information Center telephone number is 202–260–7099. For a summary of the comments, especially those related to the groundwater risk analysis, see ''Summary of Comments on: Management and Disposal of Lead-Based Paint Debris; Proposed Rule, and Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris; Proposed Rule'' in the docket for today's rule.

VIII. Other Applicable Federal, State, Tribal, and Local Requirements

Today's proposed rule would not alter the authority of State, local and Tribal governments to regulate LBP waste more stringently than does EPA. Generators of residential LBP waste should contact State environmental agencies to determine if there are additional or more stringent disposal requirements for residential LBP waste. Also, generators should comply with applicable HUD and/or TSCA regulations when addressing residential LBP hazards.

IX. How Would States and Tribes Implement This Proposed Rule?

Because today's proposed rule would be less stringent than existing federal criteria, States would not be required to amend permit programs which have been determined to be adequate under 40 CFR Part 239. States would have the option to amend statutory or regulatory definitions pursuant to today's proposed rule. If a state chooses to amend its permit program pursuant to today's action, the State would be required to notify the Regional Administrator of the modification as provided by 40 CFR 239.12.

Today's proposed amendments would be directly applicable to landfills in States without an approved permit program under Part 239 and in Indian Country. We would also encourage Tribes to adopt today's proposed amendments into their programs in order to promote lead-based paint abatement activities in homes and other residences in Indian Country.

X. How Would This Proposed Rule Comply With Applicable Statutes and Executive Orders?

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the other provisions of the Executive Order. The Order defines a significant regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

EPA has performed a full economic analysis, ''Economic Analysis of EPA's Direct Final Rule Amending 40 CFR parts 257 and 258,'' which is available in the docket for today's rule. The EA concludes that this rule will impose no additional costs to parties, but may result in cost savings and incremental public health benefits. The rule authorizes the disposal of residential LBP waste in C&D landfills, where previously, under the July 31, 2000 policy memorandum, disposal was authorized only in MSWLFs. As a result, EPA believes that, in those parts of the country where it is cheaper to transport and dispose of residential LBP waste in C&D landfills compared to MSWLFs, some residential LBP waste will be diverted from MSWLFs to C&D landfills. Where this occurs, generators will benefit from lower waste management and disposal costs.

EPA assumes that only residential LBP waste generators in the Midwest, Northeast, and South regions will shift disposal from MSWLFs to C&D landfills, based on an analysis of the relative costs of MSWLF and C&D landfill disposal by region. EPA further assumes that the percentage of residential LBP waste that is affected is proportional to the share of these three regions in the number of housing units with LBP, which is 84.4 percent. Under these assumptions, an estimated 0.87 million tons of residential LBP waste will be diverted from MSWLFs to C&D landfills annually. This represents 0.73 percent of the total volume of all waste disposed of in MSWLFs annually. This shift in disposal would save residential LBP waste generators in the Midwest, Northeast, and South regions up to an estimated $16.76 million annually. The savings accruing to generators of residential LBP abatement waste is estimated at $0.79 million per year, while the savings accruing to generators of residential renovation and remodeling waste is $15.98 million per year.

EPA estimates that of the $0.79 million in savings that could accrue to generators of residential LBP abatement waste, an estimated 39.7 percent, or $0.31 million, will be generated annually in the public housing sector.

EPA assumes that in the public sector, any savings in residential LBP waste management and disposal costs will be used to conduct additional LBP abatements. Given an average cost for LBP abatement in public housing units of $3,650, the $0.31 million in annual savings would fund an additional 86 abatements each year. This ensuing increase in LBP abatement projects would result in a more rapid reduction in the potential for exposure to the hazards of LBP, especially for children. These hazards include decreased intelligence (i.e., lower IQ), behavioral problems, reduced physical stature and growth, and impaired hearing.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards established for industries as described in the North American Industry Classification System (*see http://www.sba.gov/size/NAICS-cover-page.html*); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on small entities. The rule will provide an additional non-mandatory option for the disposal of residential LBP waste.

C. Paperwork Reduction Act

Today's proposed rule is in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This proposed rule does not require the collection of information from the States, Federal Agencies, or industry. Therefore, we do not need to prepare an Information Collection Request.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local, and Tribal governments, and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objective of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained in Section IX of this preamble, none of today's proposed revisions are more stringent or broaden the scope of the existing Federal requirements. Therefore, States are not required to adopt the revision to the definition of MSWLF unit nor the additional definitions of construction and demolition (C&D) landfill and residential lead-based paint waste in today's rule. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's proposed rule would expressly provide an additional option for

disposal of certain waste applicable in Indian Country, but would not create any mandate on Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866. However, this rule will affect decisions involving the environmental health or safety risks to children. It will benefit children by allowing environmentally protective disposal of residential lead-based paint waste in C&D landfills, which is less costly than disposal in MSWLFs in certain areas of the U.S., therefore reducing the cost of lead abatements. Reducing the cost of LBP abatements will also reduce the amount of time needed to complete abatements in public housing. Lower abatement costs may increase the amount of private homes undergoing abatements. By reducing costs associated with the disposal of LBP waste, the Agency believes that the number of abatements may marginally increase, thus resulting in a reduction of the number of children exposed to LBP.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. Today's proposed rule does not involve technical standards, voluntary or otherwise. Therefore, the NTTAA does not apply to today's proposed rule.

I. Executive Order 12898: Environmental Justice Strategy

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

Today's proposed rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities. On the contrary, since the rule will reduce the cost of performing LBP abatements in certain regions of the U.S., EPA assumes that the savings will afford public housing authorities, in particular, the opportunity to conduct additional abatements of LBP hazards in affected housing units. Tenants of public housing units are possibly more likely to be minority and lower-income households, and the rule should have the effect of providing a differential benefit to such populations.

J. Executive Order 13211: Energy Effects

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 Fed. Reg. 28355 (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects

40 CFR Part 257

Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 28, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–26095 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to Revise Critical Habitat for the Cape Sable Seaside Sparrow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to revise critical habitat for the Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*), under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that revision of critical habitat is warranted. Currently, most of our listing budget must be directed to complying with numerous court orders, settlement agreements, litigation related activities, and due and overdue final listing determinations. We will proceed with a proposal to revise critical habitat for the Cape Sable seaside sparrow as soon as feasible, considering our workload priorities and available funding. We continue to address habitat needs of the sparrow through coordination with agencies that manage land and water in South Florida.

ADDRESSES: The complete file for this finding, including comments and information submitted, is available for public inspection, by appointment, during normal business hours at the South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.

FOR FURTHER INFORMATION CONTACT: David Martin (see **ADDRESSES** section), telephone 561/562–3909, extension 230.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(D)(ii) of the Act and our listing regulations (50 CFR 424.14(c)(3)) require that within 12 months after receiving a petition that is found to present substantial information indicating that revision of a critical habitat may be warranted, we shall determine how we intend to proceed with the requested revision, and promptly publish notice of such intention in the **Federal Register**.

On August 26, 1999, Mr. Sidney Maddock, Biodiversity Legal Foundation, submitted a petition to us, on behalf of himself, the Biodiversity Legal Foundation, the Florida Biodiversity Project, Brian Scherf, and Rosalyn Scherf, to revise critical habitat for the Cape Sable seaside sparrow. We received the petition on August 31, 1999.

After considering the petition and review of all available scientific and commercial information, we found that the petition presented substantial information indicating that the requested action may be warranted. We published a notice announcing our finding in the **Federal Register** on July 10, 2000 (65 FR 42316).

We designated critical habitat for the sparrow on August 11, 1977 (42 FR 40685). Currently designated critical habitat encompasses about 76,883 hectares (189,979 acres) in the southern Everglades along the eastern flank of Shark River Slough and along Taylor Slough. Most of the critical habitat is on Federal or State managed lands, including portions of Everglades National Park managed by the National Park Service, and portions of the Southern Glades Wildlife and Environmental Area managed by the Florida Fish and Wildlife Conservation Commission. Major constituent elements within the designated critical habitat requiring special management considerations or protection were not described in detail in this designation.

At the time the sparrow was listed, limited published information was available on the species' natural history and habitat requirements, and existing research had been conducted primarily on the sparrow's eastern habitats. To fill these gaps, much detailed research was conducted on the sparrow during the 1990s. Recent research has focused on determining natural history parameters, demographic parameters, and management strategies for habitat and populations. Agencies or organizations involved in these efforts include Everglades National Park, U.S. Geological Survey—Biological Resources Division, Army Corps of Engineers (Corps), and the Florida Fish and Wildlife Conservation Commission. Concerted efforts since the early 1990s have resulted in annual rangewide breeding season surveys, investigation of non-breeding season habitat use and movements, population modeling, habitat management including exotic vegetation and fire control, and a revised recovery plan. These efforts have expanded and refined our knowledge about critical habitat for the sparrow. Monitoring required for consultations under section 7 of the Act has also contributed to our database regarding critical habitat.

We have reviewed the petition, the information provided in the petition, other literature, and information gathered since the previous critical habitat designation, as well as submitted comments and information. Based on the best scientific and commercial information available, we find that revision of critical habitat is warranted for the Cape Sable seaside sparrow. Based on this new information, some new areas will likely need to be added and others removed from the designation.

Section 4(b)(3)(D)(ii) of the Act provides that with a 12-month warranted finding, we shall determine how we intend to proceed with the requested revision and publish such notice of our intention in the **Federal Register**. We have determined that the revision is warranted and we intend to proceed according to the following steps:

Habitat Assessment

Criteria for designating critical habitat are provided in our regulations at 50 CFR 424. We must consider for inclusion in critical habitat those areas that meet physiological, behavioral, ecological, and evolutionary requirements that are essential to the conservation of a species and that may require special management considerations or protection. Such requirements include, but are not limited to: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species.

When considering how to revise the designation of critical habitat, we will focus on the principal biological or physical constituent elements that are essential to the Cape Sable seaside sparrow's conservation. Known primary constituent elements will be listed with the critical habitat. Areas that contain these primary constituent elements must be determined for the sparrow.

We will designate as critical habitat areas essential to the conservation of the sparrow. The quantity and overall quality of habitat, ownership, land use, and connectivity with other sparrow habitat changes significantly from site to site. Once identified, the habitats must be delineated, mapped, and described for the proposed designation process. This process may include review of aerial photography, ownership maps, field ground truthing, locating landmarks or other geographical markers using survey techniques such as geographic positioning systems to locate latitude and longitude, with the final product being a usable map.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We will conduct the economic analysis for the proposed critical habitat designation prior to making a final determination. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Proposed Revision

We will develop and publish a proposed rule to revise critical habitat for the Cape Sable seaside sparrow as soon as feasible, considering our workload priorities and available funding. Currently, most of our listing budget must be directed to complying with numerous court orders, settlement agreements, litigation related activities, and due and overdue final listing determinations.

Coordination

We will coordinate with Federal, State, Tribal, local, and private landowners during the habitat assessment process.

At this time, we are part of the Federal government's efforts to improve water management in the Everglades, and thus conserve species, including the Cape Sable seaside sparrow, that depend on appropriate water levels. In

1999, we issued a Jeopardy Biological Opinion to the U.S. Army Corps of Engineers (Corps) for the Modified Water Deliveries to Everglades National Park project, Experimental Water Deliveries Program, and the C–111 Project proposed by the Corps in South Florida. This opinion contains Reasonable and Prudent Alternatives (RPAs) that address all of the currently known subpopulations of the Cape Sable seaside sparrow. These RPAs include elements that are designed to protect and improve the habitat of all of these subpopulations, regardless of whether the specific location of that habitat is currently designated as critical habitat. As a result of that Opinion, we have been working with the Corps, Everglades National Park, and the South Florida Water Management District to establish water-management practices that will achieve the aims of the RPAs, including protection and improvement of all known areas where sparrows have been documented since the early 1980s. Efforts for protection of the sparrow and its habitat in the near future will include coordination with the Florida Fish and Wildlife Conservation Commission and the Miccosukee Tribe of Indians. Through this section 7 process and our work with the Federal and State agencies in south Florida, we will continue to protect and improve habitat for the Cape Sable seaside sparrow.

Author

The primary author of this document is David Martin (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: October 17, 2001.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 01–26746 Filed 10–22–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 011005244–1244–01; I.D. No. 092401D]

RIN 0648–AP08

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Foreign Fishing and Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2002 Specifications and Foreign Fishing Restrictions

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

ACTION: Proposed Rule, 2002 initial specifications; request for comments.

SUMMARY: NMFS announces initial specifications for the 2002 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of this action is to fulfill this requirement and to promote the development and conservation of the MSB resources. This action also proposes an inseason adjustment procedure for the 2002 mackerel joint venture processing (JVP) annual specifications. Finally, NMFS proposes to revise the regulations to add a provision that specifies a method for carrying over *Loligo* squid Quarter I underages into Quarter III.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on November 23, 2001.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at http:/www.nero.gov/ro/doc/nr.htm.

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, ''Comments-2002 MSB Specifications.'' Comments also may be sent via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist 978–281–9226, fax 978–281–9135, e-mail jennifer.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at §§ 600.516(c) and 648.21, require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the initial amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), and JVP for the affected species managed under the FMP. The regulations also specify that there will be no JVP or TALFF specified for *Loligo* squid, *Illex* squid, or butterfish, except that a butterfish bycatch TALFF will be specified if TALFF is specified for Atlantic mackerel. Procedures for determining the initial annual amounts are found in § 648.21.

On August 10, 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow the specification of quota set-asides to be used for research purposes. For each of the four species managed under the FMP, the Council recommended that up to 2 percent of the 2002 IOY be set aside for scientific research purposes. A Request for Proposals has been published to solicit proposals for 2002 based on research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). The deadline for submission was September 14, 2001, and proposals are currently under review. The quota set-asides will be adjusted in the final rule establishing the annual specifications for the MSB fisheries, consistent with projects forwarded to the NOAA Grants Office for award. If the awards are not made for any reason, NMFS will publish an additional rule to restore the unused set-aside amount to the annual quota.

Table 1 contains the proposed initial specifications for the 2002 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 1. PROPOSED INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	*Illex*		
Max OY	26,000	24,000	N/A[1]	16,000
ABC	17,000	24,000	347,000	7,200
IOY	17,000[5]	24,000[5]	85,000[2,5]	5,900[5]
DAH	17,000	24,000	85,000[3]	5,897
DAP	17,000	24,000	50,000	5,897
JVP	0	0	20,000[4]	0
TALFF	0	0	0	0

[1] Not applicable.
[2] IOY may be increased during the year, but the total ABC will not exceed 347,000 mt
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 30,000 mt at discretion of Regional Administrator.
[5] If a 2-percent research set-aside is deducted, the total IOY would be as follows: Atlantic mackerel - 83,300 mt, *Loligo* - 16,660 mt, *Illex* - 23,520 mt, and butterfish - 5,782 mt.

Table 2 contains the proposed research set-asides for the 2002 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 2. PROPOSED RESEARCH QUOTA SET-ASIDES, IN MT, FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	*Illex*		
Research Set-aside	340	480	1,700	118
Remaining Quota	16,660	23,520	83,300	5,782
TAL	17,000	24,000	85,000	5,900

2002 Proposed Specifications

Atlantic Mackerel

Overfishing for Atlantic mackerel is defined by the FMP to occur when the catch associated with a threshold fishing mortality rate (F) of F_{MSY} (the F that produces MSY (maximum sustainable yield)) is exceeded. When spawning stock biomass (SSB) is greater than 890,000 mt, the maximum F threshold is F_{MSY} (0.45), and the target F is 0.25. To avoid low levels of recruitment, the FMP contains a control rule whereby the threshold F decreases linearly from 0.45 at 890,000 mt SSB to zero at 225,000 mt SSB (1/4 of the biomass level that would produce MSY on a continuing basis (B_{MSY})), and the target F decreases linearly from 0.25 at 890,000 mt SSB to zero at 450,000 mt SSB (1/2 B_{MSY}). Annual quotas are specified that correspond to the target F resulting from this control rule.

Since SSB is currently above 890,000 mt, the target F for 2002 is 0.25. The yield associated with that target F at the estimated stock size is 369,000 mt. The ABC recommendation of 347,000 mt represents an adjustment to the yield estimate of 369,000 mt, minus the estimated Canadian catch of 22,000 mt. The proposed IOY for the 2002 Atlantic mackerel fishery is 85,000 mt, which is equal to the proposed DAH. The specification for DAH is computed by calculating the estimated recreational catch, the proposed DAP and JVP. The recreational catch component of DAH is estimated to be 15,000 mt. DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey, which is intended to obtain estimates of processing capacity in the domestic and joint venture (JV) fisheries. However, for the years 1994 through 2002, response to this voluntary survey was low and did not contain projections from some large processors. The Council believes, based on the best data available, that the capacity of the domestic fleet to harvest mackerel greatly exceeds the domestic processors' capacity to process mackerel.

Therefore, the Council has recommended, and NMFS proposes, a specification of 20,000 mt of JVP for the 2002 fishery, with a possible increase to 30,000 mt later in the year. If additional applications for JVP are received, the Council could authorize NMFS to increase this allocation to 30,000 mt by publishing notification in the **Federal Register**. The Council also recommended, and NMFS proposes, a TALFF of zero and a DAP of 50,000 mt, yielding a DAH of 85,000 mt, which includes the 15,000-mt recreational catch estimate. The Council chose to specify TALFF at zero despite the minimal loss to the Nation that may result from the loss of poundage fees collected from foreign vessels. The Council was concerned that the perceived competition TALFF represents to U.S. processors could impede the future expansion of mackerel processing facilities.

As authorized by §§ 600.501 and 600.520(b)(2)(ii), the Council recommended, and NMFS proposes, that several special conditions be imposed on the 2002 Atlantic mackerel fishery, as follows: (1) JVs would be allowed south of 37°30' N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Administrator should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but the total should not exceed 347,000 mt; and (4)

applications from a particular nation for an Atlantic mackerel JV allocation for 2002 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Atlantic Squids

Loligo

The FMP defines overfishing for *Loligo* squid as occurring when the catch associated with a threshold of the fishing mortality that produces the maximum sustainable level of yield per recruit (F_{MAX}) is exceeded (F_{MAX} is a proxy for F_{MSY}). When an estimate of F_{MSY} becomes available, it will replace the current overfishing proxy F_{MSY}. Max OY is specified as the catch associated with F_{MAX}. In addition, the biomass target is specified as B_{MSY}.

The most recent stock assessment for *Loligo* squid (the 29th Northeast Regional Stock Assessment Workshop, August 1999 (SAW-29)) concluded that the stock was approaching an overfished condition and that overfishing was occurring. However, recent survey data for *Loligo* squid indicate that abundance of this species has increased significantly since SAW 29 was conducted. Estimates of biomass based on NMFS' Northeast Fisheries Science Center (NEFSC) fall 1999, spring 2000, and fall 2000 survey indices for *Loligo* squid indicate that the stock is currently at or near B_{msy}. The stock is also no longer listed as overfished in NMFS' Report to Congress: Status of the Fisheries of the United States (January 2001).

Based on the assumption that the stock will be at or near B_{msy} in 2002, the Council recommended no changes from the 2001 quota level. The 2002 quota is specified as the yield associated with 75 percent of F_{msy} at B_{msy}, or 17,000 mt, based on projections from SAW-29. The regulations continue to specify Max OY as the yield associated with F_{max}, or 26,000 mt. Thus, the 2002 proposed Max OY for *Loligo* squid is 26,000 mt and the recommended ABC for the 2002 fishery is 17,000 mt.

In Amendment 5 to the FMP, the Council concluded that U.S. vessels have the capacity to, and will harvest the OY on an annual basis, so that DAH equals OY. The Council also concluded that U.S. fish processors, on an annual basis, can process that portion of the OY that will be harvested by U.S. commercial fishing vessels, so that DAP equals DAH, and JVP is zero. Since U.S. fishing vessels have the capacity to harvest, and are expected to attempt to harvest, the entire OY, there is no portion of the OY that can be made available for foreign fishing, making TALFF zero.

Distribution of the Annual *Loligo* Squid Quota

The *Loligo* squid 2000 annual quota was allocated among three 4-month trimesters. Due to the premature closures and overages that occurred during the 2000 fishing year, the 2001 annual DAH for *Loligo* squid was allocated into quarterly periods. The Council has proposed, and NMFS recommends, no change from the 2001 quarterly distribution system. The 2002 quarterly allocations would be as follows:

TABLE 3. *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric Tons	Research Set-aside
I (Jan–Mar)	33.23	5,649	N/A
II (Apr–Jun)	17.61	2,994	N/A
III (Jul–-Sep)	17.3	2,941	N/A
IV (Oct–Dec)	31.86	5,416	N/A
Total	100	17,000	340

Also unchanged from 2001, NMFS proposes that the 2002 directed fishery be closed in Quarters I-III when 80 percent of the period allocation is harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calender day until the end of the respective quarter. The directed fishery would close when 95 percent of the total annual DAH has been harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calender day for the remainder of the year. Quota overages from Quarter I would be deducted from the allocation in Quarter III, and any overages from Quarter II would be deducted from Quarter IV.

Carry-over of Quarterly Quota Underages

The Council has also recommended, and NMFS proposes, to modify the method for carrying over *Loligo* squid quarterly underages for 2002 and subsequent fishing years. For the 2001 fishing year, by default, quarterly underages carried over into Quarter IV because the fourth quarter does not close until 95 percent of the total annual quota has been harvested. However, beginning with the 2002 fishing year, NMFS proposes to add a provision under 50 CFR part 648.21 stating that, in the event that the first quarter landings for *Loligo* squid are less than 70 percent of the first quarter allocation, the underage below 70 percent would be applied to Quarter III. Underages from quarters II and III would continue to be added to Quarter IV by default, based on the 95-percent closure rule mentioned above.

Illex

The approved overfishing definition for *Illex* squid states that overfishing for *Illex* squid occurs when the catch associated with a threshold fishing mortality rate of F_{MSY} is exceeded. Maximum OY is to be specified as the catch associated with a fishing mortality rate of F_{MSY}. In addition, the biomass target is specified as B_{MSY}. The minimum biomass threshold is specified as 1/2 B_{MSY}.

The most recent assessment of the *Illex* squid stock (SAW-29) concluded that the stock is not overfished and that overfishing is not occurring. The previous assessment, the 21st Northeast Regional Stock Assessment (1996), had concluded that the U.S. *Illex* squid stock is fully exploited. Due to a lack of adequate data, the estimate of yield at F_{MSY} was not updated in SAW-29. However, an upper bound on annual F was computed for the U.S. Exclusive Economic Zone portion of the stock, based on a model that incorporated weekly landings and relative fishing effort and mean squid weights during 1994-1998. These estimates of F were well below the biological reference points. Current absolute stock size is unknown and no stock projections were done in SAW-29.

Since data limitations did not allow an update of yield estimates at the threshold and target F values, the Council recommended, and NMFS

proposes, that the specification of Max OY and ABC remain unchanged from 2001 at 24,000 mt (the yield associated with F_{MSY}). Under this option, the directed fishery for *Illex* squid would remain open until 95 percent of the ABC is taken (22,800 mt). Once 95 percent of the ABC is estimated to have been taken, the directed fishery would be closed and a 5,000-lb (2,268-kg) trip limit would take effect for the remainder of the fishing year. Similar to *Loligo* squid, when a trip limit is in effect, vessels are prohibited from possessing or landing more than 5,000 lb (2,268 kg) in a single calendar day. Amendment 5 to the FMP eliminated the possibility of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's ability to harvest and to process the OY from this fishery.

Butterfish

The FMP set OY for butterfish at 16,000 mt. Based on the most current stock assessment, the Council recommends, and NMFS proposes, an ABC of 7,200 mt for the 2002 fishery. This represents no change in the specifications since 1996. Commercial landings of butterfish have been low at 2,798 mt, 1,964 mt, and 2,116 mt for the 1997 through 1999 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market-sized fish have impacted this fishery.

For the 2002 fishing year, the Council recommended, and NMFS proposes, an IOY for butterfish of 5,900 mt. The IOY is composed of a DAH of 5,900 mt and a bycatch TALFF that is equal to zero. Amendment 5 eliminated the possibility of JVP or TALFF specifications for butterfish except for a bycatch TALFF specification if TALFF is specified for Atlantic mackerel. Because the Council did not recommend TALFF for Atlantic mackerel, TALFF for butterfish is set at zero.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA in section 5.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the **SUPPLEMENTARY INFORMATION** section. A summary of the IRFA follows:

The numbers of potential fishing vessels in the 2002 fisheries are 395 for *Loligo* squid/butterfish, 77 for *Illex* squid, and 2,098 for Atlantic mackerel. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The proposed ABC specifications of 347,000 mt and DAH of 85,000 mt for Atlantic mackerel, the DAH specifications of 24,000 mt for *Illex* squid, and the DAH specifications of 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The level of landings in the proposed specifications for 2002 have not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of the proposed action.

From 1996-2000, *Loligo* squid landings averaged 16,548 mt. If the 2002 proposed DAH specification of 17,000 mt for *Loligo* squid is achieved, there would be an increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1996-2000. NMFS also proposes to modify the provision for carrying over Quarter I *Loligo* squid underages. Under the new measure, *Loligo* squid Quarter I underages less than 70 percent of the first quarter allocation would be applied to Quarter III. Currently, all underages from Quarter I are applied to Quarter IV because Quarter IV does not close until 95 percent of the total annual quota is harvested. However, by making the underage available during Quarter III, *Loligo* squid permit holders could continue to fish during a time when the quarter may have otherwise been closed. This could provide an added economic benefit to fishers during Quarter III. However, because this provision would only shift a limited amount of quota from one period to another, and does not modify the *Loligo* squid annual quota, no overall change in revenue is expected.

One alternative considered for the Atlantic mackerel fishery was to set the 2002 specifications at the same level as 2001. The specifications under this alternative were similar to the preferred alternative, with the exception of IOY and TALFF. Under this alternative, the IOY specification would be slightly higher (88,000 mt) because TALFF would be specified at 3,000 mt. The specification of TALFF above zero was rejected by the Council as inconsistent with the FMP because it would not meet the policy objectives of the Council relative to further development of the U.S. domestic harvest for Atlantic mackerel. NMFS accepted the Council recommendation regarding IOY as accomplishing this objective. However, this alternative would place no constraints, and consequently no revenue impacts on the fishery because the proposed levels of harvest for Atlantic mackerel under this alternative have not been harvested in recent years. A second alternative for Atlantic mackerel was to set ABC at the long-term potential catch (LTPC), or 134,000 mt. This alternative was found inconsistent with the FMP because it would not allow for variations and contingencies in the status of the stock. For example, the current adult stock was recently estimated to exceed 2.1 million mt. The specification of ABC at LTPC would effectively result in an exploitation rate of only about 6 percent, well below the optimal level of exploitation. The level of foregone yield under this alternative was considered unacceptable, but would not impact the IOY specifications. A third alternative considered for mackerel included the elimination of JVP for 2002, which would lower the specification of IOY to 68,000 mt, also far in excess of recent landings. This alternative was rejected due to the need for JVP's, which allow U.S. harvesters to take Atlantic mackerel at levels in excess of current U.S. processing capacity. However, these alternatives would not constrain the mackerel fishery and were determined to have no impact on the revenues of participants in this fishery.

For *Loligo* squid, one alternative that was considered was to set the ABC, DAH, DAP, and IOY at 13,000 mt, or a 23.3-percent reduction from the 2001 level. This was the same level as the 2000 fishing year until an inseason adjustment increased the ABC, DAH, DAP, and IOY to 15,000 mt (65 FR 60118, October 10, 2000). If the 13,000-mt alternative was adopted for the 2002 fishing year, 132 of the 497 impacted vessels would experience a total gross revenue reduction (all species combined) of greater than 5 percent. The remaining 365 vessels would experience a less than 5-percent reduction in revenue or an increase in revenue. A second alternative would set ABC, DAH, DAP, and IOY at 11,700 mt. This would represent a 31-percent reduction in landings relative to 2000. Under this scenario, 170 of the 497 impacted vessels would experience gross revenue reductions (all species combined) of greater than 5 percent. The remaining 327 vessels would experience a less than 5-percent reduction in revenue, or an increase in revenue.

For *Illex* squid, one alternative considered would set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt and a second alternative would set Max OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. These specifications would be far in excess of recent

landings in this fishery. Therefore, there would be no constraints, and, thus, no revenue reductions, associated with these specifications. However, the first alternative was considered unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid. Conversely, under the second alternative an ABC of 19,000 mt would not allow the fishery to perform at its optimal exploitation level during a year of relatively high abundance, and was therefore rejected.

For butterfish, the Council considered two alternatives; the first alternative set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second alternative set a Max OY of 16,000 mt and a ABC, IOY, DAH, and DAP at 10,000 mt. These specifications far exceed recent harvests in the butterfish fishery and would not constrain or impact the industry; however, they could lead to overfishing of the stock, and, thus, were rejected by the Council.

It has been determined that this rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

This proposed rule does not contain or involve any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

A copy of the IRFA is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 17, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.21, paragraph (f)(3) is added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) * * *

(3) Beginning January 1, 2002, if commercial landings in Quarter I are determined to be less than 70 percent of the Quarter I quota allocation, any remaining Quarter I quota that is less than 70 percent will be reallocated to Quarter III (e.g., if the Quarter I quota was 100,000 lb (220,462 kg) and 50,000 lb (110,231 kg) was landed, then the remaining Quarter I quota, up to 70 percent, or 20,000 lb (44,092 kg), would be reallocated to Quarter III. A balance of 30 percent, or 30,000 lb (66,139 kg), would remain in Quarter I).

* * * * *

[FR Doc. 01–26688 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 011011249–1249–01; I.D. 092701A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Petition for Emergency Rulemaking for Red Snapper

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

ACTION: Notice of agency decision; denial of a petition for emergency rulemaking.

SUMMARY: NMFS announces the denial of a petition for emergency rulemaking for the red snapper fishery in the Gulf of Mexico that was filed with the U.S. Department of Commerce by the Texas Shrimp Association (TSA). TSA's petition requested emergency rulemaking to reduce the 2001 total allowable catch (TAC) in the fishery and to shorten the associated recreational fishing season.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: TSA petitioned the U.S. Department of Commerce to promulgate an emergency rule to reduce the 2001 TAC in the directed fisheries for red snapper in the Gulf of Mexico from 9.12 million lb (MP)(4.14 million kg) to not more than 3 million lb (1.36 million kg) and to shorten the recreational fishing season as part of the TAC reduction. The petition alleged that overfishing has been occurring in the fishery and will occur again in 2001 without the requested emergency rulemaking. On April 19, 2001, NMFS published a notice of receipt of the TSA petition and requested public comments on the petition (66 FR 20129). After thorough consideration of the petition and of all public comments received, NMFS has denied TSA's petition for emergency rulemaking.

Basis for Denial of the Petition

The TSA petition states that the following are causes of previous and continuing overfishing (NMFS responses are provided as appropriate):

(1) TSA asserts that the current definition of ''optimum yield'' (OY) in the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) does not conform to the more rigorous definition of OY required by the Sustainable Fisheries Act (SFA) of 1996, which amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Response: The current definition of OY in the Reef Fish FMP is ''any harvest level which maintains, or is expected to maintain, over time a survival rate or biomass into the stock of spawning age to achieve at least 20 percent spawning potential ratio (SPR).'' Additionally, the Reef Fish FMP currently requires that overfished red snapper stocks be restored to a level of 20 percent SPR by 2019. However, the Magnuson-Stevens Act and NMFS' National Standard Guidelines (NSG) (63 FR 24212; May 1, 1998) require that the Councils and NMFS develop new definitions of ''overfishing'' and ''overfished'' for managed stocks based on the ability of a stock to produce maximum sustainable yield (MSY) on a continuing basis. While NMFS has approved proposed definitions of overfishing that are based on static SPR as a proxy for fishing mortality rate, definitions of overfished and stock rebuilding targets must be biomass-based, as required by the Magnuson-Stevens Act and the NSG. For overfished stocks, the Magnuson-Stevens Act and the NSG require that a recovery plan must be developed to restore overfished stocks to the biomass level capable of producing MSY on a continuing basis (B_{MSY}).

NMFS agrees that these Magnuson-Stevens Act (as amended by the SFA) and NSG requirements represent a more conservative fishery management approach than is reflected in the Reef Fish FMP's current definition of overfishing (when a reef fish stock or stock complex is overfished, overfishing is defined as harvesting at a rate that is not consistent with a program established to rebuild the stock or stock complex to the 20 percent SPR level), which is estimated to be the minimal

level needed to prevent future declines in the stock. On November 17, 1999, NMFS disapproved the Gulf of Mexico Fishery Management Council's (Council) red snapper rebuilding targets, as proposed in its Generic Sustainable Fisheries Act (SFA) Amendment to the Council's FMPs (Generic SFA Amendment), because the Generic SFA Amendment specified a fishing mortality-based stock rebuilding target rather than the required biomass-based target. Further, the Generic SFA Amendment did not estimate the time to rebuild in the absence of fishing mortality, as required by the Magnuson-Stevens Act and the NSG. NMFS also disapproved the Generic SFA Amendment's proposed SPRs as proxies for MSY, OY, and other stock status determination criteria. In conjunction with these disapproval actions, NMFS informed the Council that it must submit a new red snapper rebuilding plan as soon as possible for agency review.

In order to comply with the requirements of the Magnuson-Stevens Act, the Council has recently submitted to NMFS, for Secretarial review, a framework action under the Reef Fish FMP that provides for a revised red snapper rebuilding plan through 2032. While a final agency decision on this proposal has not yet been made, the rebuilding plan does contain new biomass-based targets and thresholds, including a revised OY and recovery time-frame parameters that, upon preliminary review, appear consistent with the Magnuson-Stevens Act, as amended by the SFA, and the NSG. The proposed action would institute a red snapper 31-year rebuilding plan with 5-year interim management goals. The rebuilding plan would maintain the current TAC set at 9.12 MP under a constant catch scenario for the years 2001-2005, with existing bycatch reduction requirements. Thereafter, the plan would shift to a constant fishing mortality rate strategy. At that time, a reduction in the red snapper TAC is likely, unless other means of reducing bycatch and bycatch mortality are more effective than currently anticipated and the stock achieves a greater level of rebuilding than currently anticipated. Under the constant fishing mortality rate strategy, TAC is set as a constant proportion of the stock that can be removed that would allow the stock to rebuild within the required time period. As stock size increases, so can the TAC (i.e., as the stock size approaches BMSY, TAC will be approaching OY). Because red snapper are such a long-lived species and the fishery is in need of stability in all sectors, the rebuilding plan aspires to make TAC adjustments, as necessary, at 5-year intervals. Of course, section 304(e)(7) of the Magnuson-Stevens Act requires the Secretary of Commerce (Secretary) to review independently the stock rebuilding plan itself in no more than 2-year intervals to ensure adequate progress toward ending overfishing and rebuilding the affected stock. The framework procedure under the Reef Fish FMP currently contemplates annual review of the status of managed fish stocks. If the Secretary's independent review, pursuant to section 304(e)(7), results in a finding that the rebuilding plan is not making adequate progress, the Secretary is required to notify the Council immediately and recommend appropriate further conservation and management measures (see section 304(e)(7)(b) of the Magnuson-Stevens Act). In light of the Council's recent proposal for a revised red snapper stock rebuilding plan, a reduction in TAC now, based on the current Reef Fish FMP's OY definition, would be premature.

(2) TSA asserts that NMFS' scientific studies indicate that bycatch reduction devices (BRDs) required in shrimp trawls in the Exclusive Economic Zone (EEZ) of the Gulf of Mexico west of Cape San Blas, Florida, have reduced juvenile red snapper mortality by 40 percent or less instead of the 50- to 60-percent reduction necessary as a basis for the present TAC of 9.12 MP. Further, TSA asserts that NMFS and the Council have greatly exaggerated the importance (positive impact) of bycatch reduction for rebuilding the red snapper stock; and

(3) TSA asserts that recent scientific information presented to the Council's Reef Fish Stock Assessment Panel (RFSAP) (a Council scientific advisory committee) indicates that the overfished condition of the red snapper fishery is a result of excessive fishing pressure by the directed fisheries, in particular the recreational sector of the fishery, and not a result of bycatch mortality associated with shrimp harvest.

Response: The RFSAP again endorsed the red snapper stock rebuilding plan under consideration by the Council and currently under review by NMFS. The RFSAP did not alter its long-standing opinion that bycatch reduction in the shrimp fishery is necessary to rebuild the red snapper stock. The combined effects of excessive fishing mortality in the directed fishery and bycatch mortality of juvenile red snappers in the shrimp fishery have all contributed to the overfished status of red snapper in the Gulf of Mexico. Red snapper stock assessments reviewed by the RFSAP, dating back to 1990, as well as the Congressionally Mandated Red Snapper Peer Review (1997), have not only indicated that fishing mortality in the directed fishery must be reduced, but also that the Gulf red snapper stock will not recover from its overfished condition without a significant reduction in bycatch mortality of juvenile red snappers associated with shrimp trawling. In fact, the magnitude of the shrimp fishery's bycatch of juvenile red snappers far outweighs the impacts of TAC adjustments on rebuilding the red snapper stock. The best available scientific information, as represented by continuing scientific stock assessments and various scientific peer reviews over recent years during which the 9.12 MP TAC has been in place, consistently demonstrates that even if the red snapper TAC were set at zero, BRDs and other measures to address bycatch mortality of juvenile red snappers in the shrimp fishery would still be required in order to rebuild this fish stock. As described earlier, NMFS is currently reviewing the Council's stock rebuilding plan, which will likely result in future reductions in the red snapper TAC. However, it appears that an immediate TAC reduction would achieve only limited short-term conservation benefits not justified in the face of resulting significant and immediate adverse impacts on the red snapper fishery.

A 40-percent reduction in juvenile red snapper bycatch mortality in the Gulf shrimp fishery has been achieved, as substantiated by data that NMFS submitted to the Council (Nichols, 1990; Nichols & Pellegrin, 1992), and that the RFSAP reviewed. Further, NMFS biologist Dr. Scott Nichols, at the September 20-24, 1999, RFSAP meeting, and at the October 27, 1999, meeting of the Council's Scientific and Statistical Committee, stated that, excluding the now illegal configuration of a fisheye BRD covered by the trawl net's elephant ear, fisheye BRDs are currently attaining a 40-percent reduction in fishing mortality of juvenile red snappers and that a 50-percent reduction appears feasible. Additionally, NMFS biologist Dr. John Watson, in statements to the Council at its November 8-12, 1999, and November 13-16, 2000, meetings, indicated that a 50-percent bycatch reduction could be achieved from fisheye BRDs. NMFS believes that further reductions are possible with improved BRD technology. Tests conducted by NMFS have already demonstrated that prototype BRDs can reduce bycatch mortality of red snapper

in shrimp trawls by as much as 70 percent.

BRDs have significantly reduced shrimp trawl bycatch mortality of red snapper and other species in the western Gulf. However, National Standard 9 requires that bycatch be reduced to the extent practicable and the Council must continue to review possible measures that would achieve higher levels of bycatch reduction and minimize bycatch mortality. NMFS has encouraged the Council to take additional actions throughout the Gulf to reduce shrimp trawl bycatch. Such actions could include extending the requirement for BRDs into Federal waters east of Cape San Blas, FL; effort reduction in the shrimp fishery; closed areas; or seasonal closures. Additionally, monitoring of bycatch in the shrimp fishery must be improved. This could be accomplished with vessel permits (as proposed under Amendment 11 to the FMP for the Shrimp Fishery of the Gulf of Mexico (Shrimp FMP)), mandatory observers, and mandatory logbooks.

Consultants for TSA presented scientific information regarding the preceding TSA assertion (No. 3) at the RFSAP meeting held at the NMFS Southeast Fisheries Science Center (SEFSC) on September 28-October 1, 2000. The RFSAP considered three presentations in the context of the proposed revised red snapper rebuilding plan: Two were by the TSA consultants, Mr. Gazey and Dr. Gallaway, and one was by Dr. Shipp. The RFSAP concluded that ''the presentations by Mr. Gazey, Dr. Gallaway, and Dr. Shipp do not affect our previous endorsement of the rebuilding plan.''

(4) TSA asserts that the recreational sector of the directed fishery continues to exceed its annual quota under the present season opening and closing dates.

Response: While NMFS recognizes that quota overruns in the recreational fishery have occurred in the past, the Council and NMFS have taken steps to rectify this situation. In December 1999, at the Council's request, NMFS issued an interim rule to implement management measure changes for the red snapper fishery to address quota overages in the recreational sector and, thus, reduce overfishing (64 FR 71056). The interim rule established a Federal recreational season from April 21 through October 31. Also, the rule reduced fishing effort that would have occurred in state waters after the closure of the Federal season under the regulations in effect prior to implementation of the interim rule. These actions appear to have been successful, as preliminary data for the 2000 fishing year indicate that the recreational red snapper harvest was approximately 320,000 pounds under the allowable quota (4.47 MP). The interim rule measures were implemented on a permanent basis under an approved regulatory amendment, pursuant to the Reef Fish FMP's framework procedure, through a final rule issued August 17, 2000 (65 FR 50158). NMFS' goal is to continue monitoring the recreational fishery quota and to take additional action as warranted. Further discussion of NMFS and Council efforts to structure a red snapper recreational fishing season that best prevents recreational fishery quota overruns is contained in the response to public comment number 2 (see below).

(5) TSA asserts that NMFS is significantly underestimating fishing effort in the recreational sector, which allows that sector to harvest red snapper in excess of its share of the TAC; and

(6) TSA asserts that NMFS has failed to make a reduction in the recreational sector's share of the TAC to account for these excessive harvests.

Response: The best scientific information available indicates that effort in the red snapper charter vessel sector, the largest component of the recreational fishery, has not been underestimated, and that charter vessels currently account for approximately 42 percent of the total annual recreational harvest of red snapper in the Gulf of Mexico. NMFS has recently adopted new and more precise and accurate methodologies for estimating the recreational red snapper harvest that were developed cooperatively by NMFS and the Gulf States Marine Fisheries Commission. This is part of a continuing effort by NMFS to improve data collection for the recreational sector. There is no evidence to suggest that recreational landings have been underestimated.

Comments and Responses

NMFS received 1, 567 comments addressing this petition. They are summarized and responded to here:

Comment 1: Fifteen hundred and sixty three comments were received that opposed the petition for emergency rulemaking submitted by TSA including any reduction in the TAC or shortening of the 2001 recreational fishing season.

Response: The best available scientific information indicates that the 9.12 MP (4.14 million kg) TAC for 2001 may slow the recovery in the early part of any stock rebuilding program but would not jeopardize recovery of the stock consistent with the rebuilding requirements of the Magnuson-Stevens Act, particularly if greater reductions in bycatch mortality are achieved, as expected. However, an immediate reduction in TAC or shortening of the recreational fishing season for red snapper would have serious adverse economic effects upon participants in the fishery.

Comment 2: Included in the group of comments opposed to the TSA petition was a comment from an environmental group expressing its concerns regarding NMFS' regulation of the red snapper recreational fishing season and the history of TAC overruns in this fishery. Further, this group requested that NMFS close the recreational and commercial red snapper fisheries, once their allocations are met, based on available real-time data.

Response: The Magnuson-Stevens Act requires that the Gulf of Mexico red snapper recreational fishery be closed when its quota is reached. To comply with this requirement, NMFS works jointly with the Council to implement management measures and establish closure dates that, based upon the best available scientific information, are likely to result in annual catches that approximate the quota, within the margin of error of the harvest projections. NMFS uses a computer simulation model to assess the future status of the red snapper stock. The model integrates estimates of stock abundance with fishing effort to project how many fish will be caught for various time periods. This projection assumes that the current year's fishing effort will be similar to that of previous years. In-season data are not used to establish or adjust closure dates; instead, a closure date is based entirely on projections of the model used. This is the only practicable method of setting closure dates because the NMFS Marine Recreational Fishery Statistics Survey (MRFSS) is not designed for real-time quota monitoring. MRFSS data are available in 2-month blocks, referred to as waves, and landings are not available until 5 weeks after the end of a wave. Thus, there is a time lag of at least 3 months before even preliminary MRFSS landings data can be evaluated; consequently, NMFS cannot determine the closure date based on real-time fishery data. In projecting recreational fishery harvest rates and closure dates, NMFS attempts to approximate the quota in the long term, while recognizing that annual variations in the catch are inevitable. Based on the last two years' monitoring, the projections appear accurate since no overruns occurred.

Comment 3: Four comments were received in support of the petition,

including two from TSA that requested an immediate reduction in TAC to no more than 3 MP (1.36 million kg) and a shortening of the 2001 recreational fishing season.

Response: NMFS has reviewed the administrative records and court decisions from prior litigation on the issue of the red snapper TAC. NMFS has also reviewed more recent information regarding the conduct of the red snapper fishery, as discussed above, including the petition received on behalf of TSA and the public comments received on the petition. NMFS disagrees with TSA that the law or the present circumstances in the red snapper fishery require an immediate reduction in TAC. As described below, this is because (a) the Council's proposed red snapper stock rebuilding plan appears to comply with the Magnuson-Stevens Act requirements to end overfishing; (b) the deployment of BRDs in the shrimp fishery appears to be more effective than TAC adjustments in rebuilding the red snapper stock; (c) NMFS believes that greater than current levels of reduction in bycatch mortality of juvenile red snapper in shrimp trawls are attainable; and (d) the shrimp fishery does not appear to be subject to any disproportionate regulatory impacts compared to the directed red snapper fisheries.

For these reasons, NMFS disagrees with TSA's assertions, the majority of which have been raised previously by TSA and refuted by NMFS (see *Florida Wildlife Federation, et al.* v. *Daley*, Case No. 4:98cv101RH (N. D. Fla.); affirmed Case No. 99-14747c (11th Circuit Court of Appeals); Texas Shrimp Association v. Daley, Case No. 4:000v20RH (N. D. Fla,); affirmed Case No. 00-12328 (11th Circuit Court of Appeals). As TSA, through its legal counsel, recently noted, ''nothing in the petition raised any novel questions'' (see July 11, 2001, letter from TSA Counsel to Dr. William T. Hogarth). Rather, TSA asserts that the agency is making decisions based on political pressure rather than on scientific information and the Magnuson-Stevens Act (id.).

The best available scientific information affirms that the status quo TAC of 9.12 MP (4.14 million kg) is compatible with the stock rebuilding requirements of the Magnuson-Stevens Act, provided that expected bycatch reduction levels are met, that harvests will not exceed quotas, and that future recruitment, on average, will increase as spawning stock biomass increases. Additionally, the Council has submitted a framework action under the Reef Fish FMP to NMFS for approval and implementation that would establish a revised red snapper rebuilding plan through 2032. The plan contains new biomass-based targets and thresholds, including a revised OY and recovery time-frame parameters that are consistent with the Magnuson-Stevens Act, as amended by the SFA, and the NSG. The proposed action would institute a red snapper 31-year rebuilding plan with 5-year interim management goals. The rebuilding plan would maintain the current TAC set at 9.12 MP under a constant catch scenario for the years 2001-2005, with existing bycatch reduction requirements. Thereafter, the plan would shift to a constant fishing mortality rate strategy, and the status of the stock would be reviewed every 5 years to evaluate the need for additional bycatch reductions or adjustments in TAC. Under the constant fishing mortality rate strategy, TAC is set as a constant proportion of the stock that can be removed that would allow the stock to rebuild within the required time period. As stock size increases, so can the TAC (i.e., as the stock size approaches B_{MSY}, TAC will be approaching OY).

The best available scientific information, as represented by continuing scientific stock assessments and various scientific peer reviews over the recent years during which the 9.12 MP TAC has prevailed, consistently demonstrates that even if the red snapper TAC were set at zero, BRDs and other measures to address bycatch mortality of juvenile red snappers in the shrimp fishery would still be required in order to rebuild this stock. Although the Court in the BRD litigation held that a sufficient nexus existed between the need for BRDs and the red snapper TAC for purposes of conferring legal standing upon the shrimp industry so they could challenge the BRD requirement, elsewhere in the opinion, as noted above, the Court acknowledged that shrimp trawlers' severe effects upon the red snapper population is beyond dispute (Order Denying Petitions Challenging Regulations, at 7, 41). The magnitude of the impacts of the shrimp fishery's bycatch of juvenile red snappers far outweighs the impacts of TAC adjustments on rebuilding the red snapper stock. However, the current and foreseeable future regulatory burden for the shrimpers is far less than that of the red snapper fishery participants.

Section 304(e)(4)(A) of the Magnuson-Stevens Act explicitly states that, in pertinent part, fishery management plans, plan amendments, or proposed regulations for an overfished fishery shall ''specify a time period for ending overfishing.'' The Council's proposed red snapper stock rebuilding plan, inter alia, would do just that, while maintaining stability in the fishery. As Judge Hinkel noted in the decision upholding the BRD requirement, which was affirmed on appeal, rejecting one viewpoint in favor of another, when weighing competing scientific opinions and making policy determinations, is not an abuse of discretion (see Order Denying Petitions Challenging Regulations, Case No. 4:98cv101-RH, N. D. Fla, at 22). Further, the Court noted that uncertain scientific evidence does not preclude making a decision based, in part, upon reasonable expectations (id. at 43).

NMFS believes that greater reductions in bycatch mortality of juvenile red snapper in shrimp trawls are attainable, and further believes that this expectation is reasonable based upon the following considerations. First, the Jones-Davis BRD already by far exceeds the necessary level of bycatch reduction, demonstrating concretely that, in fact, such reduction is attainable. Although the Jones-Davis BRD is not widely used, due in large part to greater shrimp loss rates, given its outstanding performance at reducing bycatch mortality, it may be practicable to expand its usage, particularly if shrimp loss rates can be reduced. Second, the level of reduction in bycatch mortality for the more widely used BRD designs has steadily improved since the BRD requirement became effective. Initially, reduction levels among those BRDs measured 27 percent, but current levels are between 40 percent and 50 percent. Some of this improvement has resulted from minor modifications to the gear arising from actual use, such as adjusting the ''elephant ear'' flap in the shrimp trawls. Finally, NMFS is in the process of revising its BRD certification protocol following its experience since the original protocol was implemented several years ago. Information from BRD users as well as the Gulf and South Atlantic Fisheries Foundation has indicated the need for greater flexibility in the provisions of the BRD certification protocol. NMFS expects that once these revisions are effected, more efficient and better performing BRD designs will be developed and certified, resulting in greater reductions of bycatch and bycatch mortality of red snapper.

These developments show that reductions in red snapper bycatch mortality based on technology are feasible and likely. However, technological advances are not the only means under consideration for reducing red snapper bycatch in the shrimp fishery. In addition to technological considerations, the Council is

developing Amendment 10 to its Shrimp FMP to further address general bycatch issues. Among the alternative actions included in Amendment 10 are those that would require the use of BRDs east of Cape San Blas, FL. Although the original BRD requirement exempted this area because of minimal red snapper occurrence in that area, more recent information (Schirripa & Legault, 1999) demonstrates a significantly increased occurrence of red snapper there. The objective of Amendment 10 is not limited to reducing bycatch and bycatch mortality of red snapper, but it now appears that red snapper bycatch mortality would be reduced somewhat, along with that of other species, if such a geographic expansion in the use of BRDs were implemented. Amendment 10 also contains other action alternatives, such as those based on seasonal and areal adjustments that, in the course of addressing bycatch issues in a general sense, will clearly effect some level of reduction in red snapper bycatch mortality.

In addition to Amendment 10, further regulation of the Gulf shrimp fishery to address red snapper issues may become necessary. For example, the Council has proposed, under its Reef Fish FMP's framework action, a 31-year rebuilding program for red snapper. A fundamental element of that proposal is the achievement of greater reductions in red snapper bycatch mortality; however, the plan also provides for the contingency of not achieving that goal. It seems clear that without greater red snapper bycatch mortality reductions, both a future reduction in the red snapper TAC and further regulation of the shrimp fishery in the EEZ are likely. The latter possibility appears to form the basis for TSA's assertions that the Council's and NMFS' management of the red snapper fishery is somehow unfair to shrimpers. These claims were addressed in prior litigation, and the Court then wrote that although the BRD requirement placed serious costs on the shrimp industry, the directed red snapper fishery had for years been subject to numerous restrictions, including increased minimum fish size limits, TAC limits, and reduced bag limits and trip limits. The judge also noted that the shrimp industry had, until recently, not only been required to do very little to address bycatch, but actually enjoyed a statutory prohibition against regulations addressing the bycatch issue. In an earlier footnote within that Court opinion, the Court stated that the specific and severe effects upon the red snapper population from shrimp trawlers is ''beyond dispute.'' The judge concluded that imposing the BRD requirement and attendant costs, even with a TAC at 9.12 MP, was not only not an abuse of agency discretion or inequitable, but ''perhaps required'' (Order Denying Petitions Challenging Regulations, Case No. 4:98cv101-RH, at 7, 23, 24, 25, 43-46).

These conclusions are still applicable today. The Council has submitted Amendment 11 to the Shrimp FMP, which would establish mandatory Federal permits for the shrimp fishery, for Secretarial review, approval, and implementation. However, this is the only additional regulation currently proposed for the shrimp fishery. The Gulf shrimp fishery is the only federally managed fishery in the southeastern United States not subject to a permit requirement. The Federal shrimp permit would be available without any qualifying criteria, and the permit requirement would constitute only a minimal burden on shrimp fishermen. The red snapper commercial and recreational fisheries, however, are now and have long been subject to a much more complex and burdensome regulatory program. In particular, since entry of the legal opinion referred to above, the recreational red snapper fishing season has been significantly reduced in order to comply with the statutory quota provisions enacted under the SFA in 1996. While TSA seems to overlook this development, one benefit is that the quota appears to have eliminated the recreational overruns about which TSA complains. If approved and implemented, Shrimp FMP Amendment 10, discussed above, is likely to result in additional regulations for the Gulf shrimp fishery. However, even if the most restrictive of the amendment's alternative actions under consideration were implemented, they would not necessarily produce an inequitable result for shrimp fishermen.

The NSG make clear that under National Standard 4 an allocation of fishing privileges may impose a hardship upon one group if it is outweighed by the total benefits received by another group or groups (50 CFR 600.325 (c)(3)(i)). Although this guidance generally applies to a single fishery, in this instance, the red snapper stock is more significantly affected by the shrimp fishery than by the directed red snapper fishery. The situation is clearly analogous to an allocation of fishing privileges within a single fishery.

In light of the foregoing, it appears that additional regulation of the shrimp fishery would not result in a disproportionate regulatory impact upon shrimpers. Further, rebuilding the red snapper stock and minimizing shrimp fishery bycatch is mandated by law. Clearly, reductions in shrimp trawl bycatch mortality would benefit red snapper fishery participants. However, even with additional shrimp regulations and maintenance of a 9.12 MP TAC for red snapper, the overall result would not leave the shrimp fishery with a greater regulatory burden than the red snapper fishery.

Even if the shrimp fishery does incur additional regulatory burdens, any hardships for the shrimpers will likely be far outweighed by the overall benefits of ending overfishing of red snapper and restoring the red snapper fishery. Conversely, immediately lowering the red snapper TAC, as suggested by TSA, would not result in any apparent benefit to the shrimp industry.

Based on the discussion above, since lowering the red snapper TAC would not relieve either the biological need nor the legal requirement to address the bycatch and bycatch mortality of juvenile red snappers in shrimp trawls, and since such a TAC change would severely disrupt and adversely impact the red snapper fishery, the National Marine Fisheries Service has denied the TSA petition.

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

Dated: October 16, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26678 Filed 10–18–01; 1:37 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 205

Tuesday, October 23, 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

Animal and Plant Health Inspection Service

[Docket No. 01–086–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Virus-Serum-Toxin Act and regulations.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by December 24, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–086–1, 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. 01–086–1.

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: For information on the Virus-Serum-Toxin Act and regulations, contact Dr. Albert Morgan, Chief Staff Officer, Center for Veterinary Biologics, Operational Support Staff, VS, APHIS, 4700 River Road Unit 148, Riverdale MD 20737, (301) 734–8245. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Virus-Serum-Toxin Act and Regulations.

OMB Number: 0579–0013.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for assuring that veterinary biological products are pure, safe, potent, and effective. This program is conducted under the Virus-Serum-Toxin Act (21 U.S.C. 151, *et seq.*) and the regulations in 9 CFR, chapter I, subchapter E. Veterinary biological products are defined as all viruses, serums, toxins (excluding substances that are selectively toxic to microorganisms, e.g., antibiotics), or analogous products at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals and which act primarily through the direct stimulation, supplementation, enhancement, or modulation of the immune system or immune response. The term ''biological products'' includes, but is not limited to, vaccines, bacterins, allergens, antibodies, antitoxins, toxoids, immunostimulants, certain cytokines, antigenic or immunizing components of live organisms, and diagnostic components that are of natural or synthetic origin or that are derived from synthesizing or altering various substances or components of substances, such as microorganisms, genes or genetic sequences, carbohydrates, proteins, antigens, allergens, or antibodies.

To accomplish its mission, APHIS issues licenses to qualified establishments that produce biological products and issues permits to importers of such products. We also enforce requirements concerning production, packaging, labeling, and shipping of these products and set standards for the testing of these products.

Fulfilling this responsibility requires us to use certain information collection activities such as establishment license applications, product license applications, product import permit applications, product and test report forms, and field study summaries. This information helps us to ensure that biological products used in the United States are pure, safe, potent, and effective.

If we did not collect this information, we would be unable to carry out this mission.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning these information collection activities. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 2.62813 hours per response.

Respondents: U.S. importers and exporters of biological products, shippers, operators of establishments that produce or test biological products or that engage in product research and development.

Estimated annual number of respondents: 200.

Estimated annual number of responses per respondent: 97.36.

Estimated annual number of responses: 19,472.

Estimated total annual burden on respondents: 51,175 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 16th day of October 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–26594 Filed 10–22–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Neshaminy Creek Watershed, Bucks and Montgomery Counties, PA

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 (formerly the Soil Conservation Service) Guidelines (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 Neshaminy Creek Watershed, Bucks and Montgomery Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Ms. Robin E. Heard, State Conservationist, USDA-Natural Resources Conservation Service, One Credit Union Place, Suite 340, Harrisburg, Pennsylvania 17110–2993, telephone (717) 237–2200; fax (717) 237–2239.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robin E. Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to reduce flood damages along the lower Neshaminy Creek. The planned works of improvement will be a change from the works of improvement planned in the previously approved Work Plan for Neshaminy Creek Watershed. The previously planned floodwater retarding structure will be replaced with the following works of improvement: flood warning system; voluntary program to acquire or move residential and commercial buildings (including the establishment of riparian buffers); voluntary elevation and/or flood proofing of residential and commercial buildings; continuation and enhancement of floodplain ordinances, the flood insurance program and storm water management.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and other interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robin E. Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904 '' Watershed Protection and Flood Prevention '' and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: October 16, 2001.

Robin E. Heard,

State Conservationist.

[FR Doc. 01–26695 Filed 10–22–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Senior Executive Service: Performance Review Boards; Membership

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice.

SUMMARY: Announcement of New Members for the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: LaVerne H. Hawkins, Department of Commerce, Office of Human Resources, Room 7412, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The following individuals are eligible to serve on the Economic Development Administration's Performance Review Board:

Gerald R. Lucas, Chairperson, Deputy Chief Financial Officer
Mary Pleffner, Chief Financial Officer
James L. Taylor, Deputy Chief Financial Officer, Office of the Secretary
Deborah Jefferson, Deputy Director, Office of Human Resources Management, Office of the Secretary
Samuel Calderon, Deputy Director, Office of Budget, Office of the Secretary
LaVerne H. Hawkins, Executive Secretary, ITA, Office of Human Resources Management, (202) 482–2537

Dated: October 17, 2001.

Vicki G. Brooks,

Human Resources Manager for the Economic Development Administration.

[FR Doc. 01–26589 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Initiation of Antidumping New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping new shipper review.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on stainless steel bar from India. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214, we are initiating this new shipper review.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Annika O'Hara or Cole Kyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3798 or (202) 482–1503, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 2001).

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2001, the Department received a request from Uday Engineering Works (''Uday''), pursuant to section 751(a)(2)(B) of the Act and in accordance with 19 CFR 351.214(b), to conduct a new shipper review of the antidumping duty order on stainless steel bar from India. At the Department's direction, Uday amended its request for a new shipper review on September 20, 2001. This order has an August semi-annual anniversary month.

Initiation of Review

Pursuant to 19 CFR 351.214(b)(2)(iii), Uday certified in its July 25, 2001 request that it is not now and never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation (''POI'') (July 1, 1993 through December 31, 1993). In its September 20, 2001 filing, Uday certified, pursuant to 19 CFR 351.214(b)(2)(i), that it did not export the subject merchandise to the United States during the POI. On September 20, 2001, Uday also submitted documentation establishing: (i) The date on which its stainless steel bar was first shipped for export to the United States; (ii) the volume of that shipment; and (iii) the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, we are initiating a new shipper review of the antidumping duty order on stainless steel bar from India. In accordance with 19 CFR 351.214(h)(i), we intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated. All provisions of 19 CFR 351.214 will apply to Uday throughout the duration of this new shipper review. The standard period of review (''POR'') in a new shipper review based on the semiannual anniversary month is the six month period immediately preceding the semiannual anniversary month, *i.e.* for the instant review, February 1 through July 31, 2001.

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a) of the Act and 19 CFR 351.214.

Dated: October 17, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–26696 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Voluntary Conformity Assessment Systems Evaluation

ACTION: Request for comment on proposed information collection.

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted by December 24, 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jogindar S. Dhillon, National Institute of Standards and Technology (NIST), 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899–2100, telephone: (301) 975–5521.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Voluntary Conformity Assessment Systems Evaluation (NVCASE) Program is a voluntary program to evaluate organizations that carry out activities related to laboratory testing, product certification, and quality system registration. Interested organizations provide information to NIST to support their conformance with established criteria for any of these activities. The information provided is used to conduct an NVCASE evaluation. Based on NVCASE evaluations, NIST provides recognition to qualified U.S. organizations. The ultimate goal is to help U.S. manufacturers satisfy applicable product requirements mandated by other countries through conformity assessment procedures conducted in this country prior to export.

NVCASE recognition (1) provides other governments with a basis for having confidence that qualifying U.S. conformity assessment bodies (CABs) are competent, and (2) facilitates the acceptance of U.S. products in foreign regulated markets based on U.S. conformity assessment results.

The NVCASE recognition program facilitates U.S. trade with Europe, Asia and the Americas under government-to-government agreements, and allows the unhindered flow of U.S. products to countries in those regions.

II. Method of Collection

Applicants submit written information to NIST.

III. Data

OMB Number: 0693–0019.

Form Number: None.

Type of Review: Regular submission for an extension of a currently approved collection.

Affected Public: Accreditation Bodies.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annual Cost: The estimate of the total annual cost to submit this information for fiscal year 2001 and future years is $3500. The cost is borne by the entities submitting the information. The small increase in cost from the previous estimate is due to cost escalation and experience in working with these organizations.

IV. Requests 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 costs) 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 will also become a matter of public record.

Dated: October 16, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–26697 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Tuesday, November 13, 2001, 9 a.m. to 5:30 p.m.; Wednesday, November 14, 2001, 8 a.m. to 5:30 p.m.; Thursday, November 15, 2001, 8 a.m. to 5:30 p.m.; Friday, November 16, 2001, 8 a.m. to 3:00 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the site visit process, review the final judging process and meeting procedures, final judging of the 2001 applicants, learnings and improvements for 2002, and update on the 2002 program. The review process involves examination of records and discussions of applicant data, and will be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code.

DATES: The meeting will convene November 13, 2001 at 9 a.m. and adjourn at 3 p.m. on November 16, 2001. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 12, 2001, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act Pub. L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: October 16, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–26698 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100201C]

Marine Mammals; File No. 1008–1637

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that John Wise, Ph.D., Yale University, School of Medicine, P.O. Box 208034, New Haven, CT, 06520–8034 has been issued a permit to take marine mammal species of the orders Cetacea and Pinnipedia for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On August 16, 2001, notice was published in the **Federal Register** (66 FR 42997) that a request for a scientific research permit to import, export, or otherwise take marine mammals of the orders Cetacea and Pinnipedia had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Dated: October 15, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–26689 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

October 18, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 435 is being increased for special shift, reducing the limit for Category 444 to account for the special shift being applied to Category 435.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 77594, published on December 12, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 23, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
435	16,412 dozen.
444	12,997 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–26658 Filed 10–22–01; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 66, No. 201, Wednesday, October 17, 2001, page 52747.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, October 23, 2001.

CHANGES IN MEETING: The Commission meeting regarding Purchaser Identification Card Program (ANPR) is canceled. The meeting has not been rescheduled at this time.

For a recorded message containing the latest agenda information, call (301) 504–009.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 19, 2001.

Todd A. Stevenson,

Acting Secretary.

[FR Doc. 01–26819 Filed 10–19–01; 3:14 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

TIME AND DATE: 10:00 a.m., Tuesday, October 23, 2001.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

ENFORCEMENT MATTER OS# 4312: The Commission will be brief on issues related to enforcement matter OS# 4312.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 19, 2001.

Todd A. Stevenson,

Acting Secretary.

[FR Doc. 01–26820 Filed 10–19–01; 3:14 pm]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed AmeriCorps Education Award Utilization Survey. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by December 24, 2001.

ADDRESSES: Send comments to: Corporation for National and Community Service, Attn. William Ward, Office of Evaluation, 9th Floor, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: William Ward, (202) 606–5000, ext. 375.

SUPPLEMENTARY INFORMATION:

AmeriCorps Education Award Utilization Survey

Background

One of the goals of the AmeriCorps program is furthering the educational opportunities of its members. The AmeriCorps Education Award provides up to $4,725 to help a member pay for further education or to repay student loans. Part-time members get a pro-rated portion of that amount. The Corporation's National Service Trust data showed that about half of the AmeriCorps graduates who have earned Education Awards had begun to use them. Through the proposed study, the Corporation seeks to identify reasons for non-use of Education Awards. In addition, a thorough exploration of trends in non-use and reasons for non-use will identify ways in which the Corporation can meaningfully increase the use of Education Awards, thus furthering educational opportunity.

Current Action

The Corporation seeks to conduct a survey of former members of the AmeriCorps*State and National, AmeriCorps*VISTA and AmeriCorps*NCCC programs. This survey will entail telephone interviews of approximately 30 minutes in length with 1,000 former AmeriCorps members. It will identify trends in and reasons for non-use of the Educational Awards.

- *Type of Review:* New collection.
- *Agency:* Corporation for National and Community Service.
- *Title:* AmeriCorps Education Award Utilization Survey.
- *OMB Number:* None.
- *Agency Number:* None.
- *Affected Public:* Former AmeriCorps members.
- *Total Respondents:* 1,000.
- *Frequency:* One time.
- *Average Time Per Response:* 30 minutes.
- *Estimated Total Burden Hours:* 500 hours.
- *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: October 18, 2001.

David Rymph,

Acting Director, Department of Evaluation and Effective Practices.

[FR Doc. 01–26669 Filed 10–22–01; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Detection of Antibodies to Squalene in Serum

AGENCY: U.S. Army Medical Research and materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/859,389 entitled ''Detection of Antibodies to Squalene in Serum'' filed May 18, 2001. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention is a method for detecting squalene in sera.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–26675 Filed 10–22–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method of Inhibiting Side Effects of Pharmaceutical Compositions Containing Amphiphilic Vehicles or Drug Carrier Molecules

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/183,375 entitled ''Method of Inhibiting Side Effects of Pharmaceutical Compositions Containing Amphiphilic Vehicles or Drug Carrier Molecules'' filed October 30, 1998. Foreign rights are also available (PCT/US98/23280). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A method is provided for inhibiting or preventing toxicity and other unwanted effects (a) caused by solvents for pharmaceuticals which solvents or emulsifier contain amphiphilic molecules such as polyethoxylated oils or a derivative thereof, or (b) caused by a drug in a vehicle containing amphiphilic molecules such as phospholipids or derivative thereof, employing a complement inhibitor, and pharmaceutical compositions including a drug, solvent, or carrier containing amphiphilic molecules or derivatives thereof, and a complement inhibitor are also provided.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–26674 Filed 10–22–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Novel Dendrimer Technologies for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to novel dendrimer based technologies as described in U.S. Patent applications ''One-Pot Synthesis of Functional Dendrigrafts and their Block Copolymers with Simple Initiating Systems'' (09/356802 filed 7/19/98) and ''Methods of using Nanomanipulation for Enhancing Bio-Assay Performance'' (09/448403 filed 11/22/99). Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 459, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–26676 Filed 10–22–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Morro Bay Estuary Feasibility Study, Morro Bay California

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District of the U.S. Army Corps of Engineers will prepare a DEIS to support the Morro Bay Estuary Feasibility Study, Morro Bay, California. The Study Area is the Morro Bay Estuary, which is located on the central coast of California within the City of Morro Bay, California. The Bay is approximately four miles long and one and three quarters miles at its maximum width. The central portion of the bay encompasses the delta of Chorro and Los Osos Creeks.

Morro Bay Estuary and associated wetlands provide valuable habitat for aquatic wildlife and are an important refuge for migratory birds and marine animals. Morro Bay is one of 28 estuaries in the Environmental Protection Agency's National Estuary Program.

The predominant problem that threatens the Morro Bay Estuary ecosystem is excessive sedimentation during periods of stormwater flows from Los Osos and Chorro Creeks. This results in significant increases in the volume of sediment deposited within the Bay. Deposition results in loss of wetlands as large-scale sedimentation promotes swift progression from marine to degraded salt marsh habitat. The Feasibility Study will focus on addressing the problems and needs caused by sediment deposition in the Morro Bay area. The DEIS will analyze the potential impacts (beneficial and adverse) on the environment for a range of alternatives, including the recommended plan.

The Los Angeles District, the Morro Bay national Estuary Program, and the County of San Luis Obispo will cooperate in conducting this Feasibility Study.

ADDRESSES: District Engineer, U.S. Army corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RQ (R. Farve), P.O. Box 532711, Los Angeles, California 90053–2325.

FOR FURTHER INFORMATION CONTACT: Mr. Rey Farve, Environmental Coordinator, telephone (213)–452–3864, or Mr. Tony Risko, Chief, Coastal Studies Group, telephone (213)–452–3833.

SUPPLEMENTARY INFORMATION:

1. Authorization

This Feasibility Study was authorized by U.S. House Committee on Transportation and Infrastructure Resolution dated 7 May 1997 which states, in part: ''Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, that the Secretary of the Army is requested to review the report of the Chief of Engineers on Morro Bay Harbor, San Luis Obispo County, California published as House Document 103–33, 103rd Congress, 1st Session, and other pertinent reports to determine whether modifications of the recommendations contained therein are advisable at the present time in the interest of environmental protection and restoration and related purposes within the Morro Bay Estuary in Morro Bay, California.''

2. Background

Morro Bay Estuary is located on the central coast of California within the City of Morro Bay, California. The Morro Bay Estuary joined the Environmental Protection Agency's National Estuary Program in July 1995. The Bay contains the most significant wetland system on California's south central coast. It serves a critical environmental function on the Pacific coast and serves national and international interests, in that the Estuary supports several federally listed threatened or endangered species, many species of migratory birds protected by international treaties, and provides a protected harbor of offshore marine fisheries.

There are many known and potential threats to this nationally significant estuary. Sediment threatened to shorten the life of this open water resource by as much as ten-fold. Other water quality concerns include excessive levels of bacteria, nutrients, and heavy metals. Water diversion, urban and agricultural runoff, and increasing impervious surfaces threaten the long-term health of the Bay.

The predominant problem that threatens the Morro Bay Estuary ecosystem is excessive sedimentation during periods of stormwater flows from Lost Osos and Chorro Creeks. This results in significant increases in the volume of sediment deposited within the Bay. Deposition results in loss of wetlands as large-scale sedimentation promotes swift progression from marine to degraded salt marsh habitat.

The non-federal sponsor of the Feasibility Study is the County of San Luis Obispo.

3. Alternatives

The Feasibility Study will focus on addressing the problems and needs caused by sediment deposition in the Morro Bay area. In general, alternative plans will focus on reducing the uncontrolled sediment deposition within the backbay, and associated restoration of the ecosystem. Alternative plans will also consider improving tidal circulation and tidal flushing. Other measures to restore desired environmental conditions and habitat for federal threatened and endangered species will be formulated and addressed during coordination efforts with the general public and other resource agencies. Environmentally sensitive dredging methods will be explored, and alternate sites and uses for dredged material will be considered.

The primary undesirable impacts of concern from any of the alternatives will

likely be related to disposal of dredged material, and construction impacts. These will be addressed in the study as part of the plan formulation of the Feasibility Study, and potential impacts will be analyzed in the DEIS.

4. Scoping Process

Participation of all interested Federal, State, and County agencies, groups with environmental interests, and any interested individuals is encouraged. Public involvement will be most beneficial and worthwhile in identifying the scope of pertinent, significant environmental issues to be addressed; identifying and eliminating from detailed study issues that are not significant; offering useful information such as published or unpublished data; providing direct personal experience or knowledge which informs decision making; and recommending suitable mitigation measures to offset potential impacts from the proposed action or alternatives.

A public scoping meeting is scheduled for November 1, 2001 in the City of Morro Bay. When available, the specific time and location of this meeting will be announced in a mailing to those on the mailing list developed for this project, and announced through local media channels. The purpose of the scoping meeting will be to gather information from the general public or interested organizations about issues and concerns that they would like to see addressed in the DEIS. Comments may be delivered in writing or verbally at the meeting or sent in writing to the Los Angeles District at the address given above. The scoping period will conclude 60 days after publication of this NOI.

5. Availability of the DEIS

The DEIS is expected to be available to the public for review and comment beginning in the fall of 2003.

Dated: October 12, 2001

Richard G. Thompson,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 01–26673 Filed 10–22–01; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Federal Student Assistance Programs under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Notice inviting letters of application for participation in the Quality Assurance Program.

SUMMARY: The Secretary of Education invites institutions of higher education that may wish to participate in the Quality Assurance Program, under section 487A(a) of the Higher Education Act of 1965, as amended (HEA), to submit a letter of application to participate in the program.

DATES: Letters of application may be submitted any time after October 23, 2001.

ADDRESSES: Institutions wishing to apply to participate in the Quality Assurance Program may do so by mailing a letter of application to Barbara Mroz, U.S. Department of Education, 830 First Street, NE., Washington, DC 20202–5232 or by submitting a letter of application electronically to Barbara Mroz at: *Barbara.Mroz@ed.gov*

FOR FURTHER INFORMATION CONTACT: Sharyn Hutson, U.S. Department of Education, 830 First Street, NE., Washington, DC 20202–5232, telephone: (202) 377–4379, or via internet: *Sharyn.Hutson@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape or computer diskette) on request by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background

Institutions of higher education are invited to join the Department in an effort to simplify regulations and administrative processes for the Federal Student Financial Assistance (SFA) Programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). The vision of the Quality Assurance Program, with 143 institutions currently participating, is to provide tools that help all Title IV institutions promote better service to students, compliance, and continuous improvement in program delivery. The program encourages participating institutions to develop and implement their own comprehensive systems to verify student financial aid application data.

The Department continues to support the expansion of the Quality Assurance Program. The Secretary is authorized to provide participating institutions with regulatory flexibility for the verification of student data, and to encourage alternative management approaches in the areas of institutional processing and disbursement of Title IV funds, and entrance and exit counseling.

The Secretary believes that the process of continuous improvement fostered by the institutions already participating in the Quality Assurance Program has enhanced not only the accuracy of student aid awards and payments, but also the management of student aid offices and the delivery of services to students. By expanding the Quality Assurance Program to include other management areas, the Secretary believes it can serve more institutions and promote further improvements.

Features of the Program

The mission of the Quality Assurance Program is to help schools attain, sustain, and advance exceptional student aid delivery and service excellence. For the past 16 years, the program has done that by providing participating institutions with the flexibility to design an institutional verification program that more directly focuses on their own population segments. It has also helped them target areas of administration that affect award accuracy or that may leave the institution vulnerable to potential liabilities.

The Quality Assurance Program has given institutions the tools and techniques to assess, measure, analyze, correct and prevent problems, and has provided them with data on which to base their decisions for solving problems and addressing verification items.

The Secretary encourages institutions participating in the Quality Assurance Program to evaluate their policies and procedures and adopt improvements in those procedures. Institutions measure performance and test the effectiveness of their verification program by using the Department's Quality Analysis Tool. The Quality Analysis Tool is an Institutional Student Information Record (ISIR) analysis software product that provides Financial Aid Administrators with an in-depth analysis of their applicant population. It allows them to see not only which FAFSA elements changed when verified, but also what impact these changes have upon the Expected Family Contribution (EFC). This analysis helps Financial Aid Administrators develop a targeted institutional verification program, which makes the financial aid process easier for students.

The Quality Assurance Program also helps institutions make improvements beyond verification. It helps them set goals for continuous improvement in all areas of financial aid delivery, rather than be satisfied just to achieve basic compliance. It is a management tool that works well at all types of institutions,

including 2- and 4-year public, private, and proprietary. One key benefit of the program: institutions have reported better service to students as a primary outcome of their participation in the Quality Assurance Program. The program is a partnership between the Department and the participating institutions. Both parties become engaged in promoting continuous improvement in the administration and delivery of the student financial assistance programs, thereby enhancing service to students.

Invitation for Applications

The Secretary invites institutions of higher education that administer one or more Title IV programs to submit a letter of application to participate in the Quality Assurance Program. Institutions that currently participate in the program may continue to do so without submitting a new letter of application. The Secretary will review the letter of application, which should reflect the institution's commitment to the goals of the Quality Assurance Program, as determined by the Secretary. The letter of application should address the following goals in detail:

- Attain and sustain compliance and continuous improvement in program delivery, and better service to students;
- Improve the accuracy of institutional verification programs;
- Increase institutional flexibility in managing student aid funds, while maintaining accountability for the proper use of those funds;
- Encourage the development of innovative management approaches that advance quality.

Review Process

The Department will screen prospective participants to determine if the institution meets general Title IV eligibility requirements and has a demonstrated record of program compliance. The Secretary may also consider the institution's performance with regard to financial responsibility, administrative capability, program review findings, audit findings, etc. as outlined in the regulations and in the Student Financial Aid Handbook: Institutional Eligibility and Participation section. The Secretary anticipates that the review of applications will begin within 45 days of the date of this notice. However, applications that are received later will also be considered.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: October 17, 2001.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 01–26648 Filed 10–22–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Tuesday, November 13, 2001, 8:00 a.m.–6:00 p.m.; Wednesday, November 14, 2001, 8:00 a.m.–5:00 p.m.

Public participation sessions will be held on: Tuesday, November 13, 2001, 12:15–12:30 p.m, 5:45–6:00 p.m.; Wednesday, November 14, 2001, 11:45–12:00 noon, 4:00–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSS: Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, Idaho.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board(CAB) Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *www.ida.net/users/cab/.*)

To meet with the new site manager.

To receive presentations on and to discuss:

- Potential site groundwater contamination
- Authorized DOE–Idaho funding for fiscal year 2002
- INEEL CERCLA Disposal Facility (ICDF) and the CAB's position on the facility
- INEEL efforts to identify potential new site missions

To discuss:

- Acceptable remediation objectives for the Subsurface Disposal Area
- Public perceptions related to alternatives to incineration
- Progress to date on the Decontamination and Decommissioning Decision Making Model
- CAB participation in the Top-to-Bottom DOE–HQ review

To receive status reports on:

- The dispute between DOE, the EPA, and the State of Idaho regarding the approach and schedule for cleanup at Pit 9 (located in Waste Area Group at the Radioactive Waste Management Complex)
- Workforce restructuring at the INEEL
- Coordination with the Bureau of Land Management (regarding Wildland Fires Memorandum of Understanding)

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or tele-phone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday

through Friday except Federal holidays. Minutes will also be available by writing to Ms. Wendy Lowe, INEEL CAB Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402 or by calling (208) 522–1662.

Issued at Washington, DC on October 18, 2001.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–26671 Filed 10–22–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL93–10–012 and ER93–150–019]

Boston Edison Company; Notice of Filing

October 17, 2001.

Take notice that on September 26, 2001, New England Power Company (NEP) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance refund report in accordance with the Commission's September 13, 2001 letter Order approving settlement filed June 15, 2001 in the above-captioned proceedings.

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 and protests should be filed on or before October 26, 2001. Protests will be considered by the Commission to determine 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. 01–26598 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

October 17, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. T*ype of Application:* Preliminary Permit.

b. *Project No.:* 12093–000.

c. *Date filed:* August 30, 2001.

d. *Applicant:* City of Brawley, California.

e. *Name of Project:* Colorado River Aqueduct Desalination and Salton Sea Water Supply Project.

f. *Location:* On the Colorado River Aqueduct Wasteway No. 1, and Salton Sea, in Riverside and Imperial Counties, California. Colorado River Aqueduct is owned by The Metropolitan Water District of Southern California, Wasteway No. 1 is administered by the U.S. Bureau of Reclamation, and the Salton Sea is managed by the Salton Sea Authority.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael Clinton, Michael Clinton Engineering, 3004 Harborside Drive, Las Vegas, NV 89117–2242, (702) 255–1536

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (P–12093–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A Proposed 500-foot-long, 7-foot-high dam, (2) a proposed impoundment having and surface area of 100 acres and storage capacity of 500 acre-feet and normal water surface elevation of 1670 feet msl, (3) a proposed 18-mile-long, 48-inch-diameter steel penstock, (4) a proposed powerhouse containing two generating units having an installed capacity of 8.5 MW, (5) a proposed tailrace emptying into the Salton Sea, (6) a proposed 8-mile-long, 12.5 kV transmission line, and (7) appurtenant Facilities.

The project would have an annual generation of 100 GWh that would be sold to a local utility.

l. Copies of this filing are on file with the Commission and are available for 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).

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified

comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26600 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–003]

Colorado Interstate Gas Company; Notice of Compliance Filing

October 17, 2001.

Take notice that on October 11, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 1, 2001:

Fifth Revised Sheet No. 7A
First Revised Sheet No. 7B
First Revised Sheet No. 7C
Seventh Revised Sheet No. 8A
Second Revised Sheet No. 8B
First Revised Sheet No. 13C
First Revised Sheet No. 13D
Seventh Revised Sheet No. 21
Third Revised Sheet No. 30
Third Revised Sheet No. 132A.03
Third Revised Sheet No. 231A
Eleventh Revised Sheet No. 234A
Fourth Revised Sheet No. 306A
Fifth Revised Sheet No. 307
Seventh Revised Sheet No. 352
Fifth Revised Sheet No. 353
Fifth Revised Sheet No. 354
Second Revised Sheet No. 355
Seventh Revised Sheet No. 358

CIG states that the tariff sheets are being filed in compliance with Ordering Paragraph (D) of the Commission's September 26, 2001 order in this proceeding addressing the new services proposed by CIG in its rate case.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 01–26606 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–009]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Contract and Non-Conforming Service Agreement

October 17, 2001.

Take notice that on October 12, 2001, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and Engage Energy America LLC (Engage) (FT Service Agreement). The FT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and Engage commencing December 1, 2001. Engage obtained the capacity as the successful bidder in an open season held for the capacity. The FT Agreement also constitutes a non-conforming service agreement as contemplated in § 154.1(d) of the Commission's regulations.

Great Lakes states that the FT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

Great Lakes also states that the FT Service Agreement is a non-conforming service agreement in that it deviates in a material aspect from the form of service agreement in Great Lakes' tariff. Accordingly, Great Lakes has also filed Tenth Revised Sheet No. 1 and Original Sheet No. 90 for inclusion in Great Lakes' FERC Gas Tariff, Second Revised Volume No. 1, identifying the FT Service Agreement as a non-conforming service agreement as required by § 154.112(b) of the Commission's regulations, effective December 1, 2001.

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 on or before October 24, 2001. 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. 01–26604 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–157–005]

Kern River Gas Transmission Company; Notice of Negotiated Rate

October 17, 2001.

Take notice that on October 10, 2001, Kern River Gas Transmission Company (Kern River) tendered the following tariff sheets for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, with an effective date November 1, 2001:

Second Revised Sheet No. 2
Sheet Nos. 491–494 (Reserved)
Original Sheet No. 495
Sheet Nos. 496–499 (Reserved)
Second Revised Sheet No. 912 (Reserved)

Kern River states that the purpose of this filing is to implement negotiated rate transactions between Kern River and Questar Gas Company, and between Kern River and the Town of Eagle Mountain, in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Kern River states that a copy of this filing has been served upon its customers and interested 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.

David P. Boergers,

Secretary.

[FR Doc. 01–26605 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

October 17, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12104–000.

c. *Date filed:* August 2, 2001.

d. *Applicant:* NatEl System US.

e. *Name of Project:* W. D. Mayo Dam Project.

f. *Location:* On the Arkansas River, in Sequoyah and LeFlore Counties, Oklahoma. Would utilize the U.S. Army Corps of Engineer's existing W. D. Mayo Dam Lock and Dam #14.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gary F. Ricketts, 2760 76th Avenue SE., Suite 208, Mercer Island, WA 98040, (206) 275–0390.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (P–12104–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 11932–000, Date Filed: March 29, 2001, Date Notice Closed: August 8, 2001.

l. *Description of Project:* The proposed project using the U.S. Army Corps of Engineer's W. D. Mayo Dam and impoundment would consist of: (1) A proposed powerhouse containing 7 generating units having a total installed capacity of 35 MW, (2) a proposed 2-mile-long, 25 kV transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 155 GWh that would be sold to a local utility.

m. Copies of this filing are on file with the Commission and are available for 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).

n. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26601 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–2–000]

Natural Gas Pipeline Company of America; Notice of Termination of Gathering Service

October17, 2001.

Take notice that on October 1, 2001, Natural Gas Pipeline Company of America (Natural), tendered for filing in Docket No. RP02–2–000 a request pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c, and the Federal Energy Regulatory Commission's policy set forth in its order on rehearing in *Arkla Gathering Services Company*, 69 FERC ¶61,280 (1994) for authorization to terminate services through previously certificated and uncertificated gathering facilities located in Beckham and Washita Counties, Oklahoma (Elk City, Elk Creek, Liberty Prospect, Southwest Burns Flat and West Sentinel Area Facilities) effective November 1, 2001. Natural intends to sell these facilities to Aquila Gas Processing Corporation (Aquila).

Natural states that copies of the filing have been mailed to the customers which are currently receiving service via the subject facilities 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 on or before October 24, 2001. 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. 01–26607 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–413–001—1]

Northern Natural Gas Company; Notice of Compliance Filing

October 17, 2001.

Take notice that on October 9, 2001, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariffs, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on September 27, 2001:

Fifth Revised Volume No. 1
  Eighth Revised Sheet No. 6
Original Volume No. 2
  23 Revised Sheet No. 1A.1
  Fourth Revised Sheet No. 544

Northern states that the above sheets represent cancellation of Rate Schedule T–12 from Northern's Original Volume No. 2 FERC Gas Tariff, and its associated deletion from the Table of Contents in Northern's Volume Nos. 1 and 2 tariffs.

Northern states that copies of the filing were served upon the company's customers and interested state Commissions.

Any person desiring to be heard or to protest said application 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 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 29, 2001. 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 be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((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.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 01–26596 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–438–000]

Northwest Pipeline Corporation; Notice of Site Visit

October 17, 2001.

On October 23–24, 2001, the Office of Energy Projects (OEP) staff will conduct a pre-certification site visit of Northwest Pipeline Corporation's (Northwest) Rockies Expansion Project in various counties in Wyoming and Idaho. We will examine the proposed project route and possible route variations. An aerial inspection is scheduled for the entire route on the 23rd and the morning of the 24th. A ground inspection will be conducted by automobile and on foot on the afternoon of the 24th. The ground inspection will be limited to the proposed Pocatello Loop route. Representatives of Northwest will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. For further information on attending the site visit, please contact the Commission's Office of External Affairs at (202) 208–0004.

David P. Boergers,

Secretary.

[FR Doc. 01–26597 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–058]

Tennessee Gas Pipeline Company; Notice of Change in Rates and Negotiated

October 17, 2001.

Take notice that on September 26, 2001, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a notice of a change in the rates for the October 18, 2000 Negotiated Rate Agreement between Tennessee and Dynegy Marketing and Trade which was accepted by the Commission in *Tennessee Gas Pipeline Company,* 93 FERC ¶61,168 (2000) (November 17 Order). As agreed to in the November 17 Order, Tennessee is providing notice of substitution of a fixed price effective October 1, 2001.

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 on or before October 24, 2001. 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. 01–26603 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 17, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12087–000.

c. *Date filed:* July 16, 2001.

d. *Applicant:* White River Falls Energy Associates, Inc.

e. *Name of Project:* White River Falls Project.

f. *Location:* On the White River, near the Town of Maupin in Wasco County, Oregon. The project would not use any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles G. Prewitt, White River Falls Energy Associates, Inc., 1415 140th Avenue NE., #9, Bellevue, WA, 98005 (425) 957–1874.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (P–12087–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 400-foot-long, 5-foot-high diversion dam with a negligible

impoundment, (2) a proposed 1500-foot-long, 8.5-foot-diameter tunnel, (3) a proposed 300-foot-long, 8.5 foot-diameter steel penstock, (4) a proposed powerhouse containing one generating unit having an installed capacity of 8.5 MW, (5) a proposed tailrace, (5) a proposed 600-foot-long, 69 kV Transmission line, and (6) appurtenant facilities.

The project would have an annual generation of 33 GWh that would be sold to a local utility.

l. 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).

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26599 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Eergy Regulatory Commission

[Docket No. ER01–1695–001, *et al.*]

Boston Edison Company, *et al.*; Electric Rate and Corporate Regulation Filings

October 17, 2001.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company

[Docket No. ER01–1695–001, Docket No. ER01–1695–003, Docket No. ER01–1705–001, Docket No. ER01–1705–003, Docket No. ER01–1782–001, Docket No. ER01–1782–003]

Take notice that on October 12, 2001, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company (the NSTAR Companies) tendered for filing with the Federal Energy Regulatory Commission (Commission) Attachment K to their respective Open Access Transmission Tariffs, ''Standard Form of Interconnection Agreement'' in compliance with the Commission's August 13, 2001 and September 12, 2001 orders in the above-referenced dockets. Cambridge Electric Light Company, et al., 96 FERC 61,205, and Cambridge Electric Light Company, et al., 96 FERC 61,269.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Southern Company Services, Inc.

[Docket No. ER01–2854–001]

Take notice that on October 12, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), resubmitted to the Federal Energy Regulatory Commission (Commission) Amendment No. 2 to the Agreement for Network Integration transmission Service for Alabama Electric Cooperative, Inc., under Southern Companies Open Access transmission tariff to Add Delivery Points. This refiling is made in compliance with

FERC's letter order accepting Amendment No. 2 for filing dated September 14, 2001 in FERC Docket No. ER01–2854–000. Amendment No. 2 provides that transmission service under the referenced service agreement (Service Agreement No. 225 under Southern Companies Open Access Transmission Tariff (FERC Electric Tariff Original Volume No. 5) is to be provided at two new delivery points and it specifies the estimated Direct Assignment Facility Charges for these additional delivery points.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. ISO New England Inc.

[Docket No. ER01–316–004]

Take notice that on September 24, 2001, ISO New England Inc. (the ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Compliance Report pursuant to the Commission Order dated September 12, 2001.

Comment date: October 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER02–79–000]

Take notice that on October 12, 2001, Southern California Edison Company (SCE) submitted to the Federal Energy Regulatory Commission (Commission) Letter Agreements between SCE and High Desert Power Project, LLC (High Desert), Pegasus Power Partners, LLC (Pegasus), Energy Unlimited, Inc. (Energy Unlimited) and Blythe Energy, LLC (Blythe).

These Agreements specify the terms and conditions under which SCE will provide limited pre-interconnection services including procurement, engineering, and limited construction. Copies of this filing were served upon the Public Utilities Commission of the State of California and High Desert, Pegasus, Energy Unlimited, and Blythe.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. American Transmission Systems, Inc., Ohio Edison Company,The Cleveland, Electric Illuminating Company, and The Toledo Edison Company

[Docket No. ER02–80–000]

Take notice that on October 12, 2001, American Transmission Systems, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) on behalf of itself and Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, a Service Agreement for Network Integration Service and Operating Agreement for the Network Integration Transmission Service under the Ohio Retail Electric Program with Sempra Energy Solutions pursuant to the American Transmission Systems, Inc. Open Access Tariff. This agreement will enable the party to obtain Network Integration Service under the Ohio Retail Electric Program in accordance with the terms of the Tariff. The proposed effective date under this agreement is October 10, 2001.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. American Transmission Company LLC

[Docket No. ER02–81–000]

Take notice that on October 12, 2001, American Transmission Company LLC (ATCLLC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Revised Network Operating Agreement and a Revised Network Integration Service Agreement for Consolidated Water Power Company. ATCLLC requests an effective date of October 1, 2001.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Energy Supply Company, LLC

[Docket No. ER02–82–000]

On behalf of Hatfield's Ferry, LLC

Take notice that on October 12, 2001, Allegheny Energy Supply Company, LLC, on behalf of its to-be-formed subsidiary, Hatfield's Ferry, LLC (Hatfield) filed with the Federal Energy Regulatory Commission (Commission) a market rate tariff of general applicability under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates, and to make such sales to franchised public utility affiliates at rates capped by a publicly available regional index price.

Hatfield requests an effective date no later than November 16, 2001, and also requests expedited Commission review so an order may be issued by November 16, 2001.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Energy Vermillion, LLC

[Docket No. ER02–83–000]

Take notice that on October 12, 2001, Duke Energy Vermillion, LLC (Duke Vermillion) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 205 of the Federal Power Act an executed Electric Energy And Ancillary Service Sales Agreement, dated as of September 13, 2001 between Duke Vermillion and the Duke Energy Trading and Marketing, LLC as a service agreement under the Duke Vermillion's FERC Electric Tariff No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Nevada Power Company

[Docket No. ER02–84–000]

Take notice that on October 12, 2001, Nevada Power Company (Nevada Power) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, an executed Interconnection and Operation Agreement between Nevada Power and Duke Energy Moapa, LLC.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Lake Road Generating Company, L.P.

[Docket No. ER02–85–000]

Take notice that on October 12, 2001, Lake Road Generating Company, L.P. (Lake Road) tendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement for power sales (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) pursuant to which Lake Road will sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PG&E Dispersed Generating Company, LLC

[Docket No. ER02–86–000]

Take notice that on October 12, 2001, PG&E Dispersed Generating Company, LLC (PG&E Dispersed Gen) tendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement for power sales (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P.

(PGET) pursuant to which PG&E Dispersed Gen will sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Millennium Power Partners, L.P.

[Docket No. ER02–87–000]

Take notice that on October 12, 2001, Millennium Power Partners, L.P. rendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement for power sales (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P. pursuant to which Millennium will sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Rate Schedule No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Madison Windpower, LLC

[Docket No. ER02–88–000]

Take notice that on October 12, 2001, Madison Windpower, LLC (Madison) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission) a service agreement for power sales (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) pursuant to which Madison will sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Mountain View Power Partners, LLC

[Docket No. ER02–89–000]

Take notice that on October 12, 2001, Mountain View Power Partners, LLC (Mountain View) filed with the Federal Energy Regulatory Commission (FERC or Commission) a service agreement for power sales (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) as required by the Commission in its letter Order of February 9, 2001. See Mountain View Power Partners, LLC, Docket No. ER01–1336–000 (delegated letter order issued February 9, 2001) (Section 205 Letter Order). See also Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC 61,139 clarified, 65 FERC 61,081 (1993) (permitting non-marketer public utilities with umbrella form of service agreements on file with the Commission to file individual, executed service agreements with the Commission within thirty days of commencing service). The Service Agreement commits Mountain View to sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff No. 1.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Williams Energy Marketing & Trading Company

[Docket No. ER02–91–000]

Take notice that on October 12, 2001, Williams Energy Marketing & Trading Company (Williams EM&T) made an informational filing with the Federal Energy Regulatory Commission (Commission) detailing and supporting their Annual Fixed Revenue Requirements and their Variable O&M Rates as required by Schedule F of the reliability Must Run Agreement with the California Independent System Operator (CAISO). Copies of the filing have been served upon the CAISO both in hard copy and electronic format. Williams EM&T requests an effective date of January 1, 2002.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER02–92–000]

Take notice that on October 12, 2001, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Generator Interconnection and Operating Agreement (Interconnection Agreement) with CPV Cunningham Creek LLC (CPV). The unexecuted Interconnection Agreement sets forth the terms and conditions governing the interconnection between a combustion turbine and steam cycle project to be constructed by CPV and Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission accept this filing and make the Interconnection Agreement effective on December 11, 2001.

Copies of the filing were served upon CPV Cunningham Creek LLC and the Virginia State Corporation Commission.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Consumers Energy Company

[Docket No. ER02–94–000]

Take notice that on October 12, 2001 Consumers Energy Company (Consumers) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Nordic Marketing, L.L.C., (Customer) under Customer' FERC Electric Tariff No. 9 for Market Based Sales. Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Consumers requested that the Agreement be allowed to become effective as of September 26, 2001.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Power Resource Group, Inc.

[Docket No. ER02–95–000]

Take notice that on October 12, 2001, Power Resource Group, Inc. (PRG) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its market-based rate schedule, Rate Schedule FERC No. 1, Original Volume No. 1. PRG proposes that its Rate Schedule FERC No. 1, Original Volume No. 1 become effective October 15, 2001, which is one business day after the date of filing.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Company

[Docket No. ER02–96–000]

Take notice that on October 12, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Pepco Energy Services designated as Service Agreement No. 343 under the Company's Retail Access Pilot Program, pursuant to Attachment L of the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers effective June 7, 2000. Copies of the filing were served upon Pepco Energy Services, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Dominion Virginia Power requests an effective date of October 1, 2001, the date requested by the customer.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Doyle I, L.L.C. Walton Electric Membership Corporation

[Docket No. EC02–3–000]

Take notice that on October 12, 2001, Doyle I, L.L.C. (Doyle) (on behalf of Power Generation Investco, L.L.C. (Investco) and Enron North America Corp. (ENA) and Walton Electric Membership Corporation (Walton) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Investco will transfer all of the membership interests it holds in Doyle to Walton through an LLC Interest Purchase Agreement. Applicants request confidential treatment of Exhibit I, pursuant to 18 CFR 388.112 of the Commission's regulations, for the written instruments associated with the proposed disposition.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Holdings, Inc. Select Energy, Inc.

[Docket No. EC02–4–000]

Take notice that on October 12, 2001, Niagara Mohawk Holdings, Inc. and Select Energy, Inc. filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Select Energy will acquire all of the common stock of Niagara Mohawk Energy Marketing, Inc., an indirect, wholly owned subsidiary of Niagara Mohawk Holdings, Inc. and an indirect change of control of the jurisdictional facilities of Niagara Mohawk Energy Marketing, Inc. will occur as a result of the proposed stock transfer.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Vermont Yankee Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC

[Docket No. EC02–5–000]

Take notice that on October 12, 2001, Vermont Yankee Nuclear Power Corporation (VYNPC) and Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY) filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby VYNPC will divest, and Entergy Nuclear VY will acquire, the 510 megawatt Vermont Yankee Nuclear Power Station located in Vernon, Vermont, including the facility's appurtenant interconnection facilities.

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Boston Edison Company

[Docket Nos. EL93–10–000,013 and ER93–150–000, 020]

Take notice that on October 12, 2001, Boston Edison Company (Boston Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission), in compliance with the Commission's September 13, 2001 order in Docket Nos. EL93–10–000, 010 and EL93–150–000, 017, a refund report and notices of cancellation in connection with services it had provided to Commonwealth Electric Company and Montaup Electric Company pursuant to Pilgrim Unit sale contracts with those utilities (FPC Rate Schedule Nos. 68 and 69, respectively).

Copies of the filing were served upon Commonwealth Electric Company and National Grid USA (the successor to Montaup Electric Company).

Comment date: November 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Mirant Chalk Point, LLC; Mirant Mid-Atlantic, LLC; Mirant Peaker, LLC; Mirant Potomac River, LLC

[Docket No. EL01–97–001]

Mirant Americas Energy Marketing, L.P., Potomac Electric Power Company

[Docket No. ER01–2634–001]

Take notice that on October 15, 2001, Mirant Americas Energy Marketing, L.P. (Mirant Americas) and Potomac Electric Power Company jointly tendered for filing with the Federal Energy Regulatory Commission (Commission), in accordance with the Commission's order issued on September 14, 2001, in the above-captioned docket, two service agreements pursuant to Mirant Americas' FERC Electric Market Rate Tariff, Original Volume No. 1.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Pacific Gas and Electric Company

[Docket Nos. ER91–505–007 and EL92–18–004]

Take notice that on October 12, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing modifications to the Supplements to PG&E Rate Schedule FERC No. 143, the Principles for Tesla-Midway Transmission Service (SOTP) between PG&E and Transmission Agency of Northern California (TANC) in compliance with Orders of the Federal Energy Regulatory Commission (Commission) in Docket Nos. ER91–505–001 and EL92–18–000. The modifications are detailed in the redline version of the Supplements submitted in this filing.

Copies of this filing have been served upon the California Public Utilities Commission and to the parties designated on the service list compiled by the Commission in FERC Docket Nos. ER91–505–000 and EL92–18–000.

Comment date: November 2, 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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of 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. 01–26668 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–3–000, *et al*.]

Llano Estacado Wind, LP, *et al*; Electric Rate and Corporate Regulation Filings

October 16, 2001.

Take notice that the following filings have been made with the Commission:

1. Llano Estacado Wind, LP

[Docket No. EG02–3–000]

Take notice that on October 10, 2001, Llano Estacado Wind, LP, 823 Congress Avenue, Suite 515, Austin, Texas 78701, (Llano Estacado Wind) filed 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.

Llano Estacado Wind is a Texas limited partnership that plans to construct, own and operate the Llano Estacado Wind RanchTM at White Deer, a small power production facility located approximately three miles northwest of White Deer, Texas in Carson County (the Facility), and will engage exclusively in the generation of electric energy for sale at wholesale. The Facility will consist of a wind-powered generation facility with a power production capacity of approximately 78.8 megawatts and associated control, substation and interconnection facilities. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge that represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992.

Copies of this Application have been served upon the Public Utilities Commission of Texas and the Securities and Exchange Commission.

Comment date: November 6, 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.

2. GNE, LLC

[Docket No. EG02–4–000]

Take notice that on October 5, 2001, GNE, LLC, located at 1 Katahdin Avenue, Millinocket, Maine, 04462–1398, filed 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.

GNE, LLC is a Delaware limited liability company that will own and operate four hydroelectric plants located at or near Millinocket, Maine, with a total nameplate capacity of approximately 130 megawatts and certain undivided joint ownership interests in several transmission interconnection components that will be part of the eligible facility. GNE, LLC will be engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: November 6, 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. Energy Services Nevada, Inc.

[Docket No. EG02–6–000]

Take notice that on October 9, 2001, Energy Services Nevada, Inc. (Applicant), filed with the Federal Energy Regulatory Commission (Commission), an application for a determination of Exempt Wholesale Generator status pursuant to Part 365 of the Commission's regulations.

Applicant will own or operate, or both own and operate, an electric cogeneration facility with a capacity of approximately 2.7 MW (along with appurtenant interconnected transmission facilities) located in Fernley, Nevada. All electric output from the facility will be sold exclusively by Applicant at wholesale.

Comment date: November 6, 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. ISO New England Inc.

[Docket Nos. EL00–62–036]

Take notice that on October 3, 2001 the New England Power Pool (NEPOOL) Participants Committee submitted to the Federal Energy Regulatory Commission (Commission), the Seventy-Eighth Agreement Amending New England Power Pool Agreement and the Seventy-Ninth Agreement Amending New England Power Pool Agreement in response to requirements of the Commission's August 27, 2001 order in Docket No.EL00–62–030, New England Power Pool, 96 FERC 61,228 (2001), and the Commission's August 28, 2001 order in Docket Nos. EL00–62–026 and EL00–62–029, ISO New England Inc., 96 FERC 61,234 (2001). NEPOOL has noted for each an effective date of September 1, 2001.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service list in the captioned proceeding, the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment date: November 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket Nos. EL02–5–000 and ER02–65–000]

Take notice that on October 9, 2001, Arizona Public Service Company (APS) tendered for filing a petition for a declaration of APS' rights and obligations with respect to a Lease Power Agreement between APS and Electrical District No. Three of the County of Pinal and the State of Arizona (ED–3).

APS also submits notice of termination of a Lease Agreement governing the Facilities.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Co.

[Docket Nos. ER93–465–029, ER93–922–015, EL94–12–010, OA96–39–005, ER96–2381–003]

Take notice that on October 11, 2001, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission (Commission) a refund compliance report in connection with the July 7, 2000 settlement agreement between FPL and Orlando Public Utilities, which the Commission approved by a letter order issued September 13, 2001, in the above-captioned dockets. Applicants state that copies of this filing have been served on the official service lists in the above-captioned dockets.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Energy Group of America, Inc.

[Docket No. ER01–2694–001]

Take notice that on October 11, 2001, the Energy Group of America, Inc. submitted for filing with the Federal Energy Regulatory Commission (Commission) a First Revised Rate Schedule No. 1 in compliance with the Commission's Letter Order dated September 18, 2001. The First Revised Rate Schedule No.1 has been modified to incorporate the designation information required by Order No. 614.

The Energy Group of America, Inc. states that a copy of this filing has been

served on each person designated on the official service list in Docket ER01–2964.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Pilot Power Group, Inc.

[Docket No. ER01–1699–003]

Take notice that on October 9, 2001, Pilot Power Group, Inc. (Pilot) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's Order on April 30, 2001, submitting its index and a description of its seller/end users.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Midwest independent Transmission

[Docket No. ER01–3142–001]

Take notice that on October 11, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a corrected copy of the clean version of Attachment Q to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, which was previously accepted for filing in Docket No. ER98–1438–000, and which has been reformatted to conform to the requirements of Order No. 614.

The Midwest ISO seeks an effective date of November 27, 2001. The Midwest ISO also seeks waiver of the Commission's Regulations, 18 CFR 385.2010 (2000) with respect to service on all parties on the official service list in this proceeding.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Southwest Power Pool, Inc.

[Docket No. ER02–57–000]

Take notice that on October 9, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing with the Federal Energy Regulatory Commission (Commission) a service agreement for Firm Point-to-Point Transmission Service with Southwestern Public Service Marketing (Transmission Customer). SPP requests an effective date of January 1, 2002 for this service agreement.

A copy of this filing was served on the Transmission Customer.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER02–58–000]

Take notice that on October 9, 2001, Ameren Services Company (ASC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Transmission System Interconnection Agreement between ASC and Clay County Trust 2000. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Clay County Trust 2000 pursuant to Ameren's Open Access Transmission Tariff.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Xcel Energy Services Inc.

[Docket No.ER02–59–000]

Take notice that on October 9, 2001, Xcel Energy Services Inc. (XES), on behalf of Public Service Company of Colorado (PSCo), submitted for filing with the Federal Energy Regulatory Commission (Commission) a Short-Term Firm and a Non-Firm transmission service agreement between PSCo and Exelon Generation Company, LLC.

PSCo requests that the Commission accept the agreement effective September 6, 2001, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER02–60–000]

Take notice that on October 9, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Generator Interconnection Agreement (GIA) to replace the unexecuted placeholder GIA that is part of the Generator Special Facilities Agreement (GSFA) between PG&E and Pacific Gas and Electric Company and La Paloma Generating Company, LLC, as agent for La Paloma Generating Trust, Ltd. (La Paloma) (collectively, Parties) providing for Special Facilities and the parallel operation of La Paloma's generating facility and the PG&E-owned electric system that is on file with the Commission as PG&E Rate Schedule FERC No. 220. PG&E also tendered for filing a Supplemental Letter Agreement between the Parties. A Notice of Termination will terminate PG&E Rate Schedule FERC No. 220, and the GSFA, the newly-executed GIA and Supplemental Letter Agreement will be re-designated as Service Agreement 18 under PG&E's Electric Tariff, 6th Revised Volume No. 5.

Copies of this filing have been served upon La Paloma, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Kentucky Utilities Company

[Docket No. ER02–61–000]

Take notice that on October 9, 2001, Kentucky Utilities Company tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Amendment the interconnection between Kentucky Utilities Company and East Kentucky Power Cooperative, Inc. The agreements provides for the construction of facilities to add an additional interconnection point on Kentucky Utilities Company's Loudon to Winchester 69kV transmission line to serve the new load area referred to as the Treehaven load station. Additionally, Kentucky Utilities Company will transfer load from a substation named Columbia to a new substation referred to as Columbia South on the East Kentucky Power Cooperative's Summer Shade to Sewellton Junction 69 Kv line. The Amendment is numbered 18.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Kentucky Utilities Company

[Docket No. ER02–62–000]

Take notice that on October 9, 2001, Kentucky Utilities Company tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Amendment the interconnection between Kentucky Utilities Company and East Kentucky Power Cooperative, Inc. The agreement provides for the reactivation of a previously constructed load station on the East Kentucky Power Cooperative's 69 kV line from Kentucky Utilities Company's Lynch substation to East Kentucky Power Cooperative's Oven Fork substation. The reactivated load station is referred to as the Arkland load station. The Amendment is numbered 20.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER02–63–000]

Take notice that on October 9, 2001, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Generator interconnection and Operating Agreement (Interconnection Agreement) with Swells Fargo Bank Northwest, National Association (Wells Fargo). The Interconnection agreement sets forth the terms and conditions under which Dominion Virginia Power will provide interconnection service for Wells Fargo's yet to be built generating facility.

Dominion Virginia Power respectfully requests that the Commission set an effective date of December 10, 2001 for the Interconnection Agreement.

Copies of the filing were served upon Wells Fargo bank Northwest, National Association and the Virginia State Corporation Commission.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Mirant Delta, LLC and Mirant Potrero, LLC

[Docket No. ER02–64–000]

Take notice that on October 9, 2001, Mirant Delta, LLC and Mirant Potrero, LLC provided to the Federal Energy Regulatory Commission (Commission) an informational filing in compliance with Schedule F of their respective Must-Run Service Agreements with the California Independent System Operator Corporation.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Progress Energy Inc. On behalf of Carolina Power & Light Company

[Docket No. ER02–66–000]

Take notice that on October 10, 2001, Carolina Power & Light Company (CP&L) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreement between CP&L and the following eligible buyer, The Detroit Edison Company. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

CP&L requests an effective date of September 15, 2001 for this Service Agreement.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Pool

[Docket No. ER02–67–000]

Take notice that on October 10, 2001, the New England Power Pool (NEPOOL) Participants Committee submitted a filing with the Federal Energy Regulatory Commission (Commission) requesting acceptance of proposed changes to Market Rule & Procedure 5 that amend the allocation among Participants of certain costs and payments associated with Inadvertent Energy. NEPOOL requests the Commission to allow these proposed changes to become effective on October 1, 2001.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. NRG McClain LLC

[Docket No. ER02–68–000]

Take notice that on October 10, 2001, NRG McClain LLC (NRG McClain) submitted with the Federal Energy Regulatory Commission (Commission) a Notice of Succession pursuant to Section 35.16 of the Commission's regulations, 18 CFR 35.16. As a result of the name change, NRG McClain is succeeding to the FERC Electric Tariff of Duke Energy McClain, LLC, effective August 31, 2001. The tariff sheets filed by Duke Energy McClain in Docket No. ER01–566–000 are canceled.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Edison Company

[Docket No. ER02–69–000]

Take notice that on October 10, 2001, Commonwealth Edison Company (ComEd) submitted for filing with the Federal Energy Regulatory Commission (Commission) one amended Form of Service Agreement for Firm Point-To-Point Transmission Service (Amended Service Agreement) between ComEd and Edison Mission Marketing & Trading Inc. (Edison) and one Form of Service Agreement for Firm Point-To-Point Transmission Service (Service Agreement) between ComEd and Reliant Energy Services, Inc. (Reliant) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd asks that the Amended Service Agreement with Edison supersede and be substituted for the Service Agreement with Edison previously filed on April 17, 2001 in Docket No. ER01–1813–000. The Amended Service Agreement has been amended to change Edison's roll-over rights from pending to granted. Copies of this filing were served on Edison and Reliant.

ComEd requests an effective date of October 1, 2001 for the Amended Service Agreement with Edison and an effective date of November 1, 2001 for the Service Agreement with Reliant, and therefore seeks waiver of the Commission's notice requirements.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Edison Company

[Docket No. ER02–70–000]

Take notice that on October 10, 2001 Commonwealth Edison Company (ComEd) submitted for filing with the Federal Energy Regulatory Commission (Commission) six re-executed Form of Service Agreements for Firm Point-To-Point Transmission Service (Service Agreements) between ComEd and Exelon Generation Company LLC (Exelon) under the terms of ComEd's Open Access Transmission Tariff (OATT). At the time Service Agreement No. 503 and Service Agreement No. 504 were entered into, the name of Exelon was Commonwealth Edison Company in it Wholesale Merchant Function. Similarly, at the time Service Agreement No. 495, Service Agreement No. 496, Service Agreement No. 497, and Service Agreement No. 498 were entered into, the name of Exelon was PECO Energy Company. Service Agreement No. 503, Service Agreement No. 504, Service Agreement No. 495, Service Agreement No. 496, Service Agreement No. 497, and Service Agreement No. 498 are being revised, at the request of Exelon, to reflect the new name of the company. A copy of this filing was served on Exelon.

ComEd requests that the re-executed Service Agreements with Exelon be granted the same effective dates as were previously granted them. Accordingly, ComEd requests an effective date of January 1, 2001 for Service Agreement Nos. 503, 495, 496, 497, and 498, and an effective date of January 8, 2001 for Service Agreement No. 504.

Comment date: October 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Cinergy Services, Inc.

[Docket No. ER02–71–000]

Take notice that on October 11, 2001, Cinergy Services, Inc. (Provider)

tendered for filing with the Federal Energy Regulatory Commission (Commission) a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Exelon Generation Company, LLC (Customer).

Provider and Customer are requesting an effective date of September 11, 2001.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Cinergy Services, Inc.

[Docket No. ER02–72–000]

Take notice that on October 11, 2001, Cinergy Services, Inc. (Provider) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and Exelon Generation Company, LLC (Customer).

Provider and Customer are requesting an effective date of September 11, 2001.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Llano Estacado Wind, LP

[Docket No. ER02–73–000]

Take notice that on October 11, 2001, Llano Estacado Wind, LP (Llano Estacado Wind) submitted for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, an Application of Llano Estacado Wind, LP for Blanket Authorizations, Certain Waivers, and Order Accepting Tariff. Llano Estacado Wind will own and operate a 79.8 megawatt wind-powered generating facility near White Deer in Carson County, Texas.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. Xcel Energy Services Inc.

[Docket No. ER02–74–000]

Take notice that on October 11, 2001, Xcel Energy Services Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), submitted for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement between Public Service and Midwest Energy, Inc., which is an umbrella service agreement under Public Service's Rate Schedule for Market-Based Power Sales (FERC Electric Tariff, First Revised Volume No. 6). XES requests that this agreement become effective on September 30, 2001.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. Public Service Company of New Mexico

[Docket No. ER02–75–000]

Take notice that on October 11, 2001, Public Service Company of New Mexico (PNM) submitted for filing with the Federal Energy Regulatory Commission (Commission) two executed service agreements with Pinnacle West Marketing & Trading, under the terms of PNM's Open Access Transmission Tariff. One agreement is for non-firm point-to-point transmission service and one agreement is for short-term firm point-to-point transmission service. PNM requests October 4, 2001, as the effective date for the agreements. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Pinnacle West Marketing & Trading, and to the New Mexico Public Regulation Commission.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

28. PacifiCorp

[Docket No.ER02–76–000]

Take notice that PacifiCorp on October 11, 2001, tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission (Commission) Rules and Regulations, three Long-Term Firm Transmission Service Agreements with PacifiCorp Power Marketing (PPM) under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

29. New Mexico Electric Marketing, LLC

[Docket No. ER02–77–000]

Take notice that on October 11, 2001, New Mexico Electric Marketing, LLC, 1044 North 115 Street, Suite 400, Omaha, Nebraska 68154 (NewMex) submitted for filing with the Federal Energy Regulatory Commission (Commission) an application for blanket authorization and certain waivers under regulations of the Commission, and for an order accepting its FERC Electric Rate Schedule No. 1, enabling NewMex to engage in electric power and energy transactions as a marketer and a broker.

In transactions where NewMex purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, NewMex will be functioning as a marketer. In NewMex's marketing transactions, NewMex proposes to charge rates mutually agreed upon by the parties. In transactions where NewMex does not take title to electric power and/or energy, NewMex will be limited to the role of a broker and will charge a fee for its services. NewMex is not in the business of producing electric power nor does it contemplate acquiring title to any electric power transmission facilities.

Comment date: November 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

30. Midwest Independent Transmission System Operator, Inc. American Transmission Company LLC

[Docket No. ER02–78–000]

Take notice that on October 11, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and American Transmission Company LLC (ATCLLC) tendered for filing with the Federal Energy Regulatory Commission (Commission) Midwest ISO rate schedules that reflect the current ATCLLC open access transmission rates for service within the ATCLLC rate zone under the Midwest ISO tariff. The Midwest ISO and ATCLLC request an effective date commensurate with the operation date of the Midwest ISO, currently expected to be December 15, 2001.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all required parties. The Midwest ISO has posted its reformatted OATT on its Internet site at *www.midwestiso.org,* and the Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: November 1, 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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of 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. 01–26667 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 17, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12120–000.

c. *Date filed:* September 12, 2001.

d. *Applicant:* North Unit Irrigation District.

e. *Name of Project:* Wickiup Dam Project.

f. *Location:* On the Deschutes River, in Deschutes County, Oregon. The proposed project would utilize the existing Wickiup Dam and reservoir administered by the U.S. Bureau of Reclamation and located on U.S. Forest Service Land within the Deschutes National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Chuck Schonneker, North Unit Irrigation District, 2024 NW Beech Street, Madras, OR 97741, (503) 475–3625.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (P–12120–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 11953–000, Date Filed: April 16, 2001, Date Notice Closed: August 14, 2001.

l. *Description of Project:* The proposed project using the U.S. Bureau of Reclamation's Wickiup Dam and impoundment would consist of: (1) Two proposed 79-foot-long, 96-inch-diameter steel penstocks that converge to one proposed 21-foot-long, 120-inch-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 7 MW, (3) a proposed 9.1-mile-long, 24.7 kV transmission line, and (4) appurtenant facilities.

The project would have an annual generation of 26.1 GWh that would be sold to a local utility.

m. Copies of this filing are on file with the Commission and are available for 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).

n. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to

have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–26602 Filed 10–22–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7088–7]

EPA Science Advisory Board: Executive Committee Teleconference; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Executive Committee of the US EPA Science Advisory Board (SAB) will meet on Wednesday, November 14, 2001 from 11:00 am–2:00 pm Eastern Time. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Diana Pozun (see contact information below). The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included in the FR citations given below.

Purpose of the Meeting—In this meeting, the Executive Committee plans to review reports from some of its Committees/Subcommittee, most likely including the following:

(a) *Environmental Health Committee (EHC) & Integrated Human Exposure Committee (IHEC) Joint Review Panel*—Proposed Indoor Air Pollutant Ranking Methodology: An SAB Report (see 66 FR 34924, dated July 2, 2001 for details).

(b) *Ecological Processes and Effects Committee (EPEC)*—(1) USEPA's Science to Achieve Results STAR Program for Waters and Watersheds: An SAB Report (see 66 FR 15433, dated March 19, 2001); and (2) Planning for Ecological Risk Assessment: Developing Management Objectives: An SAB Report (see 66 FR 34924, July 2, 2001 for details)

Please check with Diana Pozun (see contact information below) prior to the meeting to determine which reports will be on the agenda as last minute changes can take place.

Availability of Review Materials: Drafts of the reports that will be reviewed at the meeting will be available to the public at the SAB website (*http://www.epa.gov/sab*) approximately two weeks prior to the meeting.

Charge to the Executive Committee: The focus of the review of these four reports will be to on the following questions: (a) Has the SAB adequately responded to the questions posed in the Charge? (b) Are the statements and/or responses in the draft report clear? And (c) Are there any errors of fact in the report?

In accord with the Federal Advisory Committee Act (FACA), the public and the Agency are invited to submit written comments on these three questions that are the focus of the review. Submissions should be received by November 7, 2001 by Ms. Diana Pozun, EPA Science Advisory Board, Mail Code 1400A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (Telephone (202) 564–4544, FAX (202) 501–0323; or via e-mail at: *pozun.diana@epa.gov*. Submission by e-mail to Ms. Pozun will maximize the time available for review by the Executive Committee.

The SAB will have a brief period available for applicable public comment. Therefore, anyone wishing to make oral comments on the three focus questions above, but that are not duplicative of the written comments, should contact the Designated Federal Officer for the Executive Committee, Dr. Donald G. Barnes (see contact information below) by November 7, 2001.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (3 minutes or less) must contact Dr. Donald Barnes, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Barnes no later than noon Eastern Standard Time on November 7, 2001.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Barnes at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 17, 2001.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 01–26686 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7088–4]

Notice of Proposed Administrative Order on Consent Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Economy Products Superfund Site, Shenandoah, IA, Docket No. CERCLA 07–2001–0007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative order on consent, Economy Products Superfund Site, Shenandoah, Iowa.

SUMMARY: Notice is hereby given of a proposed administrative order on consent for recovery of past and projected future response costs concerning the Economy Products Superfund Site in Shenandoah, Iowa with the following party: Factory Place, L.C. This proposed settlement was approved by the United States Department of Justice (DOJ) on August 22, 2001.

DATES: EPA will receive written comments relating to the proposed administrative order on consent by November 23, 2001.

ADDRESSES: Comments should be addressed to Gerhardt Braeckel, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to Economy Products Superfund Site Administrative Order on Consent, Docket No. CERCLA–07–2001–0007.

The proposed settlement may be examined or obtained in person or by mail from Kathy Robinson, Regional Hearing Clerk, at the office of the United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7567.

SUPPLEMENTARY INFORMATION: The Economy Products Site consists of three parts: (1) The Factory Place Facility which includes property previously owned by Economy Products, Inc. and the May Seed & Nursery Company; (2) the immediately adjacent residential property located to the south along Southwest Road; and (3) part of the railroad right-of-way across the street from the Facility. The proposed Administrative Order on Consent addresses only the Factory Place Facility.

Economy Products operated an agricultural pesticides formulation plant at Southwest Road and Eighth Avenue in the City of Shenandoah, Iowa from 1961 to 1973. Business activities ceased in 1973 when the operation was destroyed by fire, which resulted in the dispersion of pesticide residues across the Economy Products property and onto other parts of the Economy Products Superfund Site. Contaminated debris and soil were removed and disposed of off-site and approximately one foot of clay was spread over the site. May Seed & Nursery Co. purchased the property in 1976 and used it for storage. The property was sold to Factory Place, L.C. in 1999.

Site investigations of the Factory Place Facility found that several pesticides (toxaphene; aldrin; diedrin; DDT; chlordane; endrin; and heptachlor) were detected at concentrations which exceeded Removal Action Levels including toxaphene at 498.0 mg/kg in a surface soil sample.

EPA conducted an Engineering Evaluation and Cost Analysis and selected thermal desorption as the removal action in an Action Memorandum dated February 8, 2001. EPA has started the removal action at the Facility.

The partial cashout settlement requires the settling party to pay $950,000.00, including interest, into a special account to fund EPA's removal action at the Facility. The settling party also agrees to pay for 50% of any cost overruns that exceed $4,005,479. This proposed settlement includes institutional controls and a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a).

Dated: September 21, 2001.

William W. Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 01–26685 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–2367]

Rescheduled Fifth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the fifth meeting of the WRC–03 Advisory Committee that was originally scheduled for September 28, 2001 and canceled will now be held on November 15, 2001, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: November 15, 2001; 10:00 am–12:00 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Julie Garcia, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0763.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fifth meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the fifth meeting is as follows:

Agenda

Fifth Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554

November 15, 2001; 10:00 am–12:00 noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Fourth Meeting
4. Reports from regional WRC–2003 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26578 Filed 10–22–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 16, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. First Southern Bancorp, Statesboro, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Southern National Bank, Statesboro, Georgia.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lauritzen Enterprises, Omaha, Nebraska; to become a bank holding company by acquiring 88.9 percent of the voting shares of Farmers & Merchants State Bank, Bloomfield, Nebraska.

Board of Governors of the Federal Reserve System, October 17, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26583 Filed 10–22–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 16, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. The Banc Corporation, Birmingham, Alabama; to acquire CF Bancshares, Inc., Port St. Joe, Florida, and its subsidiary, Citizens Federal Savings Bank, Port St. Joe, Florida, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 17, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26584 Filed 10–22–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, October 29, 2001.

PLACE: Federal Reserve Board Offices, 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: October 19, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26769 Filed 10–19–01; 12:48 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–174]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of one update and one new draft toxicological profile, completing the 2nd set developed for the Department of Energy, prepared by ATSDR for review and comment.

DATES: To ensure consideration, comments on these draft toxicological profiles must be received on or before February 22, 2002. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles or comments regarding the draft toxicological profiles should be sent to the attention of Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–174. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection after the profile is published is final, no confidential business information or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–(888) 422–8737 or (404) 498–0720.

SUPPLEMENTARY INFORMATION: These toxicological profiles were developed by ATSDR for hazardous substances at Department of Energy (DOE) waste sites under Section 104(i)(3) and (5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund). This public law directed ATSDR to prepare toxicological profiles for hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL) and that pose the most significant potential threat to human health, as determined by ATSDR and the EPA. The current ATSDR priority list of hazardous substances at DOE NPL sites was announced in the **Federal Register** on July 24, 1996 (61 FR 38451).

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 2001.

Document	Hazardous substance	CAS No.
1	Cobalt	7440–48–4
	Cobalt (II) Acetate	71–48–7
	Cobalt (III) Acetate	917–69–1
	Cobalt (II) Carbonate	513–79–10
	Cobalt Carbonyl	10210–68–1
	Cobalt (II) Chloride	7646–79–9
	Cobalt (II) Hydroxide	21041–93–0
	Cobalt (II) Mesoporphyrin	21158–51–0
	Cobalt (II) Naphthalene	61789–51–3
	Cobalt (II) Nitrate	10026–22–9
	Cobalt (II) Oxide	1307–96–6
	Cobalt (II) Oxide	1308–4–9
2	Iodine	7553–56–2
	Hydrogen Iodide	10034–85–2
	Sodium Iodide	7681–82–5
	Potassium Iodide	7681–11–0
	Methyl Iodide	74–88–4
	Cesium Iodide	7789–17–5
	Potassium Iodate	7758–05–6
	Sodium Periodate	7790–28–5
	Calcium Iodide	10102–68–8
	Copper (I) Iodide	7681–65–4
	Povidone Iodine	25655–41–8

All profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional

information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 16, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–26585 Filed 10–22–01; 8:45 am]

BILLING CODE 4163–10–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–173]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Section 104(i)(3) [42 U.S.C. 9604(i)(3)] directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of the 15th set of toxicological profiles, which consists of three new drafts and two updated drafts, prepared by ATSDR for review and comment.

DATES: In order to be considered, comments on these draft toxicological profiles must be received on or before February 22, 2002. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles should be sent to the attention of Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Comments regarding the draft toxicological profiles should be sent to the attention of Dr. Ganga Choudhary, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–173. Send one copy of all comments and three copies of all supporting documents to Dr. Ganga Choudhary at the above stated address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–(888)422–8737 or (404)498–0720.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these responsibilities is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on October 21, 1999 (64 FR 56792). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744) and November 17, 1997 (62 FR 61332). [CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.]

Section 104(i)(3) of CERCLA [42 U.S.C. 9604(i)(3)] outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 2001.

Document	Hazardous substance	CAS No.
1	Atrazine	001912–24–9
2	Fluorides (Update).	016984–48–8
3	Malathion	000121–75–5
4	Pyrethrins and Pyrethroids.	Various.
5	Selenium (Update).	007782–49–2

All profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 17, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–26649 Filed 10–22–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–175]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of six updated final toxicological profiles of priority hazardous substances comprising the thirteenth set prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–(888)422–8737 or (404)498–0720.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on October 21, 1999 (64 FR 56792). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744; and November 17, 1997 (62 FR 61332).

Notice of the availability of drafts of these six updated toxicological profiles for public review and comment was published in the **Federal Register** on October 15, 1999, (64 FR 55943), with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notices bear the docket control number ATSDR–152. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia, (not a mailing address) between 8:00 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of six updated final toxicological profiles comprising the thirteenth set prepared by ATSDR. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Toxicological profile	NTIS Order No.	CAS No.
Thirteenth Set:		
1. Asbestos	PB2001–109101	001332–21–4
Amosite Asbestos		012172–73–5
Chrysotile Asbestos		012001–29–5
2. Benzidine	PB2001–109102	000092–87–5
3. 1,2-Dichloroethane	PB2001–109103	000107–06–2
4. Di-n-butyl Phthalate	PB2001–109104	000084–74–2
5. Methyl Parathion	PB2001–109105	000298–00–0
6. Pentachlorophenol	PB2001–109106	000087–86–5

Dated: October 16, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–26586 Filed 10–22–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0458]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed collection of information concerning requests for fast track designation by sponsors of

investigational new drugs and applicants for new drug approvals or biological licenses as provided in the guidance for industry on fast track drug development programs.

DATES: Submit written or electronic comments on the collection of information by Decmeber 24, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: 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: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review (OMB Control Number 0910–0389)—Extension

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506 (21 U.S.C. 356). The section authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrates a potential to address an unmet medical need. Under section 112(b) of FDAMA, FDA issued guidance to industry on fast track policies and procedures outlined in section 506 of the act. The guidance discusses collections of information that are specified under section 506 of the act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. The guidance describes three general areas involving collections of information: (1) Fast track designation requests, (2) premeeting packages, and (3) requests to submit portions of an application. Of these, fast track designation requests and premeeting packages, in support of receiving a fast track program benefit, provide for additional collections of information not covered elsewhere in statute or regulation. Information in support of fast track designation or fast track program benefits that has previously been submitted to the agency, may, in some cases, be incorporated into the request by referring to the information rather than resubmitting it.

Under section 506(a)(1) of the act, an applicant who seeks fast track designation is required to submit a request to the agency showing that the product meets the statutory standard for designation, i.e., that: (1) The product is intended for a serious or life-threatening condition; and (2) the product has the potential to address an unmet medical need. Mostly, the agency expects that information to support a designation request will have been gathered under existing provisions of the act, the PHS Act, or the implementing regulations. If such information has already been submitted to the agency, the information may be summarized in the fast track designation request. The guidance recommends that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the agency makes a fast track designation, a sponsor or applicant may submit a premeeting package which may include additional information supporting a request to participate in certain fast track programs. As with the request for fast track designation, the agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the act, the PHS Act, or implementing regulations. These may include descriptions of clinical safety and efficacy trials not conducted under an investigational new drug application (IND) (i.e., foreign studies), and information to support a request for accelerated approval. The discussion of such information in a premeeting package may be summarized if it has already been previously submitted to FDA under an OMB approved collection of information. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Under section 506(c) of the act, a sponsor must submit sufficient clinical data for the agency to determine, after preliminary evaluation, that a fast track product may be effective. Section 506(c) of the act also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance does not provide for any new collection of information regarding the submission of portions of an application that is not required under section 506(c) of the act or any other provision of the act. All forms referred to in the guidance have a current OMB approval: FDA Forms 1571 (OMB Control No. 0910–0014, expires September 30, 2002); 356h (OMB Control No. 0910–0338, expires March 31, 2003); and 3397 (OMB Control No. 0910–0297, expires February 29, 2004).

Respondents to this information collection are sponsors and applicants who seek fast track designation under section 506 of the act. The agency

estimates the total annual number of respondents submitting requests for fast track designation to the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) will be approximately 45. To obtain this estimate, FDA averaged the number of requests for fast track designation received by CBER and CDER in the 3-year period of 1998 to 2000. For these 3 years, CBER and CDER together received a yearly average of 53 requests from 45 respondents. The rate of submissions is not expected to change significantly in the next few years. FDA estimates that the number of hours needed to prepare a request for fast track designation may range between 40 and 80 hours per request, depending on the complexity of each request, with an average of 60 hours per request, as indicated in table 1 of this document.

Not all requests for fast track designation may meet the statutory standard. Of the average 53 requests made per year, the agency granted 33 requests for fast track designation. For each of the 33 granted requests, FDA estimates that a premeeting package was submitted to the agency. FDA estimates that a premeeting package needs more preparation time than needed for a designation request because the issues may be more complex and the data may need to be more developed. FDA estimates that the preparation hours may generally range between 80 and 120 hours, with an average of 100 hours per package, as indicated in table 1 of this document.

The hour burden estimates contained in table 1 of this document are for information collections requests in the guidance only and do not include burden estimates for statutory requirements specifically mandated by the act, the PHS Act, or implementing regulations. FDA estimates the burden of this collection of information as follows:

TABLE1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Designation request	45	1.18	53	60	3,180
Premeeting packages	33	1.00	33	100	3,300
Total					6,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–26575 Filed 10–22–01; 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; Announcement of OMB Approval; Premarket Notification 510(k) Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Premarket Notification 510(k) Submissions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 18, 2001 (66 FR 37479), 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 0910–0120. The approval expires on September 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–26573 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0276]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision for Foods With Vinclozolin Residues

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 November 23, 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.

Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision for Foods With Vinclozolin Residues Description

Under the pesticide tolerance reassessment process that the Environmental Protection Agency (EPA) was mandated to carry out under the Food Quality Protection Act of 1996 (FQPA), EPA has proposed to revoke the

tolerances for the pesticide chemical vinclozolin on several food commodities. The FQPA includes a provision in section 408(l)(5) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a(l)(5)), referred to as the ''channels of trade provision,'' that addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical whose tolerance has been revoked, suspended, or modified by EPA.

In general, FDA anticipates that the party responsible for food found to contain vinclozolin residues (within the former tolerance) after the tolerance for the pesticide chemical has been revoked, will be able to demonstrate that such food was packed or processed during the acceptable timeframes cited in the draft guidance, by providing appropriate documentation to the agency as discussed in the draft guidance. FDA is not suggesting that firms maintain a certain set list of documents where anything less or different would likely be considered unacceptable. Rather, the agency is leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so packed or processed.

Examples of documentation which FDA anticipates will serve this purpose consists of documentation associated with packing codes, batch records, and inventory records. These are types of documents that many food processors routinely generate as part of their basic food-production operations.

The likely respondents to this collection of information are firms in the produce and food-processing industries that handle food products that may contain residues of vinclozolin after the tolerances for this pesticide chemical have been revoked.

In the **Federal Register** of July 10, 2001 (66 FR 35990), 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]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
307	1	307	3	921

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
31	1	31	16	496

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimates for the annual reporting burden were determined by using the maximum number of samples collected throughout a year that FDA believes might be found to contain vinclozolin residues. The estimated annual reporting burden was determined using the total number of samples historically tested for vinclozolin and the number of samples that historically contained vinclozolin residues. These numbers established a rate of samples expected to contain vinclozolin residues. This rate, when applied to the number of potentially affected establishments, was used to calculate the number of expected respondents.

When determining the estimated annual recordkeeping burden, FDA estimated that most firms (at least 90 percent) maintain (or maintain access to) documentation such as packing codes, batch records, and inventory records as part of their basic food production and/or import operations. Therefore, the recordkeeping burden was calculated as the time required for the 10 percent of firms which may not currently be maintaining this documentation to develop and maintain (or maintain access to) documentation such as batch records, inventory records, sales records, and distribution records.

Dated: October 12, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–26651 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting and Nonvoting Consumer Representative Members on Public Advisory Committees and Panels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting and nonvoting consumer representatives to serve on its advisory committees and panels in the Center for Devices and Radiological Health, the Center for Drug Evaluation and Research, and the Center for Food Safety and Applied Nutrition. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2002.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Nominations should be received approximately 6 months before the vacancy dates listed in this notice.

ADDRESSES: All nominations with curricula vitae or resume (which should include nominee's office address, telephone number, and e-mail address) should be submitted to Maureen Hess (address below).

FOR FURTHER INFORMATION CONTACT: Maureen Hess, Office of Consumer Affairs (HFE–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5006, e-mail: MHess@oc.fda.gov.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and nonvoting consumer representatives of the following nine advisory committees and panels for vacancies listed below.

Center for Devices and Radiological Health

1. *Clinical Chemistry and Clinical Toxicology Devices Panel*: One vacancy occurring February 28, 2002.
2. *Circulatory System Devices Panel*: One vacancy occurring June 30, 2002.
3. *Gastroenterology and Urology Devices Panel*: One vacancy occurring December 31, 2002.
4. *General and Hospital Personal Use Devices Panel*: One vacancy occurring December 31, 2002.

Center for Drug Evaluation and Research

1. *Anesthetic and Life Support Drugs Advisory Committee*: One vacancy occurring March 31, 2002.
2. *Medical Imaging Drugs Advisory Committee*: One vacancy occurring June 30, 2002.
3. *Psychopharmacologic Drugs Advisory Committee*: One vacancy occurring June 30, 2002.
4. *Advisory Committee for Pharmaceutical Science*: one vacancy occurring October 31, 2002.

Center for Food Safety and Applied Nutrition

1. *Food Advisory Committee*: Five vacancies occurring June 30, 2002.

I. Criteria for Members

Persons nominated for membership on the committees as a consumer representative shall have demonstrated ties to consumer and community-based organizations and be able to analyze data, understand research design, discuss benefits and risks, and evaluate the safety and effectiveness of products under review. The consumer representative must be able to represent the consumer perspective on issues and actions before the advisory committee, serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations, and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

II. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include use of a list of organizations representing the public interest and consumer advocacy groups. The list of organizations has the responsibility for recommending candidates for the agency's selection.

III. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons for membership on one or more of the advisory committees to represent consumer interests. Self-nominations are also accepted. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or in any advisory committee. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 16, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–26572 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices 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: Ophthalmic Devices Panel of the Medical Devices 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 November 30, 2001, from 9:45 a.m. to 4:30 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, SMT@CDRH.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for a conductive keratoplasty (CK) refractive surgical device for the reduction of previously untreated spherical hyperopia in patients 40 years of age or greater, who have 0.75 diopter (D) to 3.25 D of cycloplegic spherical hyperopia, with less than or equal to 0.75 D of refractive astigmatism (minus cylinder format), a cycloplegic spherical equivalent of 0.75 D to 3.00 D, and no more than 0.50 D difference between preoperative manifest refraction spherical equivalent (MRSE) and cycloplegic refraction spherical equivalent (CRSE) which shows some regression of the initial effect over time. Background information, including the agenda and questions for the committee, will be available to the public on November 29, 2001, on the Internet at http://www.fda.gov/cdrh/panelmtg.html.

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 November 16, 2001. Formal oral presentations from the public will be scheduled between approximately 9:50 a.m. and 10:20 a.m. Near the end of the committee deliberations on the PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Those desiring to make formal oral presentations should notify the contact person before November 16, 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: October 16, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–26574 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products 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). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products 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 November 28, 2001, from 8:30 a.m. to 5:15 p.m.; and on November 29, 2001, from 8:30 a.m. to 2:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 28 and 29, 2001, the committee will review issues surrounding efficacy trial endpoints for vaccines for the prevention of Human Papilloma Virus. On November 29, 2001, the committee will discuss the intramural scientific research of the Laboratory of Bacterial Toxins.

Procedure: On November 28, 2001, from 12:30 p.m. to 5:15 p.m.; and on November 29, 2001, from 8:30 a.m. to 1:40 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee by November 16, 2001. Written submissions may be made to the contact person by November 16, 2001. On November 28, 2001, oral presentations will be held between approximately 3:15 p.m. and 4:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 16, 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.

Closed Committee Deliberations: On November 28, 2001, from 8:30 a.m. to 12:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). On November 29, 2001, from 1:45 p.m. to 2:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The meeting will be closed to discuss personal information concerning individuals associated with the research program.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 16, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–26576 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Community Health Center and National Health Service Corps User/Visit Survey—NEW

The purpose of this study is to conduct a sample survey which has the following components: (1) A personal interview survey of Community Health Center (CHC) and National Health Service Corps (NHSC) site users; and (2) a record-based study of visits to CHCs and NHSC sites. CHCs and NHSC sites serve predominantly poor minority medically underserved populations. The proposed user and visit survey will collect in-depth information about CHC and NHSC site users, their health status, the reasons they seek care, their diagnoses, and the services utilized in a medical encounter.

The proposed User/Visit Survey builds on a 1995 User/Visit Survey which was conducted to learn about the process and outcomes of care in CHC users. The 1995 User/Visit Survey included a personal interview of approximately 2000 users of 48 selected CHCs as well as medical record abstractions for about 3000 visits to these same health centers. The interview questionnaire was derived from the National Health Interview Survey (NHIS) conducted by the National Center for Health Statistics (NCHS) and the visit survey was an adaptation of the NCHS National Hospital Ambulatory Medical Care Survey (NHAMCS). Conformance with the NHIS and NHAMCS allowed comparisons between these NCHS surveys and the User/Visit Survey.

The proposed User/Visit Survey was developed using similar questionnaire methodology in conjunction with a contractor and will allow longitudinal comparisons for CHCs with the 1995 version of the survey data, including monitoring of process outcomes over time. This User/Visit Survey is the first year that NHSC non-grantee, freestanding sites will be surveyed.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Total respondents	Hours per response	Total burden hours
Site Induction	85 sites	1	85	1	85
Site Sampling Method	85 sites	1	85	1.5	127.5
User Survey	30 users at 70 CHCs and 40 users at 15 NHSC sites.	1	2,700	2.75	7,425
Visit Survey	70 CHCs	43 records	3,010	.5	1,505
Total					9,142.5

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 16, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–26652 Filed 10–22–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Customer Satisfaction Survey; Request for Public Comment

AGENCY: Indian Health Service, HHS.

ACTION: Request for Public Comment: 30-day notice; Proposed Information Collection: Indian Health Service Customer Satisfaction Survey.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed information collection projects, the Indian Health Service (HHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was previously published in the **Federal Register** (65 FT 18120) on April 6, 2000 and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted to OMB.

Proposed Collection

Title: ''Indian Health Service Customer Satisfaction Survey.'' *Type of Information Collection Request:* New. *Form Number:* None. *Need and Use of the Information Collection:* Executive Order 12862, ''Setting Customer Service Standards'' directs agencies ''that provide significant services directly to the public'' to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' The proposed customer satisfaction survey is designed to assess the level of customer (patient) satisfaction with the services provided at HHS-operated health care facilities. Voluntary customer service surveys will provided at IHS-operated health care facilities. Voluntary customer service surveys will be conducted at IHS-operated health care facilities. The information gathered will be used by agency management and staff to identify strengths and weaknesses in current service provision, to plan and redirect resources to make improvements that are practical and feasible, and to provide vital feedback to local health officials, health boards, and community members regarding customer satisfaction with the health care and related services being provided. *Affected Public:* Individuals. *Type of Respondents:* Individuals.

The table below provides burden hour information.

TABLE

Data Collection Instrument	Estimated No. of Respondents	Responses per Respondent	Average burden hour per response*	Total annual burden hrs
Customer Satisfaction Survey	7500	1	0.25 hr (15 minutes).	1875.0
Total	7500	1		1875.0

*The ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report for this information collection.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry our an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality,utility, and clarity of the information being electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS. To request more information on the proposed collection or to obtain a copy of the data collection plan(s) and/or instruction(s), contact: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, or call non-toll free (301) 443-2613, or send your e-mail requests, comments, and return address to: *lhodahkwen@hqe.ihs.gov.*

Comment Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: October 10, 2001.

Michael H. Trujillo, M.D., M.P.H., M.S.,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 01–26653 Filed 10–22–01; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture—Rheumatoid Arthritis Validation Sub-study

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on

proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Agricultural Health Study—A Prospective Cohort Study of Cancer and Other diseases Among Men and Women in Agriculture—Rheumatoid Arthritis Validation Study. *Type of Information Collection Request:* Revision. (OMB 0925–0406, expires 11/30/01). *Need and Use of Information Collection:* The Agricultural Health Study is an ongoing prospective cohort study of 89,189 farmers, their spouses, and commercial applicators of pesticides from Iowa and North Carolina. The proposed revision is intended to assess the validity of self-reported Rheumatoid Arthritis (RA) in the Agricultural Health Study (AHS) within small subgroups of individuals. The collection is intended to identify confirmed cases of RA to include in etiologic analyses of farming exposures and RA; evaluate the efficacy of certain questions or sets of questions for screening out false-positives for self-reported RA and identify subgroups to target for future etiologic studies of RA, based on a relatively high prevalence of RA and the feasibility of disease confirmation. *Frequency of Response:* One time. *Affected Public:* Individuals or households, Farms. *Type of Respondents:* Private pesticide applicators and their spouses. The annual reporting burden is as follows: *Estimated Number of Respondents:* 439; *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours Per Response:* .42; and *Estimated Total Annual Burden Hours Requested:* 184. The annualized cost to respondents is estimated at: $1,840. There are no Capitol Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestion from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Michael C.R. Alavanja, Dr. P.H., Epidemiology and Biostatistics Program, Division of Cancer Etiology, National Cancer Institute, EPN 8000, 6120 Executive Boulevard, Rockville, MD 20852, or call (310) 435–4720, or E-mail your request, including your address to: alavanjam@mail.nih.gov

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before December 24, 2001.

Dated: October 15, 2001.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 01–26620 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB review; comment request; The National Survey to Evaluate the NIH SBIR Program.

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of Extramural Research, Office of Extramural Programs, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 14, 2001 (p. 32361) and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: *Title:* The National Survey to Evaluate the NIH SBIR Program. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The NIH, Office of Extramural Research, Office of Extramural Programs seeks to obtain OMB's approval to conduct a survey to evaluate the Small Business Innovation Research (SBIR) Program. The SBIR Program, established by Congress in 1982 (Public Law 97–219) and recently reauthorized through September 30, 2008 (Pub. L. 106–554), provides research support to small businesses for innovative technology. The primary objectives are to assess the extent to which SBIR program goals are being met, particularly those dealing with the commercialization of research products, processes or services and the uncovering of new knowledge that will lead to better health for everyone. With survey information, NIH is enabled to accurately assess the results of its large financial investment in funding innovative research conducted by small business concerns. Findings will help to: (1) Understand if innovative projects supported through the NIH SBIR Program are being commercialized, and if so, to classify the types of products, processes or services that are derived through SBIR funding; (2) determine if other measures of success defined within the NIH mission are being achieved; and (3) enhance NIH's administration of the SBIR Program and the support that it provides to small business concerns. Overall, the NIH will use the survey results to assess the outcomes from NIH-supported SBIR awards. OD will collect information from SBIR awardees using an Internet survey. The online survey will be implemented using SSL (Secure Socket Layer) encryption technology and password access. OD will use first-class mail and email messages to advise awardees that they have been selected to participate in the survey. Frequency of Response: Annual (As needed on an on-going basis.); *Affected Public:* Small business concerns supported by NIH through the SBIR Program; and *Type of Respondents:* For-profit small business concerns that have received NIH SBIR awards. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .5; and *Estimated Total Annual Burden Hours Requested:* 500. The annualized cost to respondents is estimated at $37,500. There are no Capital Costs to report. There are no Operating Costs and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the

following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Jo Anne Goodnight, Coordinator, NIH Small Business Innovation Research/ Small Business Technology Transfer Programs, Rockledge II Building, Room 6186, 6701 Rockledge Drive, Bethesda, Md, or call non-toll-free number (301) 435–2688, or email your request, including your address, to: jg128w@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before November 23, 2001.

Dated: October 9, 2001.

Jo Anne Goodnight,

SBIR/STTR Program Coordinator, NIH.

[FR Doc. 01–26619 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Call for Nominations for the National Cancer Institute Director's Liaison Group

The National Cancer Institute (NCI), the Federal Government's primary agency for cancer research, is seeking nominations for five new members of the NCI Director's Consumer Liaison Group (DCLG) who will be appointed in July 2002. The DCLG helps NCI to identify appropriate advocates to serve on its program and policy advisory committees, and it serves as a channel for consumer advocates to voice their views and concerns. The DCLG is federal chartered advisory committee of the National Cancer Institute (NCI). It consists of 15 consumer advocates who are involved in cancer advocacy and who reflect the diversity among those whose lives are affected by cancer.

NCI brings together these advocates from many communities to advise and make recommendations to the Director, NCI from the consumer advocate perspective on a wide variety of issues, programs and research priorities. All DCLG members must be U.S. citizens. Specifically the DCLG members:

• Help develop and establish processes, mechanisms, and criteria for identifying appropriate consumer advocates to serve on a variety of program and policy advisory committees responsible for advancing the mission of the NCI.

• Serve as a primary forum for discussing issues and concerns and exchanging viewpoints that are important to the broad development of the NCI programmatic and research priorities.

• Establish and maintain strong collaborations between the NCI and the cancer advocacy community to reach common goals.

Eligibility Requirements for Individual members. To serve on the DCLG, a member must meet the following minimum eligibility requirements:

• Be involved in the cancer experience as a cancer survivor, a person affected by the suffering and consequences of cancer, or a professional or volunteer who works with survivors or those affected.

• Represent a constituency (formally or informally) with whom she or he communicates regularly on cancer issues and be able to serve as a conduit for information both to and from his/her constituency.

DCLG members must be committed to participating in all activities of the DCLG which includes at least two meetings a year in Bethesda.

Criteria For Evaluating Individual Candidates. Nominees who meet the minimum eligibility requirements will be further assessed based on the following criteria:

• Cancer advocacy experience

• Ability to communicate effectively

• Ability to represent broad issues, think ''globally''

• Ability to contribute to an effective group process

• Leadership ability

Characteristics of the DCLG. In addition to the criteria for individual candidates, the following characteristics of the DCLG as a group are intended to ensure that it reflects the breadth and diversity of the consumer advocacy community:

• Multicultural diversity

• A broad mix of cancer sites

• Representation of the medically underserved

• Men and women

• A range of organizations (local/ regional and national)

• Age diversity

• Geographic diversity (rural/urban mix)

Selection Process. A call for nominations is disseminated annually to a broad range of groups, including local, regional and national organizations, to encourage nominations of candidates reflecting the diversity sought for the DCLG. All nominees are screened for eligibility, then evaluated according to the criteria. A list of highly qualified candidates who reflect balance and diversity of representation is forwarded to the Director, NCI, who selects the DCLG members. The original members of the DCLG endorsed this process, which will be used to select future members.

NCI encourages nomination of candidates reflecting the diversity sought on the DCLG. Nominations can be made by organizations, including local/regional and national groups, or individuals, including self-nominations. To receive a nomination package for the DCLG, send your name, advocacy/ voluntary organization affiliation (if any), address and phone number to the Office of Liaison Activities, NCI, c/o Palladian Partners, 1010 Wayne Avenue, Suite 1200, Silver Spring, MD 20910, FAX (301) 650–8676.

Nominations must be postmarked by December 8, 2001.

Dated: October 16, 2001.

LaVerne Stringfield

Director, Office of Federal Advisory Committee Policy National Institutes of Health.

[FR Doc. 01–26618 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Molecular Target Drug Discovery.

Date: November 29–30, 2001.

Time: 8 a.m to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8084, Bethesda, MD 20892, 301/594–1286.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26610 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Extension of Radiotherapy Research.

Date: November 13–15, 2001.

Time: 4 pm to 2 pm.

Agenda: to review and evaluate grant applications.

Place: National Cancer Institute, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shakeel Ahmad, Phd, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 8th Floor, Room 8139, 6116 Executive Boulevard, Bethesda, MD 20892, 301–594–0114.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26611 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Centers of Excellence in Cancer Communications Research.

Date: December 5–7, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: C.M. Kerwin, PhD, Scientific Review Administrator, Special Review And Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8039, Rockville, MD 20892–7405, 301/496–7421.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, national Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26612 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institutes; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology and Cancer Prevention Research.

Date: November 19–20, 2001.

Time: 8 a.m. to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, Conference Room D, 6130 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1566.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394; Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26613 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: December 7, 2001.

Time: 12 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 31 Center Drive, Conference Rm. B2B32, NHGRI, MD 20892 (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26614 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: November 6, 2001.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 31 Center Drive, Conference Rm. B2B32, NHGRI, MD 20892 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Human Genome Research, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26615 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Reproductive Genomics: Mutant Models for Infertility.

Date: November 6, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC 20005.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26608 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 16, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5e03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26609 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personnel privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: November 18–20, 2001.

Closed: November 18, 2001, 8 pm to 9:30 pm.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27709.

Open: November 19, 2001, 8:30 am to 5 pm.

Agenda: An overview of the organization and conduct of research in the Laboratory of Signal Transduction.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: November 20, 2001, 8:30 am to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Steven K. Akiyama, PhD, Acting Deputy Scientific Director, Division of Intramural Research, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, MSC A2–09, Research Triangle Park, NC 27709, 919/541–3467, akiyama@niehs.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26617 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: November 5–6, 2001.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Dr., Room 5118, Bethesda, MD 20892, (301) 435–1259, *orrt@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 3.

Date: November 5–6, 2001.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Orthopedics and Musculoskeletal Study Section.

Date: November 5–6, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Virginian Suites, 1500 Arlington Boulevard, Arlington, VA 22209.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 2.

Date: November 5–7, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposing by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: David M. Armstrong, BS, MS, PhD, Chief, Brain Disorders and Clinical Neurosciences, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Donald Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov*

This notice is being published less than 15 days proir to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Respiratory Physiology Study Section.

Date: November 5, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036–3305.

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Metabolic Pathology Study Section.

Date: November 5–7, 2001.

Time: 8:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton, Premiere Hotel, 8661 Leesburg Pike, Vienna, VA 22182.

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 6.

Date: November 5–6, 2001.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 2001.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 5, 2001.
Time: 2 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, (301) 435–0902, *mkrause@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 6–7, 2001.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle, 1 Washington Circle, NW., Washington, DC 20037.
Contact Person: Clare K. Schmitt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148, *schmittc@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 6, 2001.
Time: 10 am to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852,, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 6, 2001.
Time: 1 pm to 6 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, Bethesda, MD 20892, (301) 435–1259, *orrt@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 6, 2001.
Time: 4 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 7, 2001.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: Rona L. Hirschberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 7, 2001.
Time: 8:30 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 7, 2001.
Time: 1 pm to 3 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, (301) 435–3504, *fungv@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 7, 2001.
Time: 1 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 7, 2001.
Time: 1 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call)
Contact Person: Alec S. Liacouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 7–8, 2001.
Time: 6 pm to 4 pm.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Embassy Square, 2000 N Street, NW, Washington, DC 20036.
Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1743, *sipej@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 7–9, 2001.
Time: 6 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Wyndham San Diego at Emerald Plaza, 400 West Broadway, San Diego, CA 92101.
Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 5.
Date: November 8–9, 2001.
Time: 8 am to 3 pm.
Agenda: To review and evaluate grant applications.
Place: Handlery Hotel and Resort, 950 Hotel Circle North, San Diego, CA 92108.
Contact Person: Ranga Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

Name of Committee: Center for Scientific Review Special Emphasis Panel SNEM 5 (02).
Date: November 8, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, Washington, DC 20037.
Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.
Time: 8 am to 9 am.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.

Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8–9, 2001
Time: 8:30 am to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 TMP (01).
Date: November 8–9, 2001
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8–9, 2001.
Time: 9 am to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.
Time: 11 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.
Time: 2 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, 301–435–0902, *mkrause@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.
Time: 2:15 to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alec S. Liacouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.
Time: 3:30 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 2001.
Time: 12:30 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, 301–435–0902, *mkrause@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 9, 2001.
Time: 8:30 am to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, The Chevy Chase Pavilion, 4300 Military Road NW, Wisconsin at Western Avenue, Washington, DC 20015.
Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, , 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–26616 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Availability of Expert Panel Reports National Toxicology Program (NTP), National Institute of Environmental Health Sciences (NIEHS), Center for the Evaluation of Risks to Human Reproduction (CERHR), announces:

(1) Availability of the Draft Expert Panel Reports on 1-Bromopropane and 2-Bromopropane—Public comments are solicited on these draft reports and the deadline for written comments is November 23, 2001.

(2) Bromopropane Expert Panel Meeting scheduled for December 5–7, 2001—The meeting is open to the public and will be held at the Hilton Washington-Dulles Airport Hotel, Herndon, VA.

Background

The NTP and the NIEHS established the NTP CERHR [**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)] in June 1998. The purpose of the Center is to provide scientifically-based, uniform assessments of the potential for adverse effects on reproduction and development caused by agents to which humans may be exposed. Expert panels conduct scientific evaluations of agents selected by the Center in public forums. Additional details about CERHR are provided below (see Additional Information about CERHR evaluations).

The agents currently under evaluation are 1-bromopropane (CASRN: 106–94–5) and 2-bromopropane (CASRN: 75–26–3). 1-Bromopropane is used as a cleaning solvent; as a solvent vehicle in spray adhesives; as a solvent for fats, waxes, or resins; and as an intermediate in the synthesis of other compounds. 2-Bromopropane is used in the synthesis of pharmaceuticals, dyes, and other compounds and is present as a contaminant in 1-bromopropane. Bromopropanes are being considered as replacement chemicals for ozone-depleting chemicals such as hydrochlorofluorocarbons and chlorinated solvents. The scientific database on these chemicals includes studies on neurotoxicity, reproductive toxicity, and occupational exposures. 2-

Bromopropane is reported to be a reproductive toxicant in humans.

Draft Expert Panel Reports on 1-Bromopropane and 2-Bromopropane Available

The Draft Expert Panel Report is composed of the following sections:

1.0 Chemistry, Use, and Human Exposure
2.0 General Toxicological and Biological Effects
3.0 Developmental Toxicity Data
4.0 Reproductive Toxicity Data
5.0 Summary, Conclusions, and Critical Data Needs

Sections 1–4 will be available to the public by October 10, 2001. Copies can be obtained electronically on the CERHR web site (*http://cerhr.niehs.nih.gov*) or in hard copy by contacting Dr. Michael Shelby, Director CERHR (NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 103, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, Phone: (919) 541–3455; Fax: (919)316–4511; *shelby@niehs.nih.gov*).

Request for Written Comments on Draft Expert Panel Reports

The CERHR invites written public comments on Sections 1–4 of the Draft Expert Panel Reports on 1-bromopropane and 2-bromopropane. Comments can be submitted in hard copy or electronic format and must be received by the Center by November 23, 2001. These comments will be distributed to CERHR staff and the Bromopropane Expert Panel for consideration in revising the draft report and in preparing for the Bromopropane Expert Panel Meeting (see below). These comments should be sent to Dr. Michael Shelby at the address provided above. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if any).

Expert Panel Will Review 1-Bromopropane and 2-Bromopropane

An expert panel (the Panel) of independent scientists selected for their scientific expertise in reproductive and developmental toxicology and other relevant areas of science are conducting this review. The roster of experts follows:

Bromopropane Expert Panel (Name and Affiliation)

Kim Boekelheide, MD, PhD [Chair] Brown University, Providence, RI
Cynthia F. Bearer, MD, PhD Case Western Reserve, Cleveland, OH
Sally Perreault Darney, PhD U.S. EPA, Research Triangle Park, NC
George P. Daston, PhD Procter & Gamble Co., Cincinnati, OH
Raymond M. David, PhD Eastman Kodak Company, Rochester, NY
Ulrike Luderer, MD, PhD University of California-Irvine, Irvine, CA
Andrew F. Olshan, PhD University of North Carolina, Chapel Hill, NC
Wayne T. Sanderson, PhD, CIH NIOSH, Cincinnati, OH
Calvin C. Willhite, PhD DTSC, State of California, Berkeley, CA
Susan Woskie, PhD University of Massachusetts-Lowell, Lowell, MA

Public Meeting of the Bromopropane Expert Panel

This meeting is open to the public and attendance is limited only by the availability of space. The meeting will take place on December 5–7, 2001, in the Solarium of the Hilton Washington-Dulles Airport Hotel, 13869 Park Center Road, Herndon, VA 20171, Phone (703) 478–2900, Fax (703) 478–9286.

Preliminary Meeting Agenda

The meeting begins each day at 8:30 a.m. It is anticipated that each day there will be a lunch break from 12–1 p.m. and the meeting will adjourn between 5 and 6 p.m. .

December 5, 2001 (8:30 a.m.)

Opening comments
Public comment session
• The Panel will receive comments from the public (up to seven minutes per speaker; details are given below).

Review of Sections 1–4 of the Draft Expert Panel Report on 1-Bromopropane and 2-Bromopropane

Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs

December 6, 2001 (8:30 a.m.)

Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs

Preparation of draft summaries and conclusion statements

December 7, 2001 (8:30 a.m.)

Presentation, discussion of, and agreement on summaries and conclusions
Closing comments

Oral Public Comments Can Be Presented at the Expert Panel Meeting

Time is set aside on December 5 for the presentation of oral public comments at the Bromopropane Expert Panel Meeting. To facilitate planning of this meeting, those persons wishing to make oral public comments are asked to contact the CERHR Director by November 26 [Dr. Michael Shelby, NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 103, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, Phone: (919) 541–3455; Fax (919) 316–4511; *shelby@niehs.nih.gov*]. Seven minutes will be available for each speaker (one speaker per organization). When registering to comment orally, please provide your name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any). If possible, also send a copy of the statement or talking points to CERHR by November 26. This information will be provided to the expert panel, to assist the panel in identifying issues for discussion, and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on December 5 (7:30—8:30 a.m.). Those persons registering at the meeting are asked to bring 20 copies of their statement or talking points.

In lieu of making an oral presentation at the meeting, the public is invited to submit a written statement to CERHR by November 26. This statement will be distributed to CERHR staff and the Bromopropane Expert Panel and noted in the meeting record.

Post-Meeting Public Comments

Following the Bromopropane Expert Panel Meeting and completion of the Expert Panel Report, public comment will be solicited. This solicitation will be announced in a future **Federal Register** notice.

For other questions about the Draft Report on 1-Bromopropane and 2-Bromopropane or the Bromopropane Expert Panel Meeting, contact the CERHR Director [contact information provided above].

Additional Information About CERHR Evaluations

CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting the Center Director (contact information provided above). The Center selects chemicals for evaluation based upon several factors including production volume, extent of human exposure, public concern, and published evidence of reproductive or developmental toxicity.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process is outlined in the **Federal Register** notice July 16, 2001 (Volume 66, Number 136, pages 37047–37048) and on the CERHR web site

under ''About CERHR''. Briefly, the Center establishes an expert panel to review and evaluate the scientific evidence on the selected chemical(s), to receive public comments, and to prepare a report on the chemical(s). This draft expert panel report is made publicly available for comment, both through the CERHR web site and upon request from CERHR, and an expert panel meeting is held to discuss and evaluate the draft report. Following the expert panel meeting and completion of the expert panel report, public comment is solicited again. After this public comment period ends, the NTP staff prepares a NTP center report on the evaluated chemical(s) that integrates background information on the chemical(s), findings of the expert panel, and a discussion of any additional, recent studies. The NTP center report includes all public comments received on the expert panel report. The final NTP center report is made publicly available and distributed to interested stakeholders and to appropriate regulatory, health, and research agencies.

Dated: October 3, 2001.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 01–26621 Filed 10–22–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2001 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, Grants to Support the Accreditation of Opioid Treatment Programs (OTPs), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2001	Est. No. of awards	Project period
Grants to Support Accreditation of Opioid Treatment Programs.	December 4, 2001	$1.6 million	–8	3 years

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web homepage: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) announces the availability of fiscal year (FY) 2002 funds for grants to partially subsidize the cost of accreditation of Opioid Treatment Programs (OTPs). The goal of these grants is to reduce the costs of basic accreditation education and accreditation surveys (site visits) for OTPs participating in the accreditation process pursuant to Title 42 of the Code of Federal Regulations (CFR), part 8.

Eligibility: Under Federal regulations, the final rule on Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction (42 CFR part 8), only private nonprofit organizations or State governmental entities, or political subdivisions thereof, which are approved by SAMHSA pursuant to that regulation, may accredit opioid treatment programs. Therefore, awards under this grant program will be made only to organizations that have been approved by SAMHSA as accreditation bodies.

SAMHSA intends to make awards under this program as soon as possible; however, all grant awards must be made prior to September 30, 2002. Therefore, any organization that has not yet applied to SAMHSA for approval as an accreditation body is urged to do so as soon as possible, as review and approval of these applications takes some time.

Such organizations may apply for funding under this grant program prior to, simultaneously with, or after they submit their application for approval as an accreditation body, so long as they submit their application for funding prior to the application due date of December 4, 2001. However, an application for a grant under this program will be considered for funding only after the applicant has been approved as an accrediting body, if such approval occurs prior to September 30, 2002.

Availability of Funds: In FY 2002, approximately $1,600,000 will be available for the total costs (direct and indirect) of 4 to 8 awards.* Awards will

*This program is being announced prior to the full annual appropriation for fiscal year (FY) 2002 for the Substance Abuse and Mental Health Services Administration's (SAMHSA) programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2002 to permit funding of a reasonable number of applications being hereby solicited. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. Questions regarding the status of the appropriation of funds should be directed to the Program Contact listed under the ''How to Get Help'' section in the grant announcement.

be made in annual increments. Actual funding levels will vary depending on the availability of appropriated funds and the number of OTPs which apply to each SAMHSA-approved accreditation body grantee. Grant funding will be awarded in two phases. Phase I funds will be awarded at the beginning of the project period and will include up to $50,000 for one-time project start-up and initial operational costs. Phase II awards for accreditation education and accreditation surveys will depend on the availability of appropriated funds and the number of OTPs accepted by the grantee for the accreditation process.

Period of Support: An award may be requested for a project period of up to 3 years.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.230.

Program Contact: For questions concerning program issues, contact: Jacqueline Hendrickson, MSW CSAT/SAMHSA, Rockwall II Building, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1109, *E-mail: jhendric@samhsa.gov*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-mail: shudak@samhsa.gov

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2001 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2001 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: October 17, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–26654 Filed 10–22–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF INTERIOR

Office of the Secretary

John H. Chafee Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 15, 2001.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist Federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the Quinsigamond Elementary School located at 828 Millbury Street, Worcester, MA for the following reasons:

1. Approval of Minutes
2. Chairman's Report
3. Executive Director's Report
4. Approval Close-out Budget FY2001
5. Financial Budget FY2002 Approval
6. Public Input

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the

Commission at the aforementioned address.

Michael Creasey,

Executive Director BRVNHCC.

[FR Doc. 01–26595 Filed 10–22–01; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–01–0777XX–241A]

Sierra Front/Northwestern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Combined Resource Advisory Council Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Council meetings will be held as indicated below. Topics for discussion will be a presentation and discussion of accomplishments during 2001 and the outlook for 2002 of the BLM in Nevada; opening and closeout reports of the three Resource Advisory Councils (RACs); discussion of proposed acquisitions to be funded by the Southern Nevada Public Land Management Act of 1998; breakout meetings of the ''pods''; breakout meetings of the three RACs; setting of schedules for meetings of the individual RACs for the coming year, and other issues members of the councils may raise.

All meetings are open to the public. During the two noon luncheons, members of the public may join the group for lunch, at their own expense. The public may present written comments to the three-RAC group or the individual RACs. The public comment period for the council meeting will be at 3 p.m. on Thursday, November 8. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Robert Stewart at the Nevada State Office, BLM, 1340 Financial Blvd., Reno, telephone (775) 861–6586.

DATE, TIME: The council will meet on Thursday, November 8 from 8:00 a.m. to 4:30 p.m. and Friday, November 9, 2001, from 8:00 a.m. to 3:00 p.m., at the Elko Convention Center, Elko, Nevada. If due to unforeseeable problems this site is not available, the alternate site of the meeting will be determined at that time, and will be in Elko, Nevada. The meeting may be cancelled if an alternate site is not available. The dates and times will remain the same. Public comment will be received at the discretion of the State Director, as meeting moderator, with a general public comment period on Thursday, November 8, 2001 at 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert Stewart, Public Information Specialist, BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 861–6586.

Dated: August 27, 2001.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 01–26581 Filed 10–22–01; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–0102703, COC–28242]

Public Land Order No. 7502; Partial Revocation of Secretarial Order Dated May 23, 1946 and Public Land Order No. 3500; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a public land order and a Secretarial Order insofar as they affect 276.57 acres of public land withdrawn for the Bureau of Reclamation's Fryingpan-Arkansas and the Arkansas Valley Reclamation Projects. The Bureau of Reclamation has determined that the lands are no longer needed for project purposes. This revocation will allow for disposal of these lands by exchange. The lands have been and will remain open to mineral leasing. The lands continue to be segregated by a proposed land exchange.

EFFECTIVE DATE: November 23, 2001.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Secretarial Order dated May 23, 1946 and Public Land Order No. 3500, which withdrew public lands for the Bureau of Reclamation's Arkansas Valley and Fryingpan-Arkansas Reclamation Projects, are hereby revoked insofar as they affect the following described lands:

Sixth Principal Meridian

T. 18 S., R. 69 W.,
sec. 1, lots 7 to 10, inclusive;
sec. 24, S½NW¼ and W½SW¼.

The areas described aggregate 276.57 acres in Fremont County.

2. At 9 a.m. on November 23, 2001, the lands described in paragraph 1 shall be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received on or prior to 9 a.m. on November 23, 2001, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands will remain closed to location and entry under the United States mining laws by an overlapping segregation.

Dated: September 28, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 01–26580 Filed 10–22–01; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–922 (Final)]

Automotive Replacement Glass Windshields From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–922 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of automotive replacement glass windshields, provided for in subheading 7007.21.10 of the

Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: September 19, 2001.

FOR FURTHER INFORMATION CONTACT: Gail Burns (202–205–2501), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of automotive replacement glass windshields from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on February 28, 2001, by PPG Industries, Pittsburgh, PA; Safelite Glass Corporation, Columbus, OH; and Apogee Enterprises, Inc., Minneapolis, MN.

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''ARG (automotive replacement glass) windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (i.e., two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (e.g., passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged * * * Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles.''

Participation in the investigation and public service list

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on January 23, 2002, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on February 5, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 29, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 31, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is January 30, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is February 12, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 12, 2002. On March 1, 2002, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 5, 2002, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: October 17, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–26588 Filed 10–22–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 15, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision of a currently approved collection.

Title: Alien Claims Activity Report.

OMB Number: 1205–0268.

Affected Public: State, Local, or Tribal Government.

Frequency: Quarterly.

Type of Response: Reporting.

Number of Respondents: 53.

Number of Annual Responses: 212.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 212.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The information collected on the Form ETA–9016 is authorized by the Social Security Act, Section 303(a)(6) and allows the Secretary of Labor to assess the cost efficiency of the INS Verification System and to determine the national impact of the Immigration Reform and Control Act on the Unemployment Insurance system.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26634 Filed 10–22–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 15, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 219–8904 or Email *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Report of Construction Contractor's Wage Rates.

OMB Number: 1215–0046.

Affected Public: Business or other for-profit.

Frequency: On Occasion.

Number of Respondents: 37,500.

Number of Annual Responses: 75,000.

Estimated Time Per Response: 20 minutes.

Total Burden Hours: 25,000.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Davis-Bacon Act (29 U.S.C. 276a–276–a–7) provides, in part that "* * * every contract in excess of $2,000 * * * which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village or other civil subdivision of the State in which the work is performed * * *."

Form WD–10 is used by the US Department of Labor to elicit construction project data from contractor associations, contractors and unions. The wage date is used to determine locally prevailing wages under the Davis-Bacon and Related Acts. The information collection requests addresses changes being proposed to Form WD1–10 to develop

more cost-effective and less burdensome methods of obtaining reliable wage data.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26635 Filed 10–22–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 15, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 219–8904 or email *Howze-Marlene@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

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

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

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Alternative Method of Compliance for Certain Simplified Employee Pensions.

OMB Number: 1210–0034.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 460.

Number of Annual Responses: 20,693.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 1,954.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $7,863.

Description: Section 110 of the Employee Retirement Income Security Act (ERISA) authorizes the Secretary of Labor to prescribe alternative methods of compliance with the reporting and disclosure requirements of Title I of ERISA for pension plans, even though simplified employee pensions (SEPs) are established in section 401(k) of the Internal Revenue Code. This regulation provides an alternative method of disclosure for sponsors of certain types of SEPs that is easier to comply with than otherwise required under ERISA. The disclosure requirement is the only method of insuring that administrators of non-model SEPs provide participating employees with specific written information concerning SEPs.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Prohibited Transaction Class Exemption 77–44 for Certain Transactions between Investment Companies and Employee Benefit Plans.

OMB Number: 1210–0049.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 431.

Number of Annual Responses: 82,240.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 7,069.

Total Annualized Capital/Startup Costs: $0

Total Annual Costs (operating/maintaining systems or purchasing services): $31,251.

Description: Prohibited Transaction Class Exemption 77–44 permits an employee benefit plan to purchase and sell shares of an open-ended investment company (mutual fund) when a fiduciary with respect to the plan is also the investment adviser for the mutual fund. In order to ensure that the class exemption is not abused, that the rights of the participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department often requires minimal information collection pertaining to the affected transactions.

Type of Review: Revision of currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Prohibited Transaction Class Exemption 98–54 relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions.

OMB Number: 1210–0111.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Frequency: On Occasion.

Number of Respondents: 35.

Numbers of Annual Responses: 8,400.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 4,200.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Prohibited Transaction Class Exemption 98–54 permits certain foreign exchange transactions between employee benefit plans and certain banks or broker dealers that are parties in interest with respect to such plans. Without this exemption, plans would lose investment income and incur higher exchange rates on small transactions. The information collection requirements of the exemption are intended to protect the interests of plan participants and beneficiaries by ensuring that the independent plan fiduciaries have sufficient information to fulfill their fiduciary duties with respect to the plan. It also ensures that the federal government agencies responsible for administration and enforcement of ERISA have sufficient information to determine that the condition of the exemption have been met.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26636 Filed 10–22–01;845am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 15, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Type of Review: Extension of a currently approved collection.

Title: Safety Standards for Underground Coal Mine Ventilation—30 CFR 75.360(a)(1) and 75.360(f).

OMB Number: 1219–0125.

Affected Public: Business or other for-profit.

Type of Response: Recordkeeping.

Frequency: Once each shift.

Number of Respondents: 127 (75 small mines and 52 large mines).

Number of Annual Responses: 102,000.

Estimated Time Per Response: 1.08 hours for small mines and 1.67 hours for large mines.

Burden Hours: 78,001.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The preshift examination is the mine operator's fundamental tool for assessing the overall safety condition of the mine. During the examination, the examiner focuses on discovering both existing and developing hazards, such as methane accumulation, bad roof and water accumulation, and determining the effectiveness of the mine ventilation system. The examination has proven to be particularly effective in the discovery and correction of hazardous conditions and practices before they lead to injuries or fatalities. Because conditions in the underground mining environment can change rapidly, recurring examinations are necessary to assure safety of the miners underground. A timely preshift examination assures the safety of the environment on a routine basis.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–26637 Filed 10–22–01; 8:45 am]

BILLING CODE 4510–43–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 extension of form WH–516, Worker Information—Terms and Conditions of Employment (English and Spanish).

DATES: Written comments must be submitted to the office listed in the addresses section below within December 24, 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, E-mail *pforkel@fenix2.dol-esa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Various sections of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 *et seq.*, require that each farm labor contractor, agricultural employer and agricultural association disclose in writing the terms and conditions of employment to: (a) Migrant agricultural workers at the time of recruitment (section 201(a)); (b) seasonal agricultural workers, upon request, at the time of employment (section 301(a)(1)); and (c) seasonal agricultural workers employed through a day-haul operation at the place of recruitment (section 301(a)(2)). Sections 201(b) and 301(b) also require that each such employer provide to each worker, upon request, a written statement of the terms and conditions of employment. In addition, sections 201(g) and 301(f) require that such information be provided in English, or as necessary and reasonable, in a language common to the workers and that the U.S. Department of Labor (DOL) make forms available to provide such information. Optional Form WH–516, Worker Information, is printed and made available by DOL for these purposes. The terms and conditions required to be disclosed to workers are set forth in section 500.75(a) and (b) and 500.76(a), (b) and (c) of Regulations, 29 CFR Part 500, Migrant and Seasonal Agricultural Worker Protection, and Form WH–516, when completed and disclosed to workers, satisfies these requirements.

Public Law 104–49, enacted on November 15, 1995, provides in section 4 for the disclosure of certain information regarding State workers' compensation insurance to the employee, i.e., whether State workers' compensation is provided and if so, the name of the State workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which this notice must be given. Optional Form WH–516 was revised in the previous OMB 83–1 submission to provide space to include this new statutorily-required information. This disclosure requirement can also be met by the employer by providing the worker with a photocopy of any notice regarding workers' compensation insurance required by law of the state in which such worker is employed.

Sections 500.75 and 500.76 of Regulations, 29 CFR part 500, Migrant and Seasonal Agricultural Worker Protections include in the terms and

conditions of employment to be disclosed to the workers, the State workers' compensation notifications required by section 4 of Public Law 104–49.

II. Review Focus

The Department of Labor is particularly interested in comments which:

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

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to ensure that farm labor contractors, agricultural employers and agricultural associations have disclosed to their migrant and seasonal agricultural workers the terms and conditions of employment as required by MSPA and its regulations.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Worker Information—Terms and Conditions of Employment (English and Spanish).

OMB Number: 1215–0187.

Agency Number: WH–516.

Affected Public: Businesses or other for-profit; Individuals or households; Farms.

Frequency: On occasion.

Total Respondents: 137,000.

Total Annual Responses: 3.24 million.

Time per Response: 32 minutes.

Estimated Total Burden Hours: 73,067.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $29,160.

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: October 9, 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. 01–26633 Filed 10–22–01; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10949, et al.]

Proposed Exemptions; Kimball International, Inc. Retirement Plan (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Kimball International, Inc. Retirement Plan (the Plan), Located in Jasper, Indiana

[Application No. D–10949]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of stock (the Shares) of Springs Valley Bank & Trust Company (Springs Valley) to Springs

Valley, the Trustee of the Plan and a party in interest with respect to the Plan, provided that the following conditions are met:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) The fair market value of the Shares is determined by a qualified, independent appraiser;

(d) The Plan does not pay any commissions, costs or other expenses in connection with the Sale; and

(e) The Plan receives as consideration an amount that is no less than the greater of: (1) the fair market value of the Shares as of the date of the Sale or (2) $40 per Share.

Summary of Facts and Representations

1. The Kimball International, Inc. Retirement Plan (the Plan) is a defined contribution plan within the meaning of ERISA Section 3(34), permitting both before-tax (401(k)) participant contributions and after-tax participant contributions. As of November 9, 2000, the Plan covers approximately 7,400 participants and has Plan assets of approximately $349,204,819.28. Approximately 1.66% ($5,796,800) of the Plan assets are involved in the proposed transaction. The Trustee of the Plan is Springs Valley.

2. Kimball International, Inc. (the Employer) is engaged in the manufacture of pianos, office, hotel, restaurant, healthcare and residential furniture and cabinets (in both wood and metal), and in the design, engineering, manufacture, packaging and distribution of electronic assemblies, circuit boards, multi-chip modules and semiconductor components on a contract basis to customers in the transportation, defense, aerospace, telecommunications, computer and medical industries.

3. Prior to 1990 the Employer sponsored and maintained two separate defined contribution profit sharing plans, the Kimball International, Inc. Indirect Retirement Plan (established effective January 1, 1952) covering the Employer's salaried employees; and the Kimball International, Inc. Direct Retirement Plan (established effective July 1, 1968) covering the Employer's non-salaried employees. Effective July 1, 1990, those two separate plans were merged to form the Plan. Subsequently, beginning March 1, 1994, the Employer incorporated a 401(k) feature within the Plan.

4. Springs Valley, as the Trustee of the Plan, has held the authority to vote the securities in the Plan, including the Shares. The Shares in the Plan were voted each year by an independent person, Claude Taylor (Mr. Taylor), on behalf of Spring Valley as Trustee. Mr. Taylor is not an employee of Spring Valley. He is a local resident of French Lick, Indiana, and has been serving in this independent capacity for over 20 years.

5. The Plan holds 144,920 Shares, having an estimated value of $5,796,800 at June 30, 2000 (based on a private transaction at $40 per share occurring in 2000), and representing approximately 19.5% of the issued and outstanding Shares. The Employer, its significant shareholders, and the Plan own in the aggregate approximately 38% of the issued and outstanding Shares. The Shares were originally acquired from Spring Valley by the Plan in three separate transactions prior to the enactment of the Act[1]. The total cost of the shares to the Plan was $319,547.88.

6. The Shares are not publicly traded, and there is no ready market for it. The Shares are valued annually by an independent, qualified, appraiser, Professional Bank Services located in Louisville, Kentucky, retained and paid by Spring Valley for the purpose of valuing such stock in connection with the Springs Valley employees' stock option plan. The method used in such valuation can briefly be described as follows: (i) The appraisal is based on a valuation of the Plan's minority interest in Springs Valley; (ii) an analysis of the bank's market liquidity, regulatory and audit reports; and (iii) other such summary information that is available and deemed appropriate. The Plan uses that valuation for its purposes of valuing the Shares annually. Professional Bank Services concluded that the fair market value of the Shares is $40 per common share as of April 5, 2001.

7. With dividends reinvested, the compound rate of return of the Shares has been 10.663% from 1984 through 1999. The Plan will receive $5,796,800 resulting from the investment by the Plan in the Shares of $319,547.88.

8. On July 1, 2001, the Employer amended the Plan to permit participants to self-direct the investment of their Plan accounts. In order to facilitate this process, and because of the illiquid nature of the Shares, the continued investment in the Shares is incompatible with Plan participant self-direction, and with the future distributions from the Plan. As a result, the Plan now proposes to sell the Shares for the greater of: (1) The fair market value of the Shares as of the date of the Sale or (2) $40 per Share.

9. Before the Sale, the Shares will be transferred from Springs Valley as trustee to an independent trustee also acting under the Plan. That independent trustee will be the National Bank of Indianapolis (the National Bank) located in Indianapolis, Indiana. The National Bank will perform an independent review and fairness determination of the appraisal process prior to the Sale to Springs Valley, which may include obtaining a second independent appraisal.

10. The applicant represents that the proposed transaction is administratively feasible, and in the best interest and protective of the Plan. The transaction will be for cash and the Plan will pay no costs or commissions associated with the sale, allowing the Plan to divest itself of the Shares and reinvest the proceeds of the Sale in assets that will be diversified and generate higher rates of return.

11. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those reasonably obtainable in an arm's-length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) The fair market value of the Shares is determined by a qualified, independent, appraiser;

(d) The Plan does not pay any commissions, costs or other expenses in connection with the Sale; and

(e) The Plan receives as consideration an amount that is no less than the greater of: (1) the fair market value of the Shares as of the date of the Sale or (2) $40 per Share.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

For Further Information Contact: Khalif Ford of the Department, telephone (202) 219–8883. (This is not a toll-free number).

[1] The Department expresses no opinion herein as to whether the holding of the Shares by the Plan violated any of the provisions of Part 4 of Title I of the Act.

Alaska United Food and Commercial Workers Health and Security Trust Fund (the Plan) Located in Anchorage, Alaska

[Application No. L–10896]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the proposed purchase by Plan participants and beneficiaries of prescription drugs from Safeway, Inc. (Safeway), a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) The terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of Safeway and its wholly owned subsidiary, SMCrx; (c) at least 50% of the preferred providers participating in the Preferred Provider Network (PPN) involving Safeway are unrelated to Safeway or any other party in interest with respect to the Plan; (d) Safeway will be treated no differently than any other pharmacy participating in the PPN; and (e) the transaction is not part of an agreement, arrangement or understanding designed to benefit Safeway or any other party in interest with respect to the Plan.

Effective Date: The proposed exemption, if granted, will be effective as of August 1, 2000.

Summary of Facts and Representations

1. The Plan is a multi-employer welfare benefit plan, which has been in existence since February 25, 1965. The Plan was established to provide health and welfare benefits, including life, sickness, accident and other benefits for Plan participants and their beneficiaries. The Plan is directed by a six person board of trustees. The three trustees representing labor are appointed by the United Food and Commercial Workers Local Union 1496 (the Union). The three employer trustees are appointed by contributing employers to the Plan, including Safeway, which operates Safeway/Carr's grocery stores. The Plan currently has approximately 2,916 participants and $8,687,702 in assets.

2. The applicant represents that the Plan had an existing relationship with a Pharmacy Benefits Manager (PBM), a company called PCS, that had not been satisfactory for an extended period of time. The applicant states that PCS has an extensive network of participating pharmacies but could not accommodate the needs of the Plan by processing non-electronic (i.e., paper) claims. The failure of PCS to process paper claims for the Plan placed the burden of processing such claims on the Plan's third party administrator, Labor Trust Services of Anchorage, Alaska.

3. After several attempts to rectify these problems with PCS, the Plan's trustees decided to seek bids from other PBMs. The trustees requested that the Plan's independent consultant, William M. Mercer, Inc., of Seattle, Washington (Mercer), find and recommend an alternative PBM at a competitive price, who would be better able to adapt to the needs of the Plan. The trustees did not select the entities to be considered in the PBM search.

4. Mercer considered four entities as possible PBMs for the Plan. Requests for proposals had been sent to SysteMed (Merck-Medco), PCN and SMCrx. PCS also provided an unsolicited bid. Mercer analyzed the bids and recommended SMCrx as being the most able to fulfill the needs of the Plan since its price was competitive and it would process the non-electronic claims. The applicant represents that the trustees of the Plan chose SMCrx based on the findings and recommendation of Mercer, the Plan's independent consultant. Safeway's representative on the Plan's board of trustees took no part in the discussion or voting on the selection of SMCrx as the Plan's PBM.

5. SMCrx is a wholly-owned subsidiary of Safeway, which is a major contributing employer to the Plan through its grocery stores in Alaska. SMCrx has a separate board of directors and a separate corporate headquarters from Safeway.

6. A PBM normally maintains an extensive system of participating pharmacies in its preferred provider network (i.e., a PPN) throughout the United States. The applicant states that SMCrx has a PPN comparable to many of its competitors. However, SMCrx is smaller in size, and, therefore, more willing to adjust its operations to the needs of the Plan, including the processing of paper claims. The Plan does have a mail order prescription option through SMCRx, which is an advantage to the participants and beneficiaries. As a PBM, SMCrx negotiated discounts with the drug manufacturers as well as the participating pharmacies. These discounts will be passed on to the Plan and its participants and beneficiaries. Unless the pharmacies meet the discount standards of SMCrx, they do not participate in the PPN. SMCrx has a nationwide network of participating pharmacies. The applicant states that the discounts with the pharmacies are uniform, thereby avoiding any favoritism.

7. Effective August 1, 2000, the Plan entered into an agreement with SMCrx wherein SMCrx agreed to act as the PBM for the Plan.[2] The Plan will receive the same discounts on pharmaceutical drugs as all other customers of SMCrx. The Plan will, through SMCrx, participate in the PPN as well as benefit from SMCrx's ability to handle the paper claims of participants and beneficiaries. SMCrx has agreed to a 30 day cancellation clause in its contract for cause, and either party may cancel the contract without cause by giving 60 days prior notice.

8. SMCrx has agreed to the following terms for a period of one year:

(a) *Custom Alaska Network*

Brand Discount 11% off AWP[3] or U&C[4]

Dispensing Fee $2.50/Rx

Generic Discount 25% off AWP or U&C

Dispensing Fee $2.50/Rx

Claims Processing:

Electronic $0.60 per claim

[2] The provision of services to a plan by a party in interest with respect to the plan is a separate prohibited transaction under section 406(a)(1)(C) of the Act. However, the provision of services to a plan by a party in interest, which are necessary for the operation of the plan, are statutorily exempt under section 408(b)(2) of the Act, if the conditions required therein are met. The regulation promulgated by the Department which defines the scope of the statutory exemption contained in section 408(b)(2) of the Act states that no relief is provided for any arrangement for services which would violate section 406(b) of the Act (see 29 CFR section 2550.408b–2).

Therefore, it should be noted that in this proposed exemption, the Department is providing no relief beyond that provided by section 408(b)(2) of the Act with respect to the provision of PBM services by SCMrx to the Plan. In addition, the Department is providing no opinion herein as to whether any service arrangements between SMCrx and the Plan would meet the conditions of section 408(b)(2) of the Act and the regulations thereunder.

However, interested persons should review DOL Adv. Op. 99–09A (May 21, 1999) for a discussion of issues relating to such service arrangements.

[3] ''AWP'' stands for ''Average Wholesale Price.'' The AWP is determined by SMCrx's utilization of the Medispan First Data Bank. This data bank is the national drug pricing standard for determining AWP. The AWP pricing is updated daily and automatically in SMCrxs adjudication system. AWP represents the retail spread over wholesale acquisition costs and is set by the manufacturers. Thus, the applicant represents that it is objectively determined. The PBM also utilizes HCFA–MAC pricing for generics. This is a nationally recognized generic pricing standard which is updated monthly.

[4] ''U&C'' stands for ''Usual and Customary.'' The discount will be taken off either the AWP or the U&C price, whichever produces the lowest price.

Paper $1.50 per claim

(b) Broad Network

Brand Discount 13% off AWP or U&C
Dispensing Fee $2.50/Rx
Generic Discount AWP—33%
Dispensing Fee $2.50/Rx

(c) Mail Order

Brand Discount 15% off AWP
Generic Discount 30% off AWP
Dispensing Fee $2.00/Rx

9. The Custom Network consists of participating pharmacies who file claims electronically, while the Broad Network consists of all other pharmacies in SMCRx's network. In each network, the Plan receives a discount on the price of drugs. The SMCRx proposal provides the Plan with the highest savings off AWP. However, there are ''paper'' claims which are part of the Broad Network which must be processed by SMCRx. There is no mandatory formulary arrangement. A voluntary formulary arrangement exists where the Plan receives 60% of the manufacturer's rebate.

10. Plan participants and beneficiaries may acquire their prescription drugs through the PPN established by SMCrx. SMCrx will adjudicate prescription claims that have been submitted to the PPN by the covered individual and shall perform all claims-related processing functions, not limited to determining the validity and the accuracy of the claims submitted. SMCrx will then bill the Plan for the cost of these services, which is agreed to by contract. SMCrx will receive a monthly fee assessed on a per claim basis which will be paid for by the Plan. SMCRx's performance and competitiveness are monitored by the Plan's third party administrator, Labor Trust Services, Inc. (LTS), and the Plan's consultant Mercer. Both Mercer and LTS are independent of Safeway.

11. The Plan benefits by: (a) Receiving discounts through the participating pharmacies; (b) receiving discounts from any participating pharmaceutical company or manufacturer in the form of lower costs to participants and beneficiaries; (c) the processing and review of claims by professional management; and (d) the submissions of reports regarding trends in the pharmaceutical/prescription industry.

The applicant represents that at least 50% of the preferred providers participating in the PPN are, and will continue to be, unrelated to Safeway or any other party in interest. All Plan decisions to enter into agreements governing the subject purchases of prescription drugs have been and will continue to be made by Plan fiduciaries that are independent of Safeway and SMCrx. In this regard, any fiduciary affiliated with Safeway or SMCrx has removed or will remove himself or herself from all consideration by the Plan as to whether to engage in the covered transactions. Finally, the applicant states that the subject transactions are not part of an agreement, arrangement or understanding designed to benefit a party in interest.

12. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The terms of the transactions are at least as favorable to the Plan as those the Plan could obtain in similar transactions with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of Safeway and SMCrx; (c) at least 50% of the preferred providers participating in the PPN are unrelated to Safeway or any other party in interest; (d) Safeway will be treated no differently than any other pharmacy participating in the PPN; and (e) the transactions are not part of an agreement, arrangement or understanding designed to benefit a party in interest.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of October, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 01–26567 Filed 10–22–01; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–135)]

Agency Information Collection Activity; OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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)). This collection is required to document changes to NASA contracts and ensure that they are made quickly and in a cost-effective manner.

DATES: All comments should be submitted on or before December 24, 2001.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Contract Modifications, NASA FAR Supplement Part 18–43.

OMB Number: 2700–0054.

Type of review: Extension.

Need and Uses: NASA procurement and technical personnel use the information obtained by this collection to manage each contract, and to ensure that the Agency can obtain the best goods and services at the best prices.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 88.

Responses Per Respondent: 2.

Annual Responses: 176.

Hours Per Request: 45.

Annual Burden Hours: 7,920.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26625 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–133]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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)). This collection provides NASA with information necessary for the effective management of government property.

DATES: All comments should be submitted on or before December 24, 2001.

ADDRESSES: All comments should be addressed to Mr. Phillip Smith, Code BFZ, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Property in the Custody of Contractors.

OMB Number: 2700–0017.

Type of review: Extension.

Need and Uses: NASA is required to account for Government-owned/contractor-held property in accordance with SFFAS #6. NASA Form 1018 provides for the annual collection of summary data from these records to ensure the accurate reflection of Agency assets and related depreciation on the financial statements and essential property management information.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 860.

Responses Per Respondent: 1.

Annual Responses: 1.

Hours Per Request: 8.

Annual Burden Hours: 7000.

Frequency of Report: Annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26627 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–132]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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)). This information collection is used by NASA contracting officers to ensure that projected contract cost savings are being realized.

DATES: All comments should be submitted on or before November 23, 2001.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Cost Reduction Proposals under the NASA FAR Supplement Shared Savings Clause.

OMB Number: 2700–0094.

Type of review: Extension.

Need and Uses: This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives on current and follow-on contracts.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 9.

Responses Per Respondent: 1.25.

Annual Responses: 11.25.

Hours Per Request: 45.

Annual Burden Hours: 506.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26628 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–131]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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)). The financial recordkeeping information and reports obtained through this collection are used by NASA to ensure proper accountability for and use of NASA-provided funds.

DATES: All comments should be submitted on or before November 23, 2001.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Financial Monitoring and Control, Grants.

OMB Number: 2700–0049.

Type of review: Extension.

Need and Uses: Information is used by NASA to effectively maintain an appropriate internal control system for grants and cooperative agreements with institutions of higher education and other non-profit organizations, and to comply with statutory requirements on the accountability of public funds.

Affected Public: Not-for-profit institutions.

Number of Respondents: 7,149.

Responses Per Respondent: 5.

Annual Responses: 37,696.

Hours Per Request: 7½ hrs.

Annual Burden Hours: 284,792.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26629 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–130]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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)). The information obtained through this collection is used by NASA management and contracting offices to assess progress toward meeting statutory goals for small businesses/small disadvantaged businesses.

DATES: All comments should be submitted on or before November 23, 2001.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Small Business and Small Disadvantaged Business Concerns and Related Contract Provisions, NASA FAR Supplement Part 18–19, SF 295.

OMB Number: 2700–0073.

Type of review: Extension.

Need and Uses: NASA requires reporting of small disadvantaged business subcontract awards in order to meet its Congressionally mandated goals.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 225.

Responses Per Respondent: 2.

Annual Responses: 450.

Hours Per Request: 12.

Annual Burden Hours: 5,400.

Frequency of Report: Semi-annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26630 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–129]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies 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)). This information collection is used by NASA to effectively maintain an appropriate internal control system for equipment and property provided or acquired under grants or cooperative agreements with institutions of higher education and other non-profit organizations.

DATES: All comments should be submitted on or before November 23, 2001.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Property Management and Controls, Grants.

OMB Number: 2700–0047.

Type of review: Extension.

Need and Uses: Collection is required to ensure proper accounting of Federal property provided under grants and cooperative agreements with institutions of higher education and to satisfy external requirements of internal control of property provided by NASA or acquired with NASA funds.

Affected Public: Not-for-profit institutions.

Number of Respondents: 7,149.

Responses Per Respondent: 4.

Annual Responses: 28,596.

Hours Per Request: 4 hrs.

Annual Burden Hours: 114,384.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26631 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–134]

Agency Information Collection Activity; OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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)). This information collection will help NASA to assess the services provided by its procurement offices.

DATES: All comments should be submitted on or before November 23, 2001.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Procurement Customer Survey.

OMB Number: 2700.

Type of review: New.

Need and Uses: The NASA Procurement Customer Survey will be used to determine whether NASA's procurement offices are providing an

acceptable level of service to the business/educational community, and if not, which areas need improvement. Respondents will be business concerns and educational institutions that have been awarded a NASA procurement, or are interested in receiving such an award.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 1000.

Responses Per Respondent: 1.

Annual Responses: 500.

Hours Per Request: 25.

Annual Burden Hours: 125.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–26626 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–128]

NASA Advisory Council, Minority Business Resource Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: Thursday, November 8, 2001, 9:00 a.m. to 4:00 p.m., and Friday, November 9, 2001, 9:00 a.m. to 12:00 noon.

ADDRESSES: Hyatt Regency Washington, One Capitol Hill, 400 New Jersey Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Previous Meeting
—OSDBU Update of Activities
—NAC Meeting Report
—Overview of NASA Enterprises and Functional Staff Offices
—Public Comment
—Panel Discussion and Review
—Goals for MBRAC V Review
—Status of Open Committee Recommendations
—New Business

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–26632 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before November 23, 2001 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on August 7, 2001 (66 FR 41270 and 41271). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Presidential Library Facilities.

OMB Number: 3095–0036.

Agency Form Number: None.

Type of Review: Regular.

Affected Public: Presidential library foundations or other entities proposing to transfer a Presidential library facility to NARA.

Estimated Number of Respondents: 1.

Estimated Time per Response: 31 hours.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 31 hours.

Abstract: The information collection is required for NARA to meet its obligations under 44 U.S.C. 2112(a)(3) to submit a report to Congress before accepting a new Presidential library facility. The report contains information that can be furnished only by the foundation or other entity responsible for building the facility and establishing the library endowment.

Dated: October 17, 2001.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 01–26577 Filed 10–22–01; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–530]

Arizona Public Service Company, Palo Verde Nuclear Generating Station, Unit 3; Exemption

1.0 Background

The Arizona Public Service Company (APS/licensee) is the holder of Facility Operating License No. NPF–74 which authorizes operation of the Palo Verde Nuclear Generating Station (PVNGS), Unit 3. 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 pressurized water reactor located in Maricopa County in Arizona.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, discusses fuel performance requirements for fuel used in light water nuclear power reactors. The requirements refer specifically to cladding types of zircaloy or ZIRLO, and do not address other cladding material. Since advanced zirconium based cladding materials do not conform to the two designations specified in the code, an exemption is required.

APS requested a temporary exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, appendix K, for PVNGS, Unit 3, by letter dated March 2, 2001, as supplemented on August 28, 2001, and September 25, 2001. The exemption would allow continued testing of a lead fuel assembly (LFA) containing fuel rods fabricated with an advanced zirconium based cladding material, designated as Alloy A. This cladding material has been previously approved for limited use and testing at PVNGS in letters dated July 17, 1992, and February 4, 1997. The requested exemption extension would allow the Unit 3 LFA to exceed the already approved operating cycles.

Part 50 of 10 CFR specifies standards and acceptance criteria only for fuel rods clad with zircaloy or ZIRLO. As noted above, APS was granted an exemption to use Alloy A in a limited number of pins starting in Cycle 4 and continuing through Cycle 6 in Unit 3. Based on the success of this advanced cladding, APS was granted an additional exemption to extend the burnup for a limited number of pins clad with Alloy A during Cycle 7. As part of the second exemption, APS was allowed to use a full assembly of the Alloy A clad in Unit 3 for three operating cycles, starting in Cycle 7. Based on the results of physical examination and measurements that have confirmed the superior performance of Alloy A, and NRC's prior approval for a limited number of pins, APS has requested an exemption to extend the burnup into Cycle 10 for the full assembly of Alloy A fuel rods.

Section 50.44 (a) of 10 CFR states, ''Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, must, as provided in paragraphs (b) through (d) of this section, include means for control of hydrogen gas that may be generated, following a postulated loss-of-coolant accident (LOCA).''

Section 50.46(a)(1)(i) of 10 CFR states, ''Each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated loss-of-coolant accidents of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated loss-of-coolant accidents are calculated.''

Section 50.46 of 10 CFR continues on to delineate specifications for peak cladding temperature, maximum hydrogen generation, coolable geometry, and long-term cooling. Sections 50.44 and 50.46 of 10 CFR specifically refer to fuel with zircaloy or ZIRLO cladding; the use of fuel clad with zirconium-based alloys that do not conform to either of these two designations requires an exemption from this section of the Code.

Appendix K, paragraph I.A.5, of 10 CFR part 50 states, ''The rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation.'' The Baker-Just equation presumes the use of zircaloy or ZIRLO cladding. The use of fuel with zirconium-based alloys that do not conform to either of these two designations requires an exemption from this section of the Code.

APS believes that special circumstances are present, pursuant to 10 CFR 50.12(a)(ii), to warrant granting the exemption request.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by an 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. These circumstances include the special circumstances as set forth in 10 CFR 50.12(a)(2)(ii), which states that special circumstances are present whenever, ''Application 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.''

The underlying purpose of 10 CFR 50.44 is to ensure that there is an adequate means of controlling generated hydrogen. The hydrogen produced in a post-LOCA scenario comes from a metal-water reaction. In the previous exemptions, it was concluded that the use of the Baker-Just equation to determine the metal-water reaction rate is conservative for Alloy A cladding. Therefore, the amount of hydrogen generated by metal-water reaction in these materials will be within the design basis of Palo Verde Unit 3.

Section 50.46 of 10 CFR identifies acceptance criteria for ECCS system performance at nuclear power facilities. The effectiveness of the ECCS in Palo Verde Unit 3 will not be affected by the reinsertion of the LFA. Due to the similarities in the material properties of Alloy A to zircaloy, and the location of the LFA in a non-limiting location, it can be concluded that the ECCS performance in Palo Verde Unit 3 will not be adversely affected.

The intent of paragraph I.A.5 of Appendix K to 10 CFR part 50 is to apply an equation for rates of energy release, hydrogen generation, and cladding oxidation from a metal-water reaction which conservatively bounds all post-LOCA scenarios. CEN–429–P, Rev. 00–P, ''Safety Analysis Report for Use of Advanced Zirconium Based Cladding Material in PVNGS Unit 3 Lead Fuel Assemblies,'' August 1996, verifies that due to the similarities in the composition of the Alloy A cladding and zircaloy, the application of the Baker-Just equation will continue to conservatively bound all post-LOCA scenarios.

The staff examined the licensee's rationale to support the exemption requests and concluded that continued use of advanced zirconium based cladding materials would meet the underlying purpose of 10 CFR part 50.

Based upon the considerations discussed in this exemption, the staff concludes that the information provided by APS and the actions described in the application form an acceptable basis for extending the exemption for another cycle.

The safety evaluation may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room).

Therefore, the staff concludes that pursuant to 10 CFR 50.12(a)(2)(ii),

special circumstances exist as discussed in Section 3.0 above, and granting this exemption will not present an undue risk to the public health and safety and is consistent with the common defense and security.

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 Arizona Public Service Company, *et al.,* an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, appendix K, for Palo Verde Nuclear Generating Station, Unit 3.

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 52644).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of October 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26694 Filed 10–22–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–454, STN 50–455, STN 50–456, STN–50–457]

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37, NPF–66, NPF–72, and NPF–77, issued to Exelon Generation Company, LLC (the licensee), for operation of the Byron Station, Units 1 and 2 located in Ogle County, Illinois, and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendment would revise technical specification (TS) 3.7.2, ''Main Steam Isolation Valves'' (MSIV). TS surveillance requirement (SR) 3.7.2.1 and 3.7.2.2 would be revised for Byron and Braidwood to allow these requirements not to be met until the first startup after September 27, 2001. By letter dated October 1, 2001, the licensee requested that the Nuclear Regulatory Commission (NRC) exercise discretion not to enforce compliance with the actions required in Byron Station, Unit 1 and 2, and Braidwood Station, Unit 2, TS. While reviewing the SRs section of the Bases for SR 3.7.2.1 and SR 3.7.2.2. in support of Braidwood Station, Unit 1 refueling outage activities, the licensee discovered that the existing surveillance procedures were inconsistent with the TS Bases. During start-up following the last refueling outages at Braidwood Station, Units 1 and 2, and Byron Station Units 1 and 2, SR 3.7.2.1 and SR 3.7.2.2 were performed in Mode 4 and not in Mode 3 as required by the TS. The existing surveillance procedures for SR 3.7.2.1 and 3.7.2.2 allow testing in Mode 3, 4, or 5.

The licensee stated that on September 27, 2001, 4 p.m. CDT (5 p.m. EDT), the plants would not be in compliance with SR 3.7.2.1 and SR 3.7.2.2, which would require Braidwood Station, Unit 2, and Byron Station, Units 1 and 2, to be in Mode 3 within the next 7 hours. A Notice of Enforcement Discretion (NOED) was requested pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.*C.* of the ''General Statement of Policy and Procedures for NRC Enforcement Actions'' (Enforcement Policy), NUREG–1600, to be effective for the period until the first startup after September 27, 2001. The NOED was granted to the licensee on October 3, 2001, requiring an exigent amendment to be issued within 4 weeks of this date.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

MSIV closure is the initiator of the Inadvertent MSIV Closure event. Operation of the affected units with MSIVs tested in Mode 4 instead of Mode 3 will not affect the probability of an inadvertent MSIV closure event, since the only effect would be to potentially delay to closure of the MSIVs. The MSIVs Original Equipment Manufacturer (OEM) was contacted regarding the effect of system conditions on MSIV stroke times. The OEM indicated that the most significant impact on stroke time is main steam flow. The OEM also indicated that impact due to MSL pressures alone resulted in little change to valve closure time. According to the OEM, a few tenths of a second is added to full design steam line pressure stroke test versus stroke tests as performed without line pressure. The OEM's basis for these statements was from testing that was performed during the production of these and similar MSIVs. Any delay in closure time will mitigate the effects of the resulting pressure transient caused by the inadvertent closure of the MSIV. There are no modifications to the hardware associated with accomplishing the closure functions. Therefore there is no increase in the probability of the Inadvertent MSIV closure event. The safety function of the MSIVs is to close in the event of a high energy line break or to be closed in the event of a steam generator tube rupture. These are mitigative actions and are not initiators to any other accident scenario previously analyzed in the updated final safety analysis report. Therefore, the proposed change will not increase the probability of any other previously analyzed accident.

The consequences of previously analyzed accidents will not be significantly increased. Based on past data related to closure time, and vendor information stating that the valve stroke time impact due to increase in steam line pressure is on the order of a few tenths of a second, we have reasonable assurance the valves will still function within the assumed analysis time, thereby maintaining the analyzed dose consequence for the steam line break and feedline break accident analyses. The MSIVs will still function as assumed for the steam generator tube rupture event, in that the valves will function in response to operator action. Therefore, no additional source term is added to the steam generator tube rupture analysis and the consequence resulting from that event are not increased.

Therefore, due to the limited effect the deficient testing has on the valve stroke time and the appreciable margin between the required stroke time and the assumed isolation time in the limiting analyses, the probability of occurrence and consequences of any accident previously analyzed are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of

accident from any accident previously evaluated?

The proposed action does not involve physical alteration of the units. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the units are operated. There are no setpoints at which protective or mitigative actions are initiated that are affected by this proposed action. This proposed action will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. The surveillance procedures for stroke time testing the MSIVs will be revised to ensure the MSIVs are tested in Mode 3. This change does not impact normal operation of the MSIVs. In addition, no alteration in the procedures, which ensure the units remain within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed action does not alter assumptions made in the safety analysis. Therefore, the proposed action does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed action does not involve a significant reduction in the margin of safety. The margin of safety is assured by the operation of the plant within the prescribed parameters and by the diverse and redundant protection afforded by the Reactor Protection System (RPS) and Engineered Safety Feature Actuation System (ESFAS). The identified testing deficiency does not affect the parameters within which the unit is maintained, and is not detrimental to the actuation of the RPS or ESFAS functions. Reasonable assurance is provided that the MSIVs will achieve full closure within the required time interval. As noted above, there is additional margin between the required isolation time and that assumed in the limiting accident analysis.

Therefore, based on the above evaluation, we have concluded that the proposed changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 23, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these

requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Edward J. Cullen Jr., Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way KSB 3–W, Kennett Square, PA 19348, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 17, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 17th day of October 2001.

For the Nuclear Regulatory Commission.

Mahesh Chawla,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26693 Filed 10–22–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on November 8–10, 2001, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Friday, November 17, 2000 (65 FR 69578).

Thursday, November 8, 2001

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10 A.M.: Final Review of the Hatch License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Southern Nuclear Operating Company regarding the license renewal application for the Edwin I. Hatch Nuclear Plant Units 1 and 2, and the associated NRC staff's final Safety Evaluation Report (SER).

10:20 A.M.–12:30 P.M.: Dresden and Quad Cities Core Power Uprate (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Exelon Generation Company regarding the license amendment request to increase the core thermal power level for Dresden Nuclear Power Station Units 2 and 3 and the Quad Cities Nuclear Power Station Units 1 and 2, and the associated NRC staff's SER.

[**Note:** A portion of this session may be closed to discuss General Electric Nuclear Energy proprietary information applicable to this matter.]

1:30 P.M.–3:30 P.M.: Safety Research Program (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC Office of Nuclear Regulatory Research regarding the vision and expectations of the NRC Safety Research Program.

3:50 P.M.–5 P.M.: Proposed Update to 10 CFR part 52 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed update to 10 CFR part 52 that is based on experience gained from previous design certification reviews and discussions with stakeholders on the early site permit and combined license processes.

5:15 P.M.–7 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as proposed reports on Final Review of the Hatch License Renewal Application, Dresden and Quad Cities Core Power Uprate, and Proposed Update to 10 CFR part 52.

Friday, November 9, 2001

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:30 A.M.: Circumferential Cracking of PWR Vessel Head Penetrations (Open)—The Committee will hear a presentation by and hold discussions with representatives of the NRC staff regarding the status of staff activities associated with resolving issues related to circumferential cracking of pressurized water reactor (PWR) vessel head penetrations, including control rod drive mechanism nozzles.

10:50 A.M.–12:15 P.M.: Licensing Approach for the Pebble Bed Modular Reactor Design (Open)—The Committee will hear remarks by Dr. Kress and Dr. Powers regarding the October 10–12, 2001 future plant design workshop organized by the NRC Office of Nuclear Regulatory Research. Also the Committee will hear a presentation by and hold discussions with representatives of the NRC staff regarding the licensing approach for the Pebble Bed Modular Reactor design.

1:15 P.M.–2 P.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

2 P.M.–2:15 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

2:30 P.M.–4:30 P.M.: Discussion of Topics for Meeting with the NRC Commissioners (Open)—The Committee will discuss the following topics for meeting the NRC Commissioners on December 5, 2001:

- Regulatory Challenges for Future Plant Designs
- Reactor Oversight Process
- ACRS Activities Associated with Power Uprates and Related Matters
- ACRS Activities Associated with License Renewal and Related Matters

4:30 P.M.–7 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, November 10, 2001

8:30 A.M.–12:30 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 P.M.–1 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50462). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Sher Bahadur, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Dr. Sher Bahadur prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Dr. Sher Bahadur if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss proprietary information per 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur (telephone 301–415–0138), between 7:30 a.m. and 4:15 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the Internet at *http://www.nrc.gov/ACRSACNW.* Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: October 17, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–26690 Filed 10–22–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of October 22, 29, November 5, 12, 19, 26, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 22, 2001

There are no meetings scheduled for the Week of October 22, 2001.

Week of October 29, 2001—Tentative

There are no meetings scheduled for the Week of October 29, 2001.

Week of November 5, 2001—Tentative

There are no meetings scheduled for the Week of November 5, 2001.

Week of November 12, 2001—Tentative

Thursday, November 15, 2001

2:00 p.m.—Discussion of Intragovernmental Issues (Closed-Ex. 1)

Week of November 19, 2001—Tentative

There are no meetings scheduled for the Week of November 19, 2001.

Week of November 26, 2001—Tentative

There are no meetings scheduled for the Week of November 26, 2001.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/SECY/smj/schedule.htm*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: October 18, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–26818 Filed 10–19–01; 3:10 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Boston Stock Exchange, Inc. (DrugMax, Inc., Common Shares, $.001 Par Value) File No. 1–15445

October 17, 2001.

DrugMax, Inc., a Nevada corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 [1] (''Act'') and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Shares, $.001 par value (''Security'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'').

The Issuer stated in its application that the Security has been listed on the Nasdaq SmallCap Market since November 19, 1999. In making the decision to withdraw the Security from listing and registration on the BSE, the Issuer considered the liquidity provided by the BSE and the cost associated with maintaining such listing. The Issuer represented that it will maintain its listing on the Nasdaq SmallCap Market so that the shareholders are provided with accessible and liquid markets. The Issuer's application relates solely to the Security's withdrawal from listing on the BSE and from registration under Section 12(b) of the Act [3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before November 8, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–26660 Filed 10–22–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Notice of Application To Withdraw From Listing and Registration on the Philadelphia Stock Exchange, Inc. (Public Service Enterprise Group Inc., Common Stock, no par value) File No. 1–9120

October 17, 2001.

Public Service Enterprise Group Inc., a New Jersey corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934, as amended (''Act''),[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value (''Security''), from listing and registration on the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer approved a resolution on January 16, 2001 to withdraw its Security from listing on the Exchange. The Security was suspended from trading on February 9, 2001. The Board believes that withdrawing the Security from the exchange will reduce its listing expenses. The Issuer will continue to list its Security on the New York Stock Exchange, Inc. (''NYSE'').

The Issuer states in its application that it has met the requirements of Phlx Rule 809 governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the withdrawal of the Security from the Phlx and shall have no effect upon its listing on the NYSE or its registration under Section 12(b) of the Act.[3]

Any interested person may, on or before November 8, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Phlx and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–26659 Filed 10–22–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25211;812–12162]

MassMutual Institutional Funds, et al.; Notice of Application

October 16, 2001

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') exempting applicants from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit them to enter into and materially amend sub-advisory agreements without shareholder approval.

APPLICANTS: Mass Mutual Institutional Funds (''MMIF''), MML Series Investment Fund (''MML Series,'' and together with MMIF, the ''Trusts''), Massachusetts Mutual Life Insurance Company (the ''Manager'').

FILING DATES: The application was filed on June 30, 2000 and amendments thereto on December 13, 2000 and October 16, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–

0609. Applicants, 1295 State Street, B379, Springfield, MA 01111–0001.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, 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 SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. The Trusts, organized as Massachusetts business trusts, are registered under the Act as open-end management investment companies. MMIF and MML Series currently are comprised of eighteen and eleven series, respectively (each a ''Fund,'' and together, the ''Funds''), each with its own investment objectives, policies and restrictions.[1] Shares of MML Series are offered solely to separate accounts established by the Manager and its life insurance company subsidiaries, including MML Bay State Life Insurance Company and C.M. Life Insurance Company. The Manager, a mutual life insurance company organized under the laws of The Commonwealth of Massachusetts, serves as the investment manager to the Funds and is registered under the Investment Advisers Act of 1940 (''Advisers Act'').

2. The Manager serves as investment manager to each Fund pursuant to separate investment management agreements (''Management Agreements'') between the Trusts and the Manager that were approved by the board of trustees of each Trust (each, the ''Board,'' and collectively, the ''Boards''), including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and each Fund's shareholders. Under the terms of the Management Agreements, the Manager provides investment management services to each Fund while delegating the day-to-day portfolio management for each Fund to one or more sub-advisers (''Sub-Advisers'') pursuant to separate investment sub-advisory agreements (''Sub-Advisory Agreements''). Each Sub-Adviser is an investment adviser registered under the Advisers Act, and any future Sub-Adviser will be registered under the Advisers Act. The Manager selects each Sub-Adviser, subject to approval by the respective Board, and compensates the Sub-Advisers out of fees paid to the Manager by the respective Fund.

3. The Manager monitors each Fund's performance and the Sub-Advisers and makes recommendations to the Board regarding allocation, and reallocation, of assets among Sub-Advisers to the extent the Manager deems appropriate in order to achieve the overall objectives of the Fund. The Manager also is responsible for recommending whether to employ, terminate or replace a particular Sub-Adviser. The Manager recommends the selection of a Sub-Adviser based on a number of factors, including whether the Sub-Adviser has displayed discipline and thoroughness in pursuit of its stated investment objectives, has maintained consistently above-average performance over time, and has demonstrated a high level of services to clients.

4. Applicants request relief to permit the Manager, subject to approval by the Boards, to enter into and materially amend Sub-Advisory Agreements without seeking shareholder approval.[2] The requested relief will not extend to a Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of either Trust or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Funds (''Affiliated Sub-Adviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants state that the structure of each Trust is different from that of traditional investment companies. Applicants assert that the investors are relying on the Manager's experience to select one or more Sub-Advisers best suited to achieve a Fund's desired investment objectives. Applicants assert that, from the perspective of the investors, the role of Sub-Advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Sub-Advisory Agreements may impose unnecessary costs and delays on the Funds, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Management Agreements will remain subject to the requirements of section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Fund (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or, in the case of a Fund created in the future whose public shareholders (or variable contract owners through a separate account) purchased shares on the basis of a prospectus containing the disclosure contemplated by condition (2) below, by the sole initial shareholder(s) before offering shares of that Fund to the public (or the variable contract owners through a separate account).

2. Each Trust will disclose in its prospectuses the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The

[1] Applicants also request relief with respect to future series of the Trusts and all future registered open-end management investment companies or series thereof that (a) are advised by the Manager or any entity controlling, controlled by, or under common control with the Manager, (b) use the multi-manager structure described in the application; and (c) comply with the terms and conditions in the application (''Future Funds'', and together with the Funds, the ''Funds''). The Trusts are the only existing registered open-end management investment companies that currently intend to rely on the requested order. If the name of any Fund contains the name of a Sub-Adviser, as defined below, it will be preceded by, the name of the Manager or the name of the entity controlling, controlled by, or under common control with the Manager that serves as primary adviser to such Fund.

[2] The term ''shareholders'' includes variable contract owners, as applicable.

prospectuses will prominently disclose that the Manager has the ultimate responsibility (subject to oversight by the Boards) to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. Within ninety (90) days of the hiring of any new Sub-Adviser, the Manager will furnish shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) with the information about the new Sub-Adviser that would be included in a proxy statement. This information will include any change in such disclosure caused by the addition of a new Sub-Adviser. The Manager will meet this condition by providing shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) within ninety (90) days of the hiring of a Sub-Adviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that Sub-Advisory Agreement, including the compensation to be paid thereunder, being approved by the Fund's shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account).

5. At all times, a majority of each Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

6. When a Sub-Adviser change is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Fund and the unit-holders of any sub-account) and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Manager will provide general management services to each Trust and the Funds relying on the requested order, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval by the Boards, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select, and recommend Sub-Advisers to manage all or a part of a Fund's assets; (c) allocate and, when appropriate, reallocate a Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the performance of Sub-Advisers; and (e) ensure that the Sub-Advisers comply with the relevant Fund's investment objective, policies, and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance.

8. No director, trustee or officer of either Trust or director or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in any Sub-Adviser except for: (a) Ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by or is under common control with a Sub-Adviser.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26590 Filed 10–22–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44941; File No. SR–NYSE–99–38]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2, by the New York Stock Exchange, Inc. to Amend the NYSE's Minor Rule Violation Plan

October 16, 2001.

I. Introduction

On September 2, 1999, the New York Stock Exchange, Inc. (''NYSE'' 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 its Minor Rule Violation Plan (''Plan''). On November 12, 1999, the Exchange amended the proposal.[3] Notice of the proposed rule change, as modified by Amendment No. 1, appeared in the **Federal Register** on December 20, 1999.[4] The Commission received no comments on the proposal. On October 9, 2001, the NYSE again amended the proposal.[5] This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

II. Description of the Proposal

The proposed rule change would revise the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to NYSE Rule 476A'' for imposition of fines for minor violations of rules by adding to the list failure to comply with the provisions of NYSE Rules 35, 345A(b), and 440A. In addition, the proposal clarifies that paragraph (c) of currently listed NYSE Rule 472 encompasses telemarketing scripts.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed Amendment No. 2, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* November 10, 1999 letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission (''Amendment No. 1''). In Amendment No. 1, the NYSE made technical changes to the proposal.

[4] *See* Securities Exchange Act Release No. 42225 (December 13, 1999), 64 FR 71162.

[5] *See* October 5, 2001 letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission (''Amendment No. 2''). In Amendment No. 2, at the request of Division staff, the NYSE removed NYSE Rule 345A(a) (Regulatory Element Continuing Education Requirements) from the proposed additions to the List of Exchange Rules Subject to Rule 476A Procedures.

SR–NYSE–99–38 and should be submitted by November 13, 2001.

IV. Discussion and Commission Findings

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[6] and, in particular, the requirements of section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6) of the Act[8] because it provides an additional option for the appropriate discipline of the NYSE's members and persons associated with its members for certain rule violations. Finally, the Commission finds the proposal is consistent with Securities Exchange Act Rule 19d–1(c)(2)[9] that governs minor rule violation plans.

The Commission finds good cause for accelerating approval of Amendment No. 2 to the proposed rule change prior to the 30th day after publication in the **Federal Register**. Amendment No. 2 removes the Regulatory Element of the Continuing Education requirements from the list of rules the NYSE administers pursuant to the Plan. The Commission notes that the National Association of Securities Dealers, (''NASD''), at the Commission's request, removed the Continuing Education Regulatory Element requirement from its proposal regarding administration of rules pursuant to its minor rule violation plan.[10] Amendment No. 2 ensures that the NYSE and the NASD have the same disciplinary options for their members and associated persons with regard to violations of Continuing Education requirements. Accordingly, the Commission finds that good cause exists, consistent with section 6(b)(6) of the Act,[11] and section 19(b) of the Act[12] to accelerate approval of Amendment No. 2 to the proposed rule change.

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 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 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 NYSE 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 the 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,[13] and Rule 19d–1(c)(2)[14] thereunder, that the proposed rule change (SR–NYSE–99–38), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26591 Filed 10–22–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3370]

State of Texas

Bee and Maverick Counties and the contiguous counties of Dimmit, Goliad, Karnes, Kinney, Live Oak, Refugio, San Patricio, Uvalde, Webb and Zavala in the State of Texas constitute a disaster area as a result of severe storms and flooding that occurred from August 28 through September 14, 2001. Applications for loans for physical damage may be filed until the close of business on December 17, 2001 and for economic injury until the close of business on July 17, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere	6.750%
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 337011 and for economic injury is 9M9600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 17, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01–26670 Filed 10–22–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

President's Commission to Strengthen Social Security

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of Meeting.

DATES: November 9, 2001 10:00 a.m.–3:30 p.m.

ADDRESSES: Washington, DC–Venue to be determined. Due to unforeseen circumstances the venue has not been identified to date. This information will be published in the **Federal Register** and posted at *www.CSSS.gov* as soon as it is available.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting will be open to the public between 10:00 a.m. and 3:30 p.m., with a break for lunch between 1:00 p.m. and 2:00 p.m.

Purpose: This is the fifth deliberative meeting of the Commission. No public testimony will be heard at this meeting.

[6] 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).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(6).

[9] 17 CFR 240.19d–1(c)(2).

[10] *See* Securities Exchange Act Release No. 44512 (July 3, 2001), 66 FR 36812 (July 13, 2001) (SR–NASD–00–39).

[11] 15 U.S.C. 78f(b)(6).

[12] 15 U.S.C. 78s(b).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 204.19d–1(c)(2).

[15] 17 CFR 200.30-3(a)(12).

However, interested parties are invited to attend the meeting.

Agenda: The Commission will meet commencing Friday, November 9, at 10:00 a.m. and ending at 3:30 p.m., with a break for lunch between 1:00 p.m. and 2:00 p.m. The Commission will be deliberating on Social Security reform options, including how to administer personal accounts.

Records are being kept of all Commission proceedings that are subject to public release under the Federal Advisory Committee Act and are available for public inspection at the Commission's office at the address below. Documents such as meeting announcements, agendas, transcripts, minutes, and Commission reports will be available on the Commission's web page. Anyone requiring information regarding the Commission should contact Commission staff by:

- Internet at *http://www.CSSS.gov,* email to comments@CSSS.gov;
- Mail addressed to President's Commission to Strengthen Social Security, 734 Jackson Place, NW, Washington, DC, 20503;
- Telephone at (202) 343–1255.

Dated: October 16, 2001.

Michael A. Anzick,

Designated Federal Officer.

[FR Doc. 01–26656 Filed 10–22–01; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given to reissue the Office of the Commissioner (SA) because the following organizations are being deleted: The Office of the Deputy Commissioner of Social Security (SAP), the Office of the Senior Executive Officer (SAK) and the Senior Advisor to the Commissioner (SAL). Notice is also being given that the following organizations are being established: The Office of Strategic Management (SAQ) and the Office of Executive Operations (SAR) The new material and changes are as follows:

Section SA.00 *The Office of the Commissioner*—(Mission):

The Office of the Commissioner (OC) is directly responsible for all programs administered by SSA; for State-administered programs directed by SSA; and for certain functions with respect to the black lung benefits program. It provides executive leadership to SSA. The Office is responsible for development of policy, administrative and program direction, program interpretation and evaluation, maintenance of relations with news media, research oriented to the study of the problems of economic insecurity in American society; and development of recommendations on methods of advancing social and economic security through social insurance and related programs.

Section SA.10 The Office the Commissioner—(Organization):

The Office of the Commissioner, under the leadership of the Commissioner of Social Security, includes:

A. The Commissioner of Social Security (SA).

B. The Deputy Commissioner of Social Security (SA).

C. Immediate Office of the Commissioner (SA).

D. The Office of the Chief of Staff (SAN).

E. The Office of Strategic Management (SAQ).

F. The Office of Executive Operations (SAR).

Section SA.20 The Office of the Commissioner—(Functions):

A. The Commissioner of Social Security (SA) and Deputy Commissioner of Social Security provide executive leadership to SSA and exercise general supervision over its major components. The Chief Information Officer is also located in the immediate Office of the Commissioner and reports directly to the Commissioner on statutorily defined CIO duties and as a key advisor to the Deputy Commissioner of Social Security.

B. The Deputy Commissioner of Social Security (SA) assists the Commissioner in carrying out his/her responsibilities and performs other duties as the Commissioner may prescribe.

C. The Immediate Office of the Commissioner (SA), including the Chief Information Officer, provides the Commissioner and Deputy Commissioner of Social Security with staff assistance on the full range of responsibilities.

D. The Chief of Staff (SAN) provides day-to-day support to the Commissioner and Deputy Commissioner in matters relating to program policy, administration, communications and external liaison.

E. The Office of Strategic Management (SAQ).

1. Directs the development of the Agency's tactical and strategic planning process, and develops and promulgates planning policies, procedures and methodologies for the Agency.

2. Produces the Agency Strategic Plan, Annual Performance Plan and Annual Performance Report; establishes and implements a framework for the effective integration of planning functions with evaluation and management of SSA resources, projects and activities in accordance with applicable law and regulations; oversees and integrates the Agency's Service Vision objectives into the Agency's strategic and tactical planning processes.

3. Ensures that the budget process focuses resources on priority initiatives that support the Agency's strategic objectives and goals, and that the appropriate measures are built to determine Agency performance, and validates and monitors Agency performance goals attainment.

4. Supports an ongoing market measurement program that collects and assesses employee, customer and stakeholder feedback to be used and provides staff support to the Office of the Commissioner on strategic initiatives and on high priority issues, directing special Agency-level cross-cutting projects.

F. The Office of Executive Operations (SAR).

1. Coordinates priority matters requiring the attention of, or decision by, the Commissioner and directs the tracking and monitoring of actions assigned by the Commissioner to all Agency components.

2. Coordinates and provides liaison for internal communication and correspondence control for OC.

3. Monitors administrative and program policy development and policy implementation activities, and prepares periodic status reports.

4. Ensures that issues requiring the Commissioner's attention are developed timely and coordinated with SSA and other Federal Agencies having an interest in the matter; designs and implements procedures for proper coordination and follows through on specific issues.

5. Expedites regulation development, review, clearance, publication and issuance. Oversees the management of the final stages of regulations development and clearance prior to submittal to the Commissioner.

6. Communicates the objectives, priorities and standards of OC to individuals involved in the preparation of correspondence and memoranda, and ensures that communications signed or approved by OC are consistent with these standards and objectives.

7. Reviews and analyzes memoranda and other communications directed to OC for adequacy of coordination and clearances, clearness and conciseness of presentation, timeliness, necessary follow through and other elements of completed staff work.

8. Works with functional components and staff offices to improve the quality of decision papers and correspondence.

Dated: October 16, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

[FR Doc. 01–26657 Filed 10–22–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–82]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC., on October 17, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10229.

Petitioner: GE Celma S.A.

Section of 14 CFR Affected: 14 CFR 145.47(b).

Description of Relief Sought/ Disposition: To permit GE Celma to use the calibration standards of the Instituto Nacional de Mertologia, Normalizącč≤o Qualidade Industrial in lieu of the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment.

Grant, 10/02/2001, Exemption No. 6546C.

Docket No.: FAA–2001–10566.

Petitioner: Montgomery Bay Chapter of the International Organization of the Ninety-Nines, Inc.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Montgomery Bay 99's to conduct local sightseeing flights at the Watsonville Open House in the vicinity of Aptos, California, for a Nickel a Pound airlift during October 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements to part 135.

Grant, 10/04/2001, Exemption No. 7633.

Docket No.: FAA–2001–10169.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Boeing to give copies of its Inspection Procedures Manual (IPM) to key individuals and make the IPM available electronically to all other employees, rather than giving a paper copy of each of its supervisory and inspection personnel.

Grant, 09/21/2001, Exemption No. 7065A.

Docket No.: FAA–2001–9713.

Petitioner: All Nippon Airways, Co., Ltd.

Section of 14 CFR Affected: 14 CFR 145.47(b).

Description of Relief Sought/ Disposition: To (1) allow ANA to use the calibration standards of the National Metrology Institute of Japan in lieu of the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment.

Grant, 10/02/2001, Exemption No. 7051A.

[FR Doc. 01–26662 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–83]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 17, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10446 (previously Docket No. 29118).

Petitioner: Homestead Helicopters, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Homestead to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 10/05/2001, Exemption No. 6733B.

Docket No.: FAA–2001–10414 (previously Docket No. 29846).

Petitioner: Air Cargo Carriers, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Air Cargo to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 10/05/2001, Exemption No. 7124A.

Docket No.: FAA–2001–10364 (previously Docket No. 29093).

Petitioner: Grand Aire Express, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit GAE to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/04/2001, Exemption No. 6723B.

Docket No.: FAA–2001–10267.

Petitioner: Carver Aero, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit Carver to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/04/2001, Exemption No. 6229C.

Docket No.: FAA–2001–10262 (previously Docket No. 27052).

Petitioner: Petroleum Helicopters, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c).

Description of Relief Sought/Disposition: To permit PHI to operate certain Bell Model 206L–1 helicopters under part 135 without a TSO–C112 (Mode S) transponder installed on each helicopter.

Grant, 10/04/2001, Exemption No. 5586D.

Docket No.: FAA–2001–10265 (previously Docket No. 29076).

Petitioner: RR Investments, Inc., dba Million Air Dallas.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit Million Air Dallas to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/04/2001, Exemption No. 6718B.

Docket No.: FAA–2001–10606 (previously Docket No. 29810).

Petitioner: IHC Health Services, Inc., dba IHC Life Flight of Salt Lake City, UT.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit IHC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 10/09/2001, Exemption No. 7079A.

[FR Doc. 01–26663 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Harmonization Initiatives

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Federal Aviation Administration and the Joint Aviation will convene a meeting to accept input from the public on the Harmonization Work Program. The Harmonization Work Program is the means by which the Federal Aviation Administration and the Joint Aviation Authorities carry out a commitment to harmonize, to the maximum extent possible, the rules regarding the certification, operation and maintenance of civil aircraft, and the standards, practices, and procedures governing the design, materials, workmanship, and construction of civil aircraft, aircraft engines, and other components. The purpose of the meeting is to provide an opportunity for the public to submit input to the Harmonization Work Program. This notice announces the date, time, location and procedures for the public meeting.

DATES: The public meeting will be held on November 27, 2001, starting at 1:30 p.m. Industry comments, presentations and proposals must be received on or before November 1, 2001.

ADDRESSES: The public meeting will be held at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC, 20001. Persons unable to attend the meeting may mail their comments in triplicate to: Brenda Courtney, Federal Aviation Administration, Office of Rulemaking (ARM–200), 800 Independence Avenue, SW., Washington, DC 20591. You may also submit your comments to Brenda Courtney by e-mail: *brenda.courtney@faa.gov* or by facsimile at (202) 267–5075.

FOR FURTHER INFORMATION CONTACT: Requests to attend and present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Brenda Courtney, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3327, e-mail: *brenda.courtney@faa.gov,* or facsimile at (202) 267–3327.

SUPPLEMENTARY INFORMATION: Federal Aviation Administration (FAA) and the Joint Aviation Authorities (JAA) will convene a meeting to accept input from the public on the Harmonization Work Program. The meeting will be held on November 27, 2001, at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC beginning at 1:30 p.m. The agenda is as follows.

November 27, 2001—Springwood Room

1:30–5 p.m. Welcome, practical arrangements
Authorities News of Interest
Approbation of Minutes (March 2001)
Debrief on action items from
- March 2001 HMT Meeting
- FAA/JAA 18th Annual Meeting (June 2001)
- OHG and CCHG Meetings

Industry and Public Presentations
Suggestions for 195h FAA/JAA Annual Meeting (June 2002)

The Washington Court Hotel is located on New Jersey Avenue, NW., three blocks from the U.S. Capitol building. Union Station, which includes Amtrak (train) and metro rail service (red line), is two blocks away. Washington Reagan National airport is a 15-minute ride by taxi. For hotel reservations at the Washington Court Hotel, please call (202) 628–2100 or fax 1–202–879–7918. Conference attendees should advise the hotel that you plan to attend the ''FAA/JAA Meeting''. Reservations must be made by Friday, October 26, 2001.

Participation at the Meeting

The FAA should receive requests from persons who wish to present oral and written statements at the public meeting no later than November 10, 2001. Statements and presentations should be provided on diskette or forwarded by e-mail to the person identified under the caption **FOR FURTHER INFORMATION CONTACT** to be made part of the official minutes of the meeting. Requests to present oral statements received after November 10 will be scheduled if time is available during the meeting.

Meeting Procedures

The following procedures are established to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting, subject to availability of space in the meeting room.

(2) The meeting may adjourn early if scheduled speakers complete their statements in less than the time scheduled for the meeting.

(3) The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served

basis. However, the FAA reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(4) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested at the above number listed under **FOR FURTHER INFORMATION CONTACT** at least 10 calendar days before the meeting.

(5) Representatives from FAA and JAA will preside over the meeting.

(6) The FAA and JAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or information related to proposed harmonization initiatives may be accepted at the discretion of the FAA and JAA. The FAA requests that persons participating in the meeting provide copies of all materials to be presented. Copies may be provided to the audience at the discretion of the participant.

(7) Statements made by the FAA and JAA are intended to facilitate discussion of issues or to clarify issues. Any statement made during the meeting by an official is not intended to be, and should not be construed as, a position of the FAA and JAA.

(8) The meeting is designed to solicit public views and more complete information on proposed harmonization initiatives. Therefore, the meeting will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Dated: Issued in Washington, DC, on October 17, 2001.

Brenda D. Courtney,

Manager, Aircraft and Airport Rules Division.

[FR Doc. 01–26665 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

The Federal Aviation Administration (FAA) Satellite Operational Implementation Team (SOIT) Hosted Forum on the Capabilities of the Global Positioning System (GPS)/Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS)

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Name: FAA SOIT Forum on GPS/WAAS/LAAS Capabilities.

Time And Date: 9:00 a.m.–5:00 p.m., December 3–4, 2001.

Place: Hyatt Fair Lakes Hotel, 12777 Fair Lakes Circle, Fairfax, Virginia 22033.

Status: Open to the aviation industry with attendance limited to space available.

Purpose: The FAA SOIT will be hosting a public forum to discuss the FAA's GPS approvals and WAAS/LAAS operational implementation plans. This meeting will be held in conjunction with a regularly scheduled meeting of the FAA SOIT and in response to aviation industry requests to the FAA Administrator. Formal presentations by the FAA will be followed by question and answer sessions. Those planning to attend are invited to submit proposed discussion topics.

Registration: Participants are requested to register their intent to attend this meeting by November 27th, 2001. Names, affiliations, email addresses, telephone and facsimile numbers should be sent to the point of contact listed below.

Point of Contact: Registration and submission of suggested discussion topics may be made to Mr. Steven Albers, phone (202) 267–7301, fax (202) 267–5086, or email at steven.CTR.albers@faa.gov.

Issued in Washington D.C. on October 16, 2001.

Hank Cabler,

SOIT Co-Chairman.

[FR Doc. 01–26661 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–10851]

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 011015251–1251–01]

Request for Commercial Requirements for U.S. Launch Range Improvements and Modernization

AGENCIES: Federal Aviation Administration (FAA); Department of Commerce, Technology Administration, Office of Space Commercialization.

ACTION: Request for Commercial Requirements for U.S. Launch Range Improvements and Modernization.

SUMMARY: The Department of Transportation (DOT) and the Department of Commerce (DOC) request inputs from the U.S. commercial space transportation sector regarding U.S. launch base and range support and modernization. Specifically, DOT and DOC seek to collect range support and modernization requirements from current or future commercial users of the Eastern Range at Cape Canaveral Air Force Station, Florida, and the Western Range at Vandenberg Air Force Base, California.

DATES: Submit requirements on or before November 30, 2001.

ADDRESSES: Please submit responses to this announcement to both the FAA and DOC, Office of Space Commercialization. Your responses can be sent in writing and in duplicate to the FAA and the Office of Space Commercialization, respectively, as follows: Docket No. FAA–2001–10851, Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Docket No. 011015251–1251–01, Office of Space Commercialization, Room 4805, U.S. Department of Commerce, Herbert C. Hoover Building, 14th & Constitution Ave., NW, Washington, D.C. 20230. If you wish to receive confirmation that FAA and DOC received your comments, include a self-addressed, stamped postcard.

You also have the option to submit comments electronically through the Internet to the FAA at *http://dms.dot.gov.* Information and/or data considered to be proprietary should be labeled appropriately and should not be filed electronically. You may review the public docket containing responses to this announcement in person in the Department of Transportation Dockets Office between 9 a.m. and 5 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: Kelvin Coleman (FAA), (202) 267–7972, or Paul Eckert (DOC), (202) 482–4571.

SUPPLEMENTARY INFORMATION: The February 2000 White House report on the Future Use and Management of the U.S. Space Launch Bases and Ranges documented a national strategy to enhance and expand the government-industry partnership for management and use of the Eastern and Western ranges (EWR). This strategy included a recommendation to allow commercial users of the Eastern and Western ranges adequate opportunity to communicate

their requirements so they could be actively considered and factored into Air Force decisions on range improvements and modernization. Further, it was desired that an ongoing process for collecting, communicating, and considering commercial requirements for EWR support and modernization be established. Thus, the Departments of Transportation and Commerce seek to work with U.S. commercial space sector users of the EWR to collect commercial requirements, especially those common to multiple users, for launch range support and modernization. Responses to this announcement should include the following:

1. A detailed explanation of the requirement;

2. technical and economic rationale, as well as, overall importance; and

3. key dimensions of performance, with threshold and objective requirements if possible.

A threshold requirement is a minimum acceptable value for a system capability or characteristic, which, in the user's judgment, is necessary to provide an operational capability. An objective requirement is a value beyond the threshold that could have a measurable and beneficial impact on the system capability, supportability, or operational concept of employment. (For example, ''The imaging subsystem must be capable of maintaining coverage on space launch vehicles from first motion through powered flight as a threshold and orbital insertion as an objective.'')

Subsequent to collecting these requirements, DOT and DOC will consolidate and prioritize requirements, with consultation from the commercial sector, and prepare a report. This report will contain commercial requirements for EWR support and modernization, and will be provided to the Air Force such that commercial sector requirements for range support and modernization can be considered in the Department of Defense (DOD) requirements process.

This request is applicable to requirements for EWR support and modernization only, and not to mission specific requirements that may be appropriately handled via the Universal Documentation System (UDS), per Air Force Space Command Instruction 21–104.

Dated: Issued in Washington, DC, on October 17, 2001

Patricia G. Smith

Associate Administrator for Commercial Space Transportation, Federal Aviation Administration.

Bruce Mehlman,

Assistant Secretary for Technology Policy, Department of Commerce.

[FR Doc. 01–26664 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: In order to comply with the requirements of the Paperwork Reduction Act of 1995, FinCEN intends to submit the information collection addressed in this notice for a three-year extension of approval by the Office of Management and Budget (''OMB''). Prior to submission of the extension request, FinCEN is soliciting comment on the information collection in FinCEN Issuance 98–1, as extended (the conditional exception to the application of 31 CFR 103.33(g)).

DATES: Written comments should be received on or before December 24, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 1618, Vienna, VA 22183–1618, *Attention:* PRA Comments—CIF Exception. Comments also may be submitted by electronic mail to the following Internet address: ''regcomments@fincen.treas.gov'' with the caption in the body of the text,''*Attention:* PRA Comments—CIF Exception.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Stacie A. Larson (703) 905–3590, Office of Chief Counsel, FinCEN, or Cynthia L. Clark, Deputy Chief Counsel, FinCEN (703) 905–3590. A copy of the issuance may be obtained from http://www.access.gop.gov/su_docs/aces/aces140.html.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, the following information is presented concerning the information collections below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Title: Conditional Exception to the Application of 31 CFR 103.33(g).

OMB Number: 1506–0008.

Abstract: Under 31 CFR 103.33(g) (the ''Travel Rule'') financial institutions must include certain information in transmittal orders relating to the transmittal of funds of $3,000 or more. In 1998, FinCEN granted a conditional exception (the ''CIF Exception'')[1] to the strict operation of the Travel Rule.[2] The CIF exception requires, among other things, that a financial institution include on a transmittal order a question mark (''?'') after the name on the transmittal order whenever that name is other than the transmittor's true name.

The information collection addressed in this notice is mandatory. The use of the question mark symbol after a name that is not the true name of the transmittor will assist law enforcement authorities in the prevention and detection of money laundering. If a transmittal order is being examined by a law enforcement agency and the question mark symbol is included, the agency will then know to ask the financial institution for the transmittor's true name. All records required to be maintained under the BSA must be retained for five years.

Current Action: There is no change to the existing information collection.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

[1] FinCEN Issuance 98–1, 63 FR 3640, January 26, 1998.

[2] FinCEN extended the CIF Exception in 1999 (FinCEN Issuance 99–1, 64 FR 41041, July 29, 1999) and again in 2001 (FinCEN Issuance 2001–1, 66 FR 32746, June 18, 2001).

Burden: The estimated number of transmittal numbers with the question mark symbol is 5,000. The estimated annual reporting burden is 250 hours, and the estimated annual recordkeeping burden is 1,250 hours.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments concerning the accuracy of the burden estimate and suggestions for reducing the burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Treasury Department, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dated: October 16, 2001.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 01–26582 Filed 10–22–01; 8:45 am]

BILLING CODE 4820–03–P

DEPARTMENT OF THE TREASURY

Customs Service

Customs Trade Symposium 2001

AGENCY: U. S. Customs Service, Treasury.

ACTION: Notice of Customs trade symposium 2001.

SUMMARY: This document announces that the U.S. Customs Service will convene a major trade symposium that will feature joint discussions by Customs, members of the trade, and other public and private sector representatives on the challenges of facilitating the flow of commerce in a heightened security environment. Newly appointed Customs Commissioner Robert C. Bonner will be the keynote speaker. This event is open to members of the international trade and transportation community and other interested parties.

DATES: Reception and pre-registration will be held on Monday, November 26, 2001, from 6 p.m. to 8 p.m. The symposium will be held on Tuesday, November 27, 2001, from 8:30 a.m. to 6 p.m. All registrations must be made on-line and confirmed by November 19, 2001.

ADDRESSES: The meeting will be held in Washington, DC, at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW.

FOR FURTHER INFORMATION CONTACT: ACS Client Representatives; Customs Account Managers; or the Office of the Trade Ombudsman at (202) 927–1440 (*trade.ombudsman@customs.treas.gov*). To obtain the latest information on program changes or to register on-line, visit the Customs Web site at *http://www.customs.gov/trade2001.*

SUPPLEMENTARY INFORMATION: The cost is $150.00 per individual and includes a reception and luncheon. All registrations must be made on-line at the Customs Web site (*http://www.customs.treas.gov/trade2001*). Registrations will be accepted on a space available basis and must be confirmed by November 19, 2001. The J.W. Marriott has reserved a block of rooms for November 26th and 27th for overnight accommodations. The room rate is $119 US dollars and reservations must be confirmed with the Marriott by November 9, 2001. Call 1–800–228–9290 and reference ''U.S. Customs Trade Symposium 2001''.

Dated: October 18, 2001.

Eula D. Walden,

Acting Trade Ombudsman, U.S. Customs Service.

[FR Doc. 01–26699 Filed 10–22–01; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Tuesday,
October 23, 2001

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–103–; KY–107–; KY–110–; KY–114–; KY–115–; KY–122–200203; FRL–7082–7]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Approval of Revisions to State Implementation Plan; Revised Format for Materials Being Incorporated by Reference for Jefferson County, Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP). The revisions were adopted by the Air Pollution Control District of Jefferson County (APCDJC) and submitted to EPA on February 3, 1998; September 22, 1998; February 11, 1999; May 21, 1999; July 20, 1999; and September 22, 2000, by the Commonwealth of Kentucky (Commonwealth) through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC). These submittals include miscellaneous rule revisions and the recodification of APCDJC regulations.

EPA is also revising the format of 40 CFR part 52 for materials submitted by the Commonwealth that are incorporated by reference (IBR) into the Jefferson County portion of the Kentucky SIP. This format revision primarily affects the ''Identification of plan'' section of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC, and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or State-submitted materials that are not subject to IBR remain unchanged.

EFFECTIVE DATE: This final rule is effective on November 23, 2001.

ADDRESSES: Copies of documents relative to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency; Region 4 Air Planning Branch; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet; Division for Air Quality; 803 Schenkel Lane; Frankfort, Kentucky 40601–1403

Air Pollution Control District of Jefferson County; 850 Barrett Avenue; Louisville, Kentucky 40204

The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day and reference files KY–103, KY–107, KY–110, KY–114, KY–115, KY–122. The Region 4 office may have additional background documents not available at the other locations.

FOR FURTHER INFORMATION CONTACT: Allison Humphris, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, 404/562–9030, (humphris.allison@epa.gov).

SUPPLEMENTARY INFORMATION: The supplemental information is organized in the following order.

I. Rule Revisions Being Approved by EPA in This Action
II. Revised IBR Format for Jefferson County, Kentucky Being Approved by EPA in This Action
III. Final Action
IV. Administrative Requirements

I. Rule Revisions Being Approved by EPA in This Action

The Commonwealth, through KNREPC, submitted to EPA revisions to the Jefferson County portion of the Kentucky SIP, as adopted by APCDJC, on February 3, 1998, September 22, 1998, February 11, 1999, May 21, 1999, July 20, 1999 and September 22, 2000. The revisions include amendments and modifications of APCDJC regulations to ensure consistency with existing CAA and EPA requirements. The revisions also include a recodification that renumbers APCDJC rule sections to make the SIP less complex and corrects typographical errors, capitalization, spelling, and punctuation. Finally, today's action removes existing APCDJC regulations that do not need to be included in the SIP. Some of these regulations are no longer applicable because they have been moved to other portions of the Kentucky SIP, or because APCDJC submitted negative declarations verifying that there are no existing sources in Jefferson County subject to these rules. The remaining regulations removed were incorrectly approved into the Kentucky SIP (i.e. regulations that EPA does not enforce, or that EPA enforces pursuant to other parts of the Code of Federal Regulations).

On June 21, 2001 (66 FR 33216), EPA published a notice of proposed rulemaking (NPR) to approve the above revisions. That NPR provided for a public comment period ending on July 23, 2001. A detailed description of the SIP revisions and EPA's rationale for approving them was provided in the NPR and will not be restated here.

II. Revised IBR Format for Jefferson County, Kentucky Being Approved by EPA in This Action

In this final action, EPA is also revising the format of 40 CFR part 52 for materials submitted by the Commonwealth that are IBR into the Jefferson County portion of the Kentucky SIP. These revisions are consistent with the SIP compilation requirements of section 110(h)(1) of the Clean Air Act (CAA) and the May 22, 1997, (62 FR 27968) **Federal Register**, in which EPA revised the procedures for IBR federally-approved SIP regulations.

The new SIP compilation for Jefferson County will consist of two parts: the federally-approved portion of regulations and source-specific SIP revisions submitted by the Commonwealth. The table identifying federally-approved regulations is provided with this **Federal Register**. The table identifying source-specific SIP revisions will be provided at a later date. All of these regulations have been approved by EPA through previous rule making actions in the **Federal Register**, or are being approved in this action or other actions being published in today's **Federal Register**. Each part has a table of contents identifying each regulation or each source-specific SIP revision. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for the Commonwealth. A copy of the full text of the Commonwealth's current compilation will also be maintained at the Office of Federal Register and EPA's Air Docket and Information Center.

By today's final action, EPA is also revising the organization of the ''Identification of plan'' section. The revised Identification of plan section will still contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA-approved source specific requirements, and (e) EPA-approved nonregulatory provisions, such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc. However, subsection (b) is being amended to include an EPA approval date for Jefferson County, Kentucky regulations, and subsection (c) is being amended to add a table for EPA-approved Jefferson County regulations for Kentucky. All revisions to the applicable SIP become

federally enforceable as of the effective date of the revisions to paragraphs (c), (d) or (e) of the applicable identification of plan found in each subpart of 40 CFR part 52.

III. Final Action

EPA is approving revisions to the Jefferson County portion of the Kentucky SIP that were adopted by the APCDJC and submitted to EPA on February 3, 1998; September 22, 1998; February 11, 1999; May 21, 1999; July 20, 1999; and September 22, 2000 by the Commonwealth through KNREPC. EPA is partially approving revisions to APCDJC Regulation 2.04 Construction or Modification of Major Sources in or Impacting upon Non-Attainment Areas (Emission Offset Requirements). As described in detail in the NPR, EPA is taking no action on subsection 3.2 of this regulation regarding applicability of the offset requirement, because this language conflicts with existing EPA policy. EPA finds that Kentucky's submittals are otherwise fully approvable. EPA is also revising the format of 40 CFR part 52 for materials submitted by the Commonwealth that are IBR into the Jefferson County portion of the Kentucky SIP.

IV. Administrative Requirements

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 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

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

Dated: September 18, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

2. Section 52.920 is amended:

a. By revising paragraphs (b)(1) and (b)(2).

b. By adding a table to the end of paragraph (c).

The revision and addition read as follows:

§ 52.920 Identification of plan.

* * * * *

(b) * * * (1) Material listed in paragraph (c) of this section with an EPA approval date prior to March 1, 1999, for the Commonwealth of Kentucky (Volume I of the Kentucky State Implementation Plan) and November 23, 2001 for Jefferson County, Kentucky (Volume II of the Kentucky State Implementation Plan) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraph (c) of this section with EPA approval dates after March 1, 1999, for the Commonwealth of Kentucky and November 23, 2001 for Jefferson County, Kentucky will be

incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP Compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of March 1, 1999, for the Commonwealth of Kentucky (Volume I) and November 23, 2001 for Jefferson County, Kentucky (Volume II).

* * * * *

(c) * * *

EPA—APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
Reg 1	General Provisions			
1.01	General Application of Regulations and Standards	11/23/01	66 FR 53660	03/17/99
1.02	Definitions	11/23/01	66 FR 53660	11/19/97
1.03	Abbreviations and Acronyms	11/23/01	66 FR 53660	09/25/96
1.04	Performance Tests	11/23/01	66 FR 53660	11/19/97
1.05	Compliance with Emission Standards and Maintenance Requirements.	11/23/01	66 FR 53660	11/18/92
1.06	Source Self-Monitoring and Reporting	11/23/01	66 FR 53660	12/15/93
1.07	Emissions During Startups, Shutdowns, Malfunctions and Emergencies.	11/23/01	66 FR 53660	01/17/96
1.08	Administrative Procedures	11/23/01	66 FR 53660	09/25/96
1.09	Prohibition of Air Pollution	11/23/01	66 FR 53660	11/16/83
1.10	Circumvention	11/23/01	66 FR 53660	04/19/72
1.11	Control of Open Burning	11/23/01	66 FR 53660	02/22/90
1.14	Control of Fugitive Particulate Emissions	11/23/01	66 FR 53660	01/20/88
Reg 2	Permit Requirements			
2.01	General Application	11/23/01	66 FR 53660	4/21/82
2.02	Air Pollution Regulation Requirements and Exemptions	11/23/01	66 FR 53660	6/21/95
2.03	Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits.	11/23/01	66 FR 53660	12/15/93
2.04	Construction or Modification of Major Sources in or Impacting Upon Non-Attainment Areas (Emission Offset Requirements).	11/23/01	66 FR 53660	3/17/93
2.05	Prevention of Significant Deterioration of Air Quality	11/13/89	54 FR 47210	4/19/89
2.06	Permit Requirements—Other Sources	11/23/01	66 FR 53660	11/16/83
2.07	Public Notification for Title V, PSD, and Offset Permits; SIP Revisions; and Use of Emission Reduction Credits.	11/23/01	66 FR 53660	6/21/95
2.09	Causes for Permit Suspension	11/23/01	66 FR 53660	6/13/79
2.10	Stack Height Considerations	11/23/01	66 FR 53660	7/19/89
2.11	Air Quality Model Usage	11/23/01	66 FR 53660	5/19/99
2.17	Federally Enforceable District Origin Operating Permits	02/15/00	65 FR 7437	6/21/95
Reg 3	Ambient Air Quality Standards			
3.01	Purpose of Standards and Expression of Non-Degradation Intention.	11/23/01	66 FR 53660	6/13/79
3.02	Applicability of Ambient Air Quality Standards	11/23/01	66 FR 53660	6/13/79
3.03	Definitions	11/23/01	66 FR 53660	6/13/79
3.04	Ambient Air Quality Standards	11/23/01	66 FR 53660	4/20/88
3.05	Methods of Measurement	11/23/01	66 FR 53660	4/20/88
Reg 4	Emergency Episodes			
4.01	General Provisions for Emergency Episodes	11/23/01	66 FR 53660	6/13/79
4.02	Episode Criteria	11/23/01	66 FR 53660	4/20/88
4.03	General Abatement Requirements	11/23/01	66 FR 53660	2/16/83
4.04	Particulate and Sulfur Dioxide Reduction Requirements	11/23/01	66 FR 53660	4/19/72
4.05	Hydrocarbon and Nitrogen Oxides Reduction Requirements	11/23/01	66 FR 53660	2/16/83
4.06	Carbon Monoxide Reduction Requirements	11/23/01	66 FR 53660	2/16/83
4.07	Episode Reporting Requirements	11/23/01	66 FR 53660	6/13/79
Reg 6	Standards of Performance for Existing Affected Facilities			
6.01	General Provisions	11/23/01	66 FR 53660	11/16/83
6.02	Emission Monitoring for Existing Sources	11/23/01	66 FR 53660	11/16/83
6.07	Standards of Performance for Existing Indirect Heat Exchangers.	11/23/01	66 FR 53660	6/13/79
6.08	Standard of Performance for Existing Incinerators	11/23/01	66 FR 53660	6/13/79
6.09	Standards of Performance for Existing Process Operations	11/23/01	66 FR 53660	3/17/99
6.10	Standard of Performance for Existing Process Gas Streams	11/23/01	66 FR 53660	11/16/83

EPA—APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
6.12	Standard of Performance for Existing Asphalt Paving Operations.	11/23/01	66 FR 53661	5/15/91
6.13	Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds.	11/23/01	66 FR 53661	5/15/91
6.14	Standard of Performance for Selected Existing Petroleum Refining Processes and Equipment.	11/23/01	66 FR 53661	4/21/82
6.15	Standard of Performance for Gasoline Transfer to Existing Service Station Storage Tanks (Stage I Vapor Recovery).	01/25/80	45 FR 6092	6/13/79
6.16	Standard of Performance for Existing Large Appliance Surface Coating Operations.	11/23/01	66 FR 53661	5/15/91
6.17	Standard of Performance for Existing Automobile and Truck Surface Coating Operations.	11/23/01	66 FR 53661	11/18/92
6.18	Standards of Performance for Existing Solvent Metal Cleaning Equipment.	11/23/01	66 FR 53661	5/15/91
6.19	Standard of Performance for Existing Metal Furniture Surface Coating Operations.	11/23/01	66 FR 53661	5/15/91
6.20	Standard of Performance for Existing Bulk Gasoline Plants	11/23/01	66 FR 53661	11/16/83
6.21	Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals.	11/23/01	66 FR 53661	11/16/83
6.22	Standard of Performance for Existing Volatile Organic Materials Loading Facilities.	11/23/01	66 FR 53661	3/17/93
6.24	Standard of Performance for Existing Sources Using Organic Materials.	11/23/01	66 FR 53661	3/17/93
6.26	Standards of Performance for Existing Volatile Organic Compound Water Separators.	11/23/01	66 FR 53661	6/13/79
6.27	Standards of Performance For Existing Liquid Waste Incinerators.	11/23/01	66 FR 53661	6/13/79
6.28	Standard of Performance for Existing Hot Air Aluminum Atomization Processes.	11/23/01	66 FR 53661	3/18/81
6.29	Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography.	11/23/01	66 FR 53661	5/15/91
6.30	Standard of Performance for Existing Factory Surface Coating Operations of Flat Wood Paneling.	11/23/01	66 FR 53661	5/15/91
6.31	Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface-Coating Operations.	11/23/01	66 FR 53661	4/23/96
6.32	Standard of Performance for Leaks from Existing Petroleum Refinery Equipment.	11/23/01	66 FR 53661	5/15/91
6.33	Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations.	11/23/01	66 FR 53661	5/15/91
6.34	Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants.	11/23/01	66 FR 53661	5/15/91
6.35	Standard of Performance for Existing Fabric, Vinyl and Paper Surface Coating Operations.	11/23/01	66 FR 53661	5/15/91
6.38	Standard of Performance for Existing Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industries.	11/23/01	66 FR 53661	12/17/86
6.39	Standard of Performance for Equipment Leaks of Volatile Organic Compounds in Existing Synthetic Organic Chemical and Polymer Manufacturing Plants.	11/23/01	66 FR 53661	7/17/96
6.40	Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control).	11/23/01	66 FR 53661	8/18/93
6.42	Reasonably Available Control Technology Requirements for Major Volatile Organic Compound- and Nitrogen Oxides-Emitting Facilities.	11/23/01	66 FR 53661	3/17/99
6.44	Standards of Performance for Existing Commercial Motor Vehicle and Mobile Equipment Refinishing Operations.	11/23/01	66 FR 53661	9/20/95
6.46	Standards of Performance for Existing Ferroalloy and Calcium Carbide Production Facilities.	11/23/01	66 FR 53661	12/21/94
6.48	Standard of Performance for Existing Bakery Oven Operations	11/23/01	66 FR 53661	7/19/95
Reg 7	Standards of Performance for New Affected Facilities			
7.01	General Provisions	11/23/01	66 FR 53661	5/17/00
7.06	Standards of Performance for New Indirect Heat Exchangers	11/23/01	66 FR 53661	4/21/82
7.07	Standard of Performance for New Incinerators	11/23/01	66 FR 53661	9/15/93
7.08	Standards of Performance for New Process Operations	11/23/01	66 FR 53661	3/17/99
7.09	Standards of Performance for New Process Gas Streams	11/23/01	66 FR 53661	6/18/97
7.11	Standard of Performance for New Asphalt Paving Operations	11/23/01	66 FR 53661	5/15/91
7.12	Standard of Performance for New Storage Vessels for Volatile Organic Compounds.	11/23/01	66 FR 53661	5/15/91
7.14	Standard of Performance for Selected New Petroleum Refining Processes and Equipment.	11/23/01	66 FR 53661	6/13/79

EPA—APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
7.15	Standards of Performance for Gasoline Transfer to New Service Station Storage Tanks (Stage I Vapor Recovery).	11/23/01	66 FR 53662	4/20/88
7.18	Standards of Performance for New Solvent Metal Cleaning Equipment.	11/23/01	66 FR 53662	5/15/91
7.20	Standard of Performance for New Gasoline Loading Facilities at Bulk Plants.	11/23/01	66 FR 53662	11/16/83
7.22	Standard of Performance for New Volatile Organic Materials Loading Facilities.	11/23/01	66 FR 53662	3/17/93
7.25	Standard of Performance for New Sources Using Volatile Organic Compounds.	11/23/01	66 FR 53662	3/17/93
7.34	Standard of Performance for New Sulfite Pulp Mills	11/23/01	66 FR 53662	6/13/79
7.35	Standard of Performance for New Ethylene Producing Plants	11/23/01	66 FR 53662	6/13/79
7.36	Standard of Performance for New Volatile Organic Compound Water Separators.	11/23/01	66 FR 53662	6/13/79
7.51	Standard of Performance for New Liquid Waste Incinerators	11/23/01	66 FR 53662	1/20/88
7.52	Standard of Performance for New Fabric, Vinyl, and Paper Surface Coating Operations.	11/23/01	66 FR 53662	5/15/91
7.55	Standard of Performance for New Insulation of Magnet Wire	11/23/01	66 FR 53662	3/17/93
7.56	Standard of Performance for Leaks from New Petroleum Refinery Equipment.	11/23/01	66 FR 53662	5/15/91
7.57	Standard of Performance for New Graphic Arts Facilities Using Rotogravure and Flexography.	11/23/01	66 FR 53662	5/15/91
7.58	Standard of Performance for New Factory Surface Coating Operations of Flat Wood Paneling.	11/23/01	66 FR 53662	5/15/91
7.59	Standard of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations.	11/23/01	66 FR 53662	4/23/96
7.60	Standard of Performance for New Synthesized Pharmaceutical Product Manufacturing Operations.	11/23/01	66 FR 53662	5/15/91
7.77	Standards of Performance for New Blast Furnace Casthouses	11/23/01	66 FR 53662	10/20/93
7.81	Standard of Performance for New or Modified Bakery Oven Operations.	11/23/01	66 FR 53662	5/17/00
Reg 8	Mobile Source Emissions Control			
8.01	Mobile Source Emissions Control Requirements	11/23/01	66 FR 53662	7/14/00
8.02	Vehicle Emissions Testing Procedure	11/23/01	66 FR 53662	7/14/00
8.03	Commuter Vehicle Testing Requirements	07/28/95	60 FR 3870	3/1/93

* * * * *

[FR Doc. 01–25892 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–131, and KY–133–200201; FRL–7083–1a]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky: Approval of Revisions to State Implementation Plan, Source Specific Requirements, and Nonregulatory Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Kentucky State Implementation Plan (SIP) which concern the control of emissions of volatile organic compounds (VOC) at a specific source in Bullitt County, Kentucky (Publisher's Printing, Inc.), and Regulation 6.49 adopted by the Air Pollution Control District of Jefferson County (APCDJC), Kentucky. Regulation 6.49 specifies reasonably available control technology (RACT) control requirements for VOC emissions at Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry (SOCMI). In addition, EPA is approving negative declarations from Kentucky and from the APCDJC for certain categories of sources subject to Control Techniques Guidelines (CTGs).

EFFECTIVE DATE: This final rule is effective on November 23, 2001.

ADDRESSES: Copies of documents relative to this action are available at the following addresses for inspection during normal business hours. People who want to examine these documents should make an appointment at least 24 hours in advance of the day they want to visit and they should reference files KY–127 and KY–128.

U.S. Environmental Protection Agency—Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303; Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403; Air Pollution Control District of Jefferson County, 850 Barret Avenue, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Raymond S. Gregory, Environmental Engineer, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–9116. Mr. Gregory can also be reached via electronic mail at *gregory.ray@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Final Action
III. Administrative Requirements

I. Background

Under the Clean Air Act (CAA) section 107(d)(4)(A), on November 6, 1991 (56 FR 56694), all of Jefferson

County, portions of Bullitt and Oldham Counties in Kentucky, and the Indiana Counties of Clark and Floyd were designated as the Louisville moderate ozone nonattainment area, as a result of monitored violations of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) during the 1987–1989 time frame. Since that time, Kentucky, Indiana and the APCDJC have adopted and implemented programs required under the CAA for a moderate 1-hour ozone nonattainment area to reduce emissions of VOC and NO_X which are precursors of ozone.

Since the Louisville area was classified as moderate ozone nonattainment, in order to be redesignated, the Louisville area is required to meet the applicable CAA requirements of subpart 2 of part D including RACT requirements for three classes of VOC sources (section 182(b)(2)). The categories are: (A) All sources covered by a CTG document issued between November 15, 1990, and the date of attainment; (B) all sources covered by a CTG issued prior to November 15, 1990; and (C) all other major non-CTG stationary sources of VOCs.

EPA is approving a source-specific non-CTG VOC RACT determination for Publisher's Printing, Inc., submitted on July 3, 2001, by Kentucky as one of the requisites (182(b)(2)(C)) for redesignation of the Kentucky portion of the Louisville 1-hour ozone nonattainment area.

Kentucky submitted a negative declaration on December 14, 1999, for the CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture manufacturing which would apply to the nonattainment portions of Oldham and Bullitt Counties. The APCDJC submitted a negative declaration for Jefferson County for the same four CTG categories on February 26, 2001. The APCDJC withdrew the negative declaration for the SOCMI category on May 1, 2001. EPA is approving the negative declaration from Kentucky (CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture manufacturing), and the negative declaration from the APCDJC (CTG categories of aerospace, shipbuilding, and wood furniture manufacturing). These negative declarations partially fulfill the CAA requirements under 182(b)(2)(A) in the Kentucky portion of the Louisville 1-hour ozone nonattainment area.

APCDJC adopted Regulation 6.49 for control of VOCs from SOCMI sources and Kentucky submitted APCDJC's Regulation 6.49 on July 18, 2001. Final approval of Regulation 6.49 completes the CAA requirement relative to the Kentucky portion of the Louisville 1-hour ozone nonattainment area for 182(b)(2)(A) and is also a requisite to redesignation of the Louisville area.

On July 23, 2001, (66 FR 38229) EPA published a notice of proposed rulemaking (NPR) proposing to approve the above revisions and negative declarations. That NPR provided for a public comment period ending on August 22, 2001. A detailed description of the SIP revisions and EPA's rationale for approving them and the negative declarations was provided in the proposed rule and will not be restated here. No comments were received on EPA's proposal.

II. Final Action

In today's action, the EPA is approving SIP revisions submitted by Kentucky to address outstanding VOC RACT requirements of subpart 2 of Part D, in particular section 182(b)(2), of the CAA. The SIP revisions EPA is approving are VOC RACT requirements for sources subject to the SOCMI CTG for Jefferson County (Regulation 6.49), and source specific VOC RACT requirements for Publisher's Printing, Inc., in Bullitt County, Kentucky. EPA's review of Regulation 6.49 found it to follow the CTG model regulation. EPA found that the VOC RACT requirements specified by Kentucky for Publisher's Printing, Inc., follow the requirements in EPA's September 1993 draft, ''Guideline Series—Control of Volatile Organic Compound Emissions from Offset Lithographic Printing'' and EPA's June 1994, ''Alternative Control Techniques Document: Offset Lithographic Printing'' and are approvable as meeting section 182(b)(2)(C) requirements for Publisher's Printing, Inc. Kentucky submitted the title V permit for Publisher's Printing, Inc., as a source-specific SIP revision.

EPA is approving the negative declaration from Kentucky for the CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture manufacturing, and the negative declaration from the APCDJC for the CTG categories of aerospace, shipbuilding, and wood furniture manufacturing as meeting the section 182(b) VOC RACT requirement for these source categories in the Kentucky portion of the Louisville 1-hour ozone nonattainment area.

The EPA has reviewed Kentucky's requested revisions of the federally-approved SIP for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to the relevant statutory and regulatory requirements.

III. Administrative Requirements

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

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

Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 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

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 18, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, 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 S—Kentucky

2. Section 52.920 is amended:

a. By adding a new entry in numerical order to the last table in paragraph (c).

b. By adding a new entry to the end of the table in paragraph (d).

c. By adding new entries in numerical order to the table in paragraph (e).

The additions read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) *EPA-approved regulations.*

* * * * * * *

EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	*Federal Register* Notice	District effective date
*	*	*	*	*
	Reg 6 Standards of Performance for Existing Affected Facilities			
*	*	*	*	*
6.49	Standards of Performance for Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry.	10/23/01	66 FR 53664	06/20/01
*	*	*	*	*

(d) *EPA-approved source-specific requirements.*

* * * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	*Federal Register* Notice
*	*	*	*	*
Title V permit requiring VOC RACT for Publisher's Printing, Inc., Bullitt County.	KDEPDAQ Permit 21–029–00019 ...	07/20/01	10/23/01	66 FR 53664

(e) *EPA-approved nonregulatory provisions.*

EPA-APPROVED KENTUCKY NONREGULATORY PROVISIONS

Appendix	Title/subject	State effective date	EPA approval date	*Federal Register* Notice
*	* * *	*	*	*
21	Negative Declarations for the nonattainment portions of Bullitt and Oldham Counties in Louisville 1-hour moderate ozone nonattainment area for CTG rules for aerospace, SOCMI, shipbuilding, and wood furniture manufacturing.	12/14/99	10/23/01	66 FR 53665
22	Negative Declarations submitted by the Air Pollution Control District of Jefferson County for the Louisville 1-hour moderate ozone nonattainment area for CTG rules for aerospace, shipbuilding, and wood furniture manufacturing.	02/26/01	10/23/01	66 FR 53665

[FR Doc. 01–25893 Filed 10–22–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[KY–117; KY–126; KY–129; KY–132–200202; IN–121–3; FRL–7082–9]

Approval and Promulgation of Implementation Plans and Redesignation of Areas for Air Quality Planning Purposes; Kentucky and Indiana; Approval of Revisions to State Implementation Plan; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Louisville moderate 1-hour ozone nonattainment area (Louisville area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). The Louisville area includes Jefferson County, and portions of Bullitt and Oldham Counties, Kentucky; and Clark and Floyd Counties, Indiana. This determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1998 to 2000 ozone seasons. On the basis of this determination, EPA is also determining that the State Implementation Plan (SIP) submissions for certain reasonable further progress (RFP) and attainment demonstration requirements, along with certain other related requirements of part D of title I of the Clean Air Act (CAA), are not applicable to the area. EPA is also approving Kentucky's and Indiana's requests submitted March 30, 2001, and April 11, 2001, respectively, as subsequently supplemented, to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS. In approving these requests, EPA is approving the plans for maintaining the 1-hour ozone NAAQS through 2012, as revisions to the Kentucky and Indiana (States) SIPs. EPA is also approving and finding adequate Kentucky's and Indiana's motor vehicle emission budgets (MVEBs) for volatile organic compounds (VOC) and nitrogen oxides(NO_X) in the submitted maintenance plans for transportation conformity purposes. Approval of the MVEBs is based in part on commitments submitted by the States to use the MOBILE6 mobile emission model within a specific timeframe when it becomes available to update the MVEBs. Finally, EPA is approving source-specific Board Orders to control NO_X emissions from 11 sources in Jefferson County, Kentucky. This action finalizes EPA's proposed rulemakings to determine that the Louisville area has attained the 1-hour ozone NAAQS; and to redesignate both the Kentucky and Indiana portions of the Louisville area to attainment for the 1-hour ozone NAAQS, and to approve the 11 source-specific NO_X Reasonably Available Control Technology (RACT) Board Orders as revisions to the Kentucky SIP.

EFFECTIVE DATE: This action will be effective on November 23, 2001.

ADDRESSES: Copies of Kentucky's submittals, as well as other information, are available for inspection during normal business hours at the following locations. U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. Air Pollution Control District of Jefferson County, 850 Barret Avenue, Louisville, Kentucky 40204. Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference files KY–117, KY–126, KY–129, and KY–132.

Copies of Indiana's submittals, as well as other information, are available for inspection during normal business hours at the following locations. U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604. Indiana Department of Environmental Management, Office of Air Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015. Indiana Department of Environmental Management Southwest Regional Office, 208 NW 4th Street, Suite 201, Evansville, Indiana 47708–1353. Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference file IN–121–3.

FOR FURTHER INFORMATION CONTACT: Allison Humphris, Environmental Scientist, or Raymond Gregory, Environmental Engineer, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–9030, (404) 562–9116, (*Humphris.Allison@epa.gov*) (*Gregory.Ray@epa.gov*). Mary Portanova, Environmental Engineer, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, (AR–18J), Air Programs Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, (*Portanova.Mary@epa.gov*)

Table of Contents

I. What is the background for these actions?
II. What comments did we receive and what are our responses?
III. What actions are we taking?
IV. Why are we taking these actions?
V. What are the effects of these actions?
VI. Administrative requirements

Whenever ''we,'' ''us,'' or ''our'' are used it means EPA.

I. What Is the Background for These Actions?

The Louisville area was designated as an ozone nonattainment area in March

1978 (43 FR 8962) and designated as the Louisville moderate 1-hour ozone nonattainment area on November 6, 1991 (56 FR 56694). The Louisville area includes Jefferson County, and portions of Bullitt and Oldham Counties, Kentucky; and Clark and Floyd Counties, Indiana. As the result of programs adopted and implemented by Kentucky, Indiana and the Air Pollution Control District of Jefferson County (APCDJC) to reduce VOC and NO_X emissions since that time, monitors in the Louisville area have recorded three years of complete, quality-assured, ambient air quality monitoring data for the 1998, 1999, and 2000 ozone monitoring seasons, demonstrating attainment of the 1-hour ozone NAAQS. Preliminary data for the 2001 ozone season shows continuing attainment. The initial redesignation requests from Kentucky and Indiana were submitted on March 30, 2001, and April 11, 2001, respectively, and supplemented on July 9, 2001, and August 24, 2001, respectively.

In a notice of proposed rulemaking (NPR) published May 17, 2001, (66 FR 27483) we proposed to determine that the Louisville area has attained the 1-hour ozone NAAQS. On the basis of this determination, we also proposed to determine that the SIP submissions for certain RFP and attainment demonstration requirements, along with certain other related requirements of part D of title I of the CAA, are not applicable to the area for so long as the Louisville area continues to attain the 1-hour ozone NAAQS. The NPR included a detailed description and rationale for EPA's proposed actions, and provided for a public comment period on these actions ending on June 18, 2001. No comments were received on that NPR during the comment period.

In an NPR published June 22, 2001, (66 FR 33505), we proposed to approve the requests by Kentucky and Indiana to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS and to approve source-specific Board Orders adopted by the Air Pollution Control Board of Jefferson County (APCBJC) to control NO_X emissions at 11 sources in Jefferson County. The NPR included more detailed information and rationale for these actions, and provided for a public comment period ending on July 23, 2001. We received comments from three commenters.

II. What Comments Did We Receive and What Are Our Responses?

The summarized comments received and EPA responses to them are provided below.

Comment 1—Attainment of the standard: The commenter believes that the area has failed to show attainment of the 1-hour ozone NAAQS. The commenter points out that EPA's Aerometric Information Retrieval System (AIRS) data base shows that the Charlestown monitor recorded 3.2 estimated exceedances of the 1-hour ozone NAAQS in the three-year period of 1998–2000 and concludes that this translates to an annual average expected exceedance rate of more than 1.05 exceedances per year, and therefore nonattainment.

The commenter also asserts that in determining that three days of data were unlikely to be above the standard, EPA has ignored the potential for exceedances on the eight other days for which data was missing. The commenter claims that additional information should be considered and claims that it was ignored. This includes ''the potential for exceedances on days where no exceedance was recorded, but where data was not available for all daytime hours (even if enough data was available to meet the minimum coverage of 75 percent of hours)''. The commenter also claims that EPA ignored the historic pattern of exceedances in this area, in which years with no exceedances have been followed by years with multiple exceedances. The commenter believes that EPA ignored the concentration levels of ozone exceedances recorded at Charlestown in 1997–99, pointing out that the design value for this three-year period was higher than for the period 1996–98 and that the peak reading in 1998 at Charlestown of 0.156 parts per million (ppm) was one of the highest recorded in the region in recent years. For these reasons, the commenter believes that EPA's proposal is arbitrary and capricious, and fails to adequately consider all of the relevant factors.

Note: Although EPA received no comments on the proposed determination of attainment (66 FR 27483, May 17, 2001), the above comment addresses issues covered in that NPR. Therefore, the following response clarifies EPA's background and rationale for approving both the proposed determination of attainment and the proposed redesignation.

Response 1: The current version of the AIRS database, EPA's air quality data system, calculates that the Charlestown monitor had 3.2 estimated exceedances during the 1998 ozone season, based on the availability of valid AIRS data for 172 out of 183 ozone season days. However, the program only reflects this value because of limitations in the software that are not entirely reflective of the provisions in the CAA. For 11 days during the 1998 ozone monitoring season, incomplete air quality data was available for the Charlestown, Indiana monitor. Three of these days have been documented in AIRS to note that EPA has made a determination, based on documentation presented by the State, and in accordance with 40 CFR part 50, Appendix H, that it is highly unlikely that the 1-hour ozone NAAQS was exceeded (for further explanation, see 66 FR 27483, May 17, 2001) on these three days. 40 CFR part 50, Appendix H states, in part, that: ''[s]ome allowance should also be made for days for which valid daily maximum hourly values were not obtained but which would quite likely have been below the standard.'' It then suggests a criterion that ''may be used'' for ozone.

For one day (August 1, 1998), EPA determined that the 1-hour NAAQS was not exceeded based on records of valid daily maxima below the 75 percent level of the standard for the Charlestown monitor for the days immediately preceding and following this date. This determination is consistent with the example criterion provided in 40 CFR part 50, Appendix H.

For two days early in the 1998 ozone monitoring season (April 3–4, 1998), EPA made a similar determination based on: the State's explanation of the site's failure to collect ozone data during the period, records of valid daily maxima well below the standard for the remaining six Louisville area monitors on those dates, and overwhelming evidence that meteorological conditions were not conducive to ozone formation (i.e. temperatures between 42 and 58 degrees, overcast skies, showers and windy conditions). In addition, no exceedances have ever been recorded at this monitoring site in early April. This determination was made in response to documentation presented by Indiana in a December 11, 2000 request. These materials are available for inspection in the Louisville redesignation dockets. The determination for these two days is consistent with 40 CFR part 50, Appendix H, which EPA interprets as allowing for use of Agency discretion in defining conditions for determining when a missing value may be assumed to be below the level of the standard.

The estimated exceedances for the Charlestown monitor are calculated using the parameters provided in Table 1 and the following equation: $e = v + [(v/n)*(N-n-z)]$. Assuming that the 1-hour ozone NAAQS was not exceeded for 172 of 183 ozone season days, and that valid AIRS data was unavailable for eight days, the Charlestown monitor is calculated as having a total of 3.1 estimated exceedances for the 1998

ozone season. This value was determined in accordance with 40 CFR 50.9 and Appendix H. Since no exceedance was recorded for 1999 or 2000, the average number of expected exceedances for this monitor is 1.0 exceedance per year for the 1998 through 2000 three-year period, using conventional rounding techniques. Thus, the data indicate that the Louisville area has attained the 1-hour ozone NAAQS for this three-year period.

TABLE 1.—PARAMETERS FOR CALCULATION OF ESTIMATED EXCEEDANCES

Variable description	Value for Charlestown monitor for 1998	Comments
e = the estimated number of exceedances for the year,	3.1	Calculated.
N = the number of required monitoring days in the year,	183	Indiana's ozone season is April 1–September 30
n = the number of valid daily maxima,	172	Days with valid data based on 40 CFR 50 and Appendix H.
v = the number of daily values above the level of the standard	3	Based on monitored values.
z = the number of days assumed to be less than the standard level	3	Based on 40 CFR 50 Appendix H, for days that were likely below thestandard.

The commenter claims that, in calculating the 1998–2000 estimated exceedances for the Charlestown monitor, EPA did not consider eight of the 11 days for which no monitoring data was available. Examination of the equation and the values used to calculate the estimated exceedances for 1998 through 2000 shows that this is not the case. In calculating the correction factor to account for missing data (i.e. [(v/n)*(N-n-z)]), EPA does consider the remaining eight days for which no data was recorded. EPA adjusts the difference between the number of required and actual monitoring days (N-n) only by the number of days for which no data was recorded and for which we assumed the daily maximum value to be below the 1-hour NAAQS (i.e. z=3). Thus, EPA took the remaining eight days into account as prescribed in the CAA and 40 CFR 50.9. We did not assume that the daily maximum value for those eight days was below the 1-hour ozone NAAQS, and we adjusted the area's estimated exceedance rate to account for this assumption.

Regarding the adequacy and completeness of the remaining monitoring data used to calculate 1998–2000 estimated exceedances for the Charlestown monitor, EPA notes that there was over 99 percent data completeness on days meeting the 75 percent completeness test at the Charlestown site over the three-year period. Neither the guidance nor 40 CFR contemplates questioning data that meet the 75 percent completeness test. There was also over 97 percent completeness for all days over the three-year period. EPA completed a review of the data and did not find any abnormalities that would indicate that the Charlestown monitor was not being run whenever possible. In addition, Region 5 conducted a performance audit of this monitor on September 26–27, 2000, which confirmed the monitor's performance to be within acceptable limits.

The commenter also claims that EPA ignored the historic pattern of exceedances for the Louisville area. EPA has not ignored historical data in making our determination. Rather, we looked at the historical data presented to us by the States in the context of the provisions of 40 CFR 50.9. When evaluating whether the 1-hour ozone NAAQS has been met, the CAA specifies that EPA must consider the most recent three years of quality-assured monitoring data. As indicated above, the data for the most recent three-year period, i.e., 1998–2000, indicates attainment. Preliminary 2001 ozone season data indicates that the area continues to attain the 1-hour NAAQS. Note that the CAA and EPA guidance also requires that the improvement in air quality be attributable to permanent and enforceable reductions. Our determination that reductions are attributable to permanent and enforceable measures is discussed further in Response 3.

Comment 2—Fully approved SIP and all requirements applicable to the area under section 110 and subpart D: The commenter indicated that, pursuant to section 107(d)(3)(E)(ii) of the CAA, EPA cannot redesignate an area to attainment unless EPA ''has fully approved the applicable implementation plan for the area.'' The commenter contends that EPA has yet to fully approve the applicable implementation plan for the Louisville area, including the specific SIP elements identified in subparts A. through I. of this comment below, as required by the CAA for moderate ozone nonattainment areas. Also, pursuant to section 107(d)(3)(E)(v) of the CAA, EPA cannot redesignate an area to attainment unless the state containing the area ''has met all requirements applicable to the area under section 110 and part D.'' The commenter contends that the States have not yet met the requirement to submit approvable plans that satisfy all CAA-required moderate area ozone SIP elements. The commenter claims that the SIP elements identified in subparts A. through I. of this comment have not been satisfied for the reasons indicated below.

Response 2: As described in the responses to subparts A. through I. of this comment below, EPA believes that both the Kentucky and Indiana portions of the Louisville area have satisfied all applicable moderate area ozone SIP requirements. In acting on a redesignation request, EPA may rely on any SIP approvals that precede, or are performed in conjunction with, the final rulemaking action to redesignate the area. The September 4, 1992 memorandum from John Calcagni, Director, Air Quality Management Division, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' (September 4, 1992 Calcagni memorandum) allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. EPA is approving today or has previously approved all remaining portions of the SIP that must be approved prior to redesignation. Therefore, the Kentucky and Indiana SIPs are fully approved.

Comment 2A—Attainment Demonstration: A commenter stated that under the CAA (42 U.S.C. 7502(c)(1), (c)(6), 7511a(b)(1); 7511a(j)) a moderate area is required to submit an attainment demonstration based on modeling or other analytical method determined by EPA to be at least as effective. The

commenter contends that since EPA has not approved an attainment demonstration for the Louisville area as required by the CAA, nor have the States involved submitted an approvable attainment demonstration, the requirements of section 110 and part D have not been met, and that EPA has not fully approved the SIP as required.

Response 2A: An attainment demonstration is not required under EPA's attainment determination policy, as set forth in the May 10, 1995, memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' (May 10, 1995, Seitz memorandum). EPA has explained at length in other actions its rationale for the reasonableness of that interpretation of the CAA and incorporates those explanations by reference here. See, for example, Cleveland-Akron-Lorain, Ohio (61 *FR* 20458, May 7, 1996); Salt Lake and Davis Counties, Utah (60 FR 36723, July 18, 1995); Grand Rapids, MI (61 FR 31832–33, June 21, 1996); and Cincinnati-Hamilton, Ohio and Kentucky (65 FR 37879, June 19, 2000). EPA also reiterates its position set forth in the proposed rulemaking to redesignate the Louisville area (66 *FR* 33505, June 22, 2001), and in the proposed rulemaking to determine that the Louisville area has attained the 1-hour ozone NAAQS (66 *FR* 27483, May 17, 2001). Subpart 2 of part D of title I of the CAA contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, as not requiring SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the 1-hour ozone NAAQS (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA has interpreted the general provisions of subpart 1 of part D of title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or section 172(c)(9) contingency measures. As explained in the May 10, 1995, Seitz memorandum, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 in the same manner. (See *Sierra Club* vs *EPA*, 99 F.3d 1551 (10th Cir. 1996))

The attainment demonstration requirements of section 182(b)(1) are that the plan provide for ''such specific annual reductions in emissions* * *as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA.'' If an area has in fact monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble for the Interpretation of title I of the CAA Amendments of 1990 (57 *FR* 13496, April 16, 1992, supplemented at 57 FR 18070, April 28, 1992) (General Preamble). As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached'' (57 FR 13564, April 16, 1992). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS.

EPA has reviewed the 1998–2000 ambient air ozone monitoring data for the Louisville area for consistency with the requirements of 40 CFR part 58. A discussion of this review is included in EPA's proposed determination of attainment for the Louisville area (66 FR 27483, May 17, 2001) and in the response to comment 1. On the basis of this review, EPA has determined that the Louisville area has attained the 1-hour ozone NAAQS during the 1998–2000 period, and is therefore not required to submit an attainment demonstration. Since an attainment demonstration is not required, EPA is not required to approve an attainment demonstration as a requisite to redesignating the Louisville area.

Comment 2B—All reasonably available control measures (RACM): The commenter contends that EPA has not approved a demonstration showing that the Kentucky and Indiana SIPs provide for implementation of all RACM as expeditiously as practicable. 42 U.S.C. 7502(c)(1). The commenter also alleges that the States have not met this requirement for the Louisville area. The commenter contends that EPA has no authority to waive this requirement, which applies in addition to the requirement to demonstrate timely attainment.

Response 2B: The General Preamble treats the RACM requirement as a ''component'' of an area's attainment demonstration. The General Preamble explains that ''section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM as expeditiously as practicable. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area's attainment demonstration.'' Thus, EPA's final suspension of the attainment demonstration requirement pursuant to today's final determination of attainment also suspends the section 172(c)(1) RACM requirement, since the latter is a component of the attainment demonstration.

The General Preamble further states that ''where measures that might in fact be available for implementation in the nonattainment area could not be implemented on a schedule that would advance the date for attainment in the area, EPA would not consider it reasonable to require implementation of such measures.'' Because attainment has been reached for the Louisville area, no additional measures are needed to provide for attainment, nor could the attainment date for the area now be advanced through implementation of RACM. Therefore, no additional RACM controls beyond what are already required in the SIP are necessary for redesignation to attainment.

Comment 2C—RACT: The commenter contends that EPA has not fully approved the Kentucky SIP as meeting the requirement for RACT for all VOC sources within the nonattainment area, including each category of VOC sources covered by Control Technique Guideline (CTG) documents. The commenter further contends that without EPA reopening the public comment period on the redesignation proposal, the public will be deprived of the opportunity to offer fully informed comment as to whether the state plan as a whole meets all of the applicable requirements of section 110 and part D.

Response 2C: As described in the proposed redesignation (66 FR 33511, June 22, 2001), Indiana fulfilled all RACT requirements prior to submittal of its redesignation request. Likewise, Kentucky fulfilled most RACT requirements prior to submittal of its redesignation request. In two final actions signed on September 18, 2001, and a third signed on October 3, 2001, and published elsewhere in the *FR*, EPA approved the following revisions to the Kentucky SIP: Existing VOC RACT regulations; new regulations to address VOC RACT, a source-specific non-CTG VOC RACT determination, and negative declarations. These final actions

addressed all remaining VOC RACT requirements for Kentucky. EPA had previously published NPRs that included proposals for each of these final actions that provided the public with adequate opportunity to offer comments on these revisions to the Kentucky SIP. Comments were received on one of the three NPRs. However, none of these comments addressed the VOC RACT requirements being proposed for approval. Since no comments were received that raised questions regarding the adequacy of the relevant VOC RACT requirements, EPA has issued final approval for these revisions to the Kentucky SIP. Therefore, with these actions, in conjunction with today's action, the Kentucky SIP for the Louisville area 1-hour ozone SIP is fully approved. In acting on a redesignation request, EPA may rely on any SIP approvals that precede, or are performed in conjunction with, the final redesignation action. The September 4, 1992 Calcagni memorandum allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. Thus, all RACT requirements have been fully adopted by Kentucky and Indiana and approved by EPA.

Comment 2D—Rate of progress plans: The commenter contends that the CAA required the States to obtain EPA approval of a 15 percent ''rate of progress'' plan (RFP plan) for the Louisville area (section 182(b)(1)). Although the States submitted such a plan, the commenter notes that EPA has not approved the plan. The commenter asserts that, on this basis, the SIP does not meet all requirements under section 110 and part D.

Response 2D: The General Preamble provides EPA's interpretation of certain section 172(c) requirements, including the following interpretation regarding RFP requirements: ''The requirements for RFP will not apply in evaluating a request for redesignation to attainment, since* * * air quality data* * * must show that the area has already attained. Showing that the state will make RFP towards attainment will have no meaning at that point.''

The May 10, 1995, Seitz memorandum, which sets forth EPA's attainment determination policy, provides a similar position on the RFP requirement. In this memo, EPA interprets the general provisions of subpart 1 of part D of title I (sections 171 and 172) and the more specific requirements of subpart 2 of part D of title I so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or section 172(c)(9) contingency measures, and the corresponding more specific SIP revisions identified in subpart 2, for so long as the subject area is monitoring attainment of the 1-hour ozone NAAQS. With regards to the specific requirement for RFP, whether dealing with the general RFP requirement of section 172(c)(2) or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas, including the 15 percent plan requirement of 182(b)(1), ''the stated purpose of RFP is to ensure attainment by the applicable attainment date. If an area has in fact attained the relevant NAAQS, the stated purpose of the RFP requirement will have been met, and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1), and 182(c)(2)(B) and (C).''

As noted by the commenter, both States had submitted 15 percent plans prior to submitting the redesignation request. EPA approved Indiana's 15 percent plan (62 FR 24815, May 7, 1997), and Indiana continues to implement and enforce all regulations associated with that submittal. EPA also proposed approval, in the form of a direct final rulemaking, of Kentucky's 15 percent plan and the regulations relied on to achieve those reductions (64 FR 49425, September 13, 1999), but subsequently withdrew the direct final rulemaking (64 FR 59644, November 3, 1999). In this final rulemaking, EPA is taking final action on our determination of attainment for the Louisville area, thereby removing the requirement for the 15 percent plan. Elsewhere in this FR, in a separate final rulemaking, EPA concludes that although no action on the 15 percent plan itself is required, the regulations submitted by Kentucky with its 15 percent plan provided permanent and enforceable reductions during the 1998 through 2000 time period, since they were implemented prior to 1998, and EPA approves regulations submitted by Kentucky as part of its 15 percent plan. That final action ensures that regulations implemented by Kentucky prior to attainment of the 1-hour ozone NAAQS are permanent and enforceable as part of the SIP, thereby fulfilling the requirements of section 107(d)(3)(iii), and the requirements for redesignation.

Comment 2E—New Source Review (NSR): The commenter points out that the CAA requires the SIP to include a preconstruction permit program for new major sources and modifications within the nonattainment area (42 U.S.C. 7410(a)(2)(C), 7502(c)(4)&(5), 7503, 7511a(a)(2)(C), and (b)(5)). The commenter contends that the States have not met this requirement, and that EPA has no express authority to waive this mandate.

Response 2E: Notwithstanding the current status of the Kentucky and Indiana SIPs, EPA has determined that areas being redesignated to attainment do not need to comply with the requirement that a part D NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the applicable NAAQS without part D NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 14, 1994. See also the discussion in the Grand Rapids, Michigan action (61 FR 31834, June 21, 1996). The States have demonstrated that the Louisville area will be able to maintain the 1-hour NAAQS without part D NSR in effect, and, therefore, need not have fully-approved part D NSR programs prior to approval of the redesignation request for the Louisville area. Kentucky's and Indiana's PSD requirements will be applicable and remain enforceable after the redesignation of the Louisville area (66 FR 33509–33510, June 22, 2001). See also the discussion in the final redesignation rulemaking for the Cincinnati-Hamilton area (65 FR 37890–37891, June 19, 2000).

In any event, the Kentucky and the Indiana SIPs were reviewed to ensure that they satisfied all CAA requirements to include a fully-approved part D NSR program. Section 172(c)(5) mandates that SIPs require permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Section 182(b)(5) requires all major new sources or modifications in a moderate nonattainment area to achieve offsetting reductions of VOCs at a ratio of at least 1.15 to 1.0. For Kentucky, these requirements were completed through previously-published final rulemaking actions, and a final rulemaking action signed on September 18, 2001, to approve revisions to Kentucky's NSR program that were proposed for approval on June 21, 2001, (66 FR 33216). Indiana's part D NSR program was approved in October 1994.

Comment 2F—Conformity: The commenter contends that the SIP does not include conformity procedures as required by the CAA, and that EPA has no authority to waive this requirement. Since the CAA allows redesignation to attainment only where EPA has fully approved the implementation plan and only where the state has met all requirements applicable to the area

under section 110 and part D, the commenter contends that the area should not be redesignated.

Response 2F: Kentucky and Indiana have met the statutory requirement for submitting approvable general conformity procedures. EPA approved the Indiana general conformity rules effective on March 16, 1998, (63 FR 2146, January 14, 1998). EPA approved the Kentucky general conformity rules effective on September 25, 1998, (63 FR 40044, July 27, 1998).

In addition to general conformity, section 176(c) provides that state conformity revisions must be consistent with Federal transportation conformity regulations that the CAA requires EPA to promulgate. The Federal transportation conformity regulations were finalized on November 24, 1993, amended on August 7, 1995, and amended again on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendments: Flexibility and Streamlining). On March 2, 1999, a court decision (*Environmental Defense Fund* v. *EPA*, 167 F.3d 641 (D.C. Cir. 1999)) rescinded several sections of the Federal transportation conformity rule, requiring EPA to revise those sections of the Federal rule. Kentucky submitted transportation conformity rules on November 23, 1994, and updated this submittal with revised rules on December 19, 1997. Indiana submitted transportation conformity rules on January 23, 1997, and updated this submittal with revised rules on April 19, 2001. The revised rules were adopted by Indiana in 1998 in response to the August 1997 changes to the Federal regulations. EPA has not acted on the submittals from either State, as they do not address later Federal transportation conformity regulation amendments. Once EPA has completed revisions to the Federal rule to reflect the 1999 court decision, both States will need to revise their regulations to address the changes.

EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a Section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. EPA has explained its rationale and applied this interpretation in numerous redesignation actions. See redesignations for: Tampa, Florida (60 FR 52748, December 7, 1995); Jacksonville, Florida (60 FR 41, January 3, 1995); Miami, Florida (60 FR 10325, February 24, 1995); Grand Rapids, Michigan (61 FR 31835, June 21, 1996); and Cleveland-Akron-Lorain, Ohio (61 FR 20458, May 7, 1996). The U.S. Court of Appeals for the Sixth Circuit recently upheld this interpretation in *Wall* v. *EPA*, No. 00–4010, Slip Op. at 21–24 (6th Cir. September 11, 2001). The Court upheld EPA's view that failure to submit a revision that meets part D transportation conformity requirements is not a basis to deny a redesignation request. Consequently, EPA may approve Kentucky's and Indiana's 1-hour ozone redesignation requests notwithstanding the lack of fully approved conformity SIPs.

Comment 2G— NO_X SIP Call: The commenter contends that under 42 U.S.C. 7410(a)(2)(D)(i) the SIP must include provisions to prohibit emissions that will contribute significantly to nonattainment in, or interfere with maintenance by, any other state. The commenter asserts that EPA has specifically determined that emissions from the States Kentucky and Indiana contribute significantly to ozone nonattainment in downwind states, and issued a SIP Call to require additional NO_X controls in each State's SIP to address this problem. The commenter contends that this indicates that each State's SIP does not fully meet all of the requirements under section 110. The commenter believes that EPA cannot find the SIP Call requirement inapplicable for the purposes of redesignation.

Response 2G: EPA believes that submissions under the NO_X SIP call should not be considered applicable requirements for purposes of evaluating a redesignation request. Nevertheless, Indiana adopted the NO_X SIP Call rules on June 6, 2001, and submitted them for parallel processing on March 20, 2001, with a final submittal on August 20, 2001. EPA signed a final FR approving Indiana's rules on September 27, 2001. Therefore, Indiana has met the NO_X the SIP Call submission requirements.

Kentucky submitted regulations for parallel processing on February 20, 2001. EPA is currently awaiting supplemental information before determining if the Kentucky NO_X SIP Call submittal is approvable. However, the requirement to submit complete SIP revisions under the NO_X SIP call continues to apply to the area after redesignation to attainment. Therefore, Kentucky remains obligated to ensure its submittal is complete and approvable even after redesignation, and would risk sanctions for failure to do so.

The NO_X SIP Call requirements are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular area's designation and classification are the requirements that are the relevant measures to evaluate in reviewing a redesignation request. The NO_X SIP call submittal requirements continue to apply to the States regardless of the designation of any one particular area in these States. The NO_X SIP Call submissions are required to reduce emissions affecting downwind areas, not to address air quality in the designated Louisville ozone nonattainment area.

Thus, we do not agree that the NO_X SIP Call submission requirement should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing redesignation policies regarding conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996; and 62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, 62741, December 7, l995).

Comment 2H—Serious area requirements: One commenter stated that because the Louisville area failed to attain by its applicable attainment date of November 15, 1996, or the extended attainment date of November 15, 1997 (64 FR 27734, May 21, 1999), the Louisville area must be reclassified to ''serious'' and must meet all of the requirements for serious areas prior to redesignation.

Response 2H: Prior to the proposed determination of attainment (66 FR 27483, May 17, 2001), EPA approved a one 1-year extension of the Louisville area's attainment date (62 FR 55173, October 23, 1997) making its new attainment date November 15, 1997. On

May 21, 1999, (64 FR 27734), EPA proposed to find that the Louisville area failed to attain the 1-hour ozone NAAQS by its extended attainment date of November 17, 1997. Alternatively, EPA proposed in this same notice to extend the Louisville area's attainment date, provided Kentucky and Indiana submit SIPs pursuant to EPA's notice of proposed interpretation entitled, ''Extension of Attainment Dates for Downwind Transport Areas'' (64 FR 14441, March 25, 1999) by November 15, 1999. Provided the States met the extension policy criteria and EPA proposed to approve the States' submittals, EPA would then be able to propose a specific extended attainment date in that same notice. Kentucky and Indiana submitted attainment demonstration SIPs by the November 15, 1999, deadline, and were in the process of finalizing these submittals in the fall of 2000. At this same time, preliminary monitoring data for the 2000 ozone season indicated that the Louisville area was attaining the 1-hour ozone NAAQS for the 1998 to 2000 three-year period. This attainment status was confirmed when Kentucky and Indiana provided early certification of their 2000 ozone season monitoring data as complete, accurate, quality-assured in accordance with 40 CFR part 58, and recorded in AIRS on January 16, 2001, and January 11, 2001, respectively. Thus, EPA was in the process of reviewing the requests to extend the Louisville area's attainment date when the area, in fact, attained the 1-hour ozone NAAQS. Since the Louisville area has attained the 1-hour ozone NAAQS and submitted an approvable maintenance plan, the additional requirements for a ''serious'' area are not needed.

Comment 2I— NO_X RACT: EPA proposed to approve various source-specific NO_X RACT orders from Kentucky as part of the SIP (66 FR 33505, June 22, 2001). The commenter notes that EPA's longstanding definition of RACT is ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' (44 FR 53762, September 17, 1979). The commenter contends that the material in the proposed rulemaking action (66 FR 33505, June 22, 2001) does not demonstrate that the proposed emission limits are in fact RACT. The commenter contends that to determine RACT for these sources, EPA must at least examine NO_X control technologies in use throughout the nation and elsewhere, select one or more technologies as RACT for each category, and document why any more effective technologies are not technically and/or economically feasible. That EPA has failed to provide such analysis here. (The commenter also claims to identify several specific deficiencies with respect to individual sources and categories. These are described and responded to as subparts of this comment).

Response 2I: On November 12, 1999, and May 23, 2001, Kentucky submitted Board Orders approved by APCBJC for the 11 major NO_X sources located in the Louisville area. A Board Order is a regulatory instrument adopted by an air pollution control board which specifies air pollution control limits or requirements for a specific source or company. EPA reviewed each Board Order at both the prehearing and formal submittal stage for adequacy in meeting the requirements of NO_X RACT as defined in the November 25, 1992, Nitrogen Oxides Supplement to the General Preamble; CAA Amendments of 1990 Implementation of title I (57 FR 55625) (NO_X Supplement). The original November 12, 1999, submittal included Board Orders for 10 sources, but EPA concluded that only two of these Board Orders satisfied RACT. Following extensive consultation between APCDJC and EPA, Kentucky submitted revised Board Orders for the remaining eight sources, and for one additional major NO_X source, all of which EPA determined to satisfy RACT.

Comment 2Ia—Louisville Gas and Electric (LG&E) emission limits: EPA proposes to approve emission limits ranging from 0.47 to 0.52 pounds NO_X per million British thermal unit (lb/mmBtu) for LG&E electric generating units. The commenter contends that EPA does not explain why most of these limits are so much higher than the Ozone Transport Commission (OTC) phase II limit, which is the less stringent of 0.2 lb/mmBtu or a 65 percent reduction. The commenter claims that EPA estimates that the phase II reductions will be achieved at a cost of $1,600 per ton—a level that EPA has determined to be reasonably achievable. The commenter contends that in the absence of an adequate explanation or analysis of this discrepancy, EPA cannot determine that the proposed limits constitute RACT.

Response 2Ia: NO_X RACT for each of the sources located in the Louisville area, including LG&E's Cane Run and Mill Creek Generating Stations, was determined based on EPA's interpretation of what constitutes RACT as presented in the NO_X Supplement. The OTC is comprised of several northeastern states, and the programs and emission limits established by OTC for purpose of controlling NO_X emissions in the northeast are applicable only to those states.

The NO_X Supplement considers RACT for utilities to be ''the most effective level of combustion modification reasonably available to an individual unit. This implies low-NO_X burners. * * *'' EPA determined that, in the majority of cases, such controls result in an overall level of control equivalent to maximum allowable NO_X emission rates of 0.45 and 0.50 lb/mmBtu, respectively, for tangentially-fired and wall-fired coal-burning electric utility boilers, with compliance based upon a 30-day rolling average emission rate. EPA further determined that ''the actual NO_X emission reduction that can be achieved on a specific boiler depends on a number of site-specific factors * * *''

The initial Board Orders for these two facilities, submitted November 12, 1999, addressed EPA's prehearing concern that compliance with the established emission limits must be determined based on a 30-day rolling average emission rate. However, EPA commented that Kentucky increased the emission limits over the presumptive RACT limit provided in the NO_X Supplement, making them unapprovable absent further justification. Specifically, the November 12, 1999 Board Orders included emission limits of 0.49 lb/mmBtu for the tangentially-fired units (Mill Creek boilers 1 and 2 and Cane Run boiler 6) and 0.55 lb/mmBtu for the wall-fired units (Mill Creek boilers 3 and 4 and Cane Run boilers 4 and 5) located at these facilities. To support why these two sources could not meet presumptive RACT levels, Kentucky provided documentation showing that the selected acid rain controls for compliance with title 4 requirements—low-NO_X burners—were installed on these boilers and operated as designed on a regular basis. Kentucky further demonstrated, using Continuous Emission Monitoring data from the sources, that reasonable emission limits for these boilers, based on a 30-day rolling average compliance period and appropriate operation of the installed controls, were 0.47 lb/mmBtu for the three tangentially-fired units and 0.52 lb/mmBtu for the four wall-fired units. On May 23, 2001, Kentucky submitted revised Board Orders for the LG&E Cane Run and Mill Creek facilities that specify emission limits of 0.47 for three tangentially-fired coal-burning utility

boilers and 0.52 for four bottom wall-fired coal-burning utility boilers.

EPA therefore determined that Kentucky has required a RACT level of control for these facilities by installing the most effective, reasonably available controls, documenting the actual NO_X emission reduction achieved through appropriate operation of those controls, and requiring the corresponding emission limits in the final Board Orders for these facilities. The unit-specific nature of these requirements also assures a greater level of control than could be achieved through an ''overall [facility-wide] level of control,'' which the NO_X Supplement uses to establish presumptive RACT limits.

Comment 2Ib—Setting emission limits for some sources: For several source categories, EPA proposes to approve limits on capacity factors, rather than actual emission limits. The commenter contends that the notice does not explain why these constitute RACT, when other states have set numeric NO_X RACT emission limits for the same or similar source categories. See EPA's October 17, 1995, Summary of NO_X RACT Rules (available at *www.epa.gov/ttn/caaa/t1pgm.htm*). The commenter further contends that the proposal conflicts with EPA's NO_X RACT guidance, which indicates that EPA expects that NO_X RACT for sources other than electric utility boilers to be set at levels at least comparable to RACT guidance levels for electric utility boilers (57 *FR* 55620, November 25, 1992).

Response 2Ib: Capacity factors that limit the operation of coal- and gas-fired boilers at facilities to less than 10 percent of total capacity were included in the Board Orders for five facilities in lieu of emission limits. However, all of the boilers subject to capacity limits are back-up or emergency units that are operated on a very infrequent basis. In fact, most of these units were not operated during the 2000 and/or 2001 ozone seasons. Thus, total ozone season emissions from the capacity-limited units in recent years have been so low that additional controls or extensive monitoring are clearly not cost-effective and therefore not justified. The Board Orders do establish emission limits for all primary boilers in use at these facilities that satisfy RACT. Taken together, these different approaches for addressing emissions from primary and back-up boilers ensure that the emissions from these five facilities comply with RACT. The five Board Orders also require these facilities to record the amount, type and heat content of fuel combusted each day for each boiler subject to a 10 percent capacity limit; the capacity factor for each of these boilers must also be calculated and recorded monthly. Finally, the facilities must submit a semi-annual report documenting all deviations from NO_X RACT Plan requirements. These comprehensive usage and reporting requirements ensure that emissions from the subject boilers for all five facilities will continue to represent RACT. In summary, due to limited operating hours, the costs to control these units would be very high for a small amount of emission reductions.

For three of the five facilities, the boilers subject to 10 percent capacity factors are gas-fired. Low usage rates, combined with the clean-burning, inherently lower-emitting nature of these gas-fired boilers (0.20 lb/mmBtu or less) ensure that total emissions from these units will be minimal. The Board Order for one of these facilities—Oxy Vinyls—establishes a 10 percent capacity factor for one gas-fired boiler that serves as a back-up unit for the two primary coal-fired boilers. In actuality, this gas-fired boiler was not operated during the 1999 or 2000 ozone seasons. However, even if operated at 10 percent capacity, total potential NO_X emissions for this unit would be significantly lower than could be achieved by establishing a RACT emission limit for the unit, assuming operation at full capacity. In addition, emissions from the two primary coal-fired boilers effectively dwarf emissions from the capacity-limited gas boiler by comparison. Installation of controls on the latter unit would be non-cost effective and impracticable. The second facility—Ford Louisville Assembly Plant—has three gas-fired boilers subject to a 10 percent capacity factor. Two of these boilers were not operated in 2000 or 2001. The third was operated for a short time in October of one year for testing purposes. The third facility—Rohm and Haas—has one primary gas-fired boiler, and one back-up gas-fired boiler subject to a 10 percent capacity factor. Emissions from the latter could potentially comprise a greater portion of this facility's total emissions. However, the Rohm & Haas Board Order also requires this boiler to meet a 0.20 lb/mmBtu emissions limit in the event that it is unable to comply with the 10 percent capacity limit. This boiler was operated at less than three percent capacity in 2000.

The Board Order for the fourth facility, GE Appliances, establishes a 10 percent capacity factor for each of five secondary backup coal-fired boilers. The primary energy source for the facility is a clean-burning methane gas boiler, and the secondary energy source is a gas-fired boiler subject to an emissions limit of 0.2 lb/mmBtu. During the 2000 ozone season, four of the coal-fired boilers were not used and the fifth had a usage rate equivalent to two percent of its total capacity. During the 2001 ozone season, none of these five boilers were operated. In addition to the above-mentioned recordkeeping and reporting requirements that all five facilities must meet, the GE Appliances Board Order requires this facility to conduct a thorough maintenance or ''tune-up'' of each of the five coal-fired boilers prior to the start of the ozone season. It also requires even more extensive maintenance on one of these five boilers—to be identified by May 1 of each year as the primary backup among these five boilers. The required semi-annual report submitted by GE Appliances must document all maintenance activities performed on these boilers to verify that the pre-season ''tune-up'' was completed and that the boilers continued to be well-maintained on an ongoing basis.

The Board Order for the fifth facility, the Louisville Medical Center Steam Plant, establishes a 10 percent capacity factor for each of two coal-fired boilers that are designated as third-level backup for the primary boilers at the source. The Board Order establishes emission limits that satisfy RACT for the primary, and first- and second-level backup boilers in use at the facility. During the 2000 ozone season, the two coal-fired boilers subject to 10 percent capacity limits were not operated.

Comment 2Ic—Texas Gas Transmission delayed compliance dates: The commenter points out that EPA proposes to approve delayed compliance dates for various emission limits applicable to Texas Gas Transmission. Some of these dates are during 2002, and one is during 2004. The commenter contends that EPA cannot approve NO_X RACT with such delayed compliance dates. The CAA required adoption and implementation of NO_X RACT in Louisville long ago, and EPA has no authority to approve orders that allow for delayed compliance.

Response 2Ic: Based on review of the November 12, 1999, submittal, EPA noted that the turbine lacked controls and identified several types of controls, including dry low NO_X controls, that appeared to be viable RACT choices. Absent adequate justification, EPA required the facility to install controls on this unit. Texas Gas agreed to install dry low NO_X controls on the turbine in 2004. Installation could not be done in 2001–2002, because the facility will be

installing RACT controls on the Internal Combustion Engines (ICEs) during that timeframe, and requires that either the ICEs or the turbine be operational at all times. Following installation of these controls, this facility will have fulfilled the CAA requirement to implement NO_X RACT.

Comment 3—Showing that air quality improvement is due to permanent and enforceable reductions: The commenter asserts that neither the States nor EPA have shown that air quality improvements are due to permanent and enforceable emission reductions, as required by 42 U.S.C. 7407(d)(3)(E)(iii). The commenter asserts that although States have adopted measures that have produced some emission reductions, EPA has not demonstrated that these reductions are responsible for the area's improved air quality or the absence of violations. The commenter holds that the only way to reliably make such a showing is through photochemical grid modeling. The commenter further asserts that given the complex chemistry and meteorology of ozone formation, the combination of NO_X and VOC emission reductions that might be attributable to the cited measures could just as easily lead to increases in ozone concentrations. The commenter contends that the lack of violations in 1998–2000 could be due to weather patterns or changes in transport of ozone precursors. The commenter further contends that the States did not offer other technically sound analysis showing that air quality improvements are due to permanent and enforceable emission reductions.

Response 3—Our policy does not specify that photochemical grid modeling is required for all ozone nonattainment areas to demonstrate that permanent and enforceable emission reductions have produced improvements in air quality. See the September 4, 1992, Calcagni memorandum; the General Preamble; ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; and ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

We have found that reductions in ozone precursor (VOC and NO_X) emissions (emission inventory approach) have brought many areas across the country into attainment. Reductions in ozone precursor emissions similar to the reductions that have taken place in the Louisville area have been confirmed in photochemical grid modeling to reduce ambient ozone concentrations. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the 1-hour ozone NAAQS. See redesignations for Charleston, West Virginia (59 FR 30326, June 13, 1994; and 59 FR 45985, Sept. 6, 1994); Greenbrier County, West Virginia (60 FR 39857, Aug. 4, 1995); Parkersburg, West Virginia (59 FR 29977, June 10, 1994; and 59 FR 45978, Sept. 6, 1994); Jacksonville/Duval County, Florida (60 FR 41, January 3, 1995); Miami/Southeast, Florida (60 FR 10325, February 24, 1995); Tampa, Florida (60 FR 62748, December 7, 1995); Lexington, Kentucky (60 FR 47089, September 11, 1995); Greensboro, North Carolina (58 FR 47391, September 9,1993); Indianapolis, Indiana (59 FR 35044, July 8, 1994; and 59 FR 54391, October 31, 1994); South Bend-Elkhart, Indiana (59 FR 35044, July 8, 1994); Evansville/Vanderburgh County, Indiana (62 FR 12137, March 14, 1997, and 62 FR 64725, December 9, 1997); Canton, Youngstown-Warren, Ohio (61 FR 3319, January 31, 1996); Cleveland-Akron-Lorain, Ohio (60 FR 31433, June 15, 1995, and 61 FR 20458, May 7, 1996), Clinton County, Ohio (60 FR 22337, May 5, 1995, and 61 FR 11560, March 21, 1996); Columbus, Ohio (61 FR 3591, February 1, 1996); Kewaunee, Manitowoc, and Sheboygan Counties, Wisconsin (61 FR 29508, June 11, 1996; and 61 FR 43668, August 26,1996); Walworth County, Wisconsin (61 FR 28541, June 5, 1996, and 61 FR 43668, August 26, 1996); Pointe Coupee Parish, Louisiana (61 FR 37833, July 22, 1996, and 62 FR 648, January 6, 1997); and Monterey Bay, California (62 FR 2597, January 7, 1997). Most of the areas that have been redesignated to attainment for the 1-hour ozone NAAQS have continued to attain the standard. Areas that are not maintaining the 1-hour ozone NAAQS are implementing maintenance plans designed to bring them back into attainment. The U.S. Court of Appeals for the Sixth Circuit recently upheld EPA's emissions inventory approach for maintenance plans as a basis for approval of those plans in *Wall* v. *EPA,* supra at 17–19.

Between 1990 and 1999, VOC emissions in the Louisville nonattainment area have decreased area-wide by more than 112 tons per day. These emissions reductions are due to a number of permanent and enforceable regulatory programs, including the Federal Motor Vehicle Emissions Control Program, fleet turnover of automobiles, implementation of Stage II vapor recovery program, implementation of VOC RACT, lower Reid vapor pressure gasoline, restrictions on open burning, regulations covering landfill emissions, and ceased operation and improved technology at facilities in the Louisville area. Kentucky also instituted regulations regarding rule effectiveness and mandated the use of reformulated gasoline in the nonattainment area. Additional reductions in Indiana resulted from regulations for VOC storage tanks, shipbuilding/ship repair, wood furniture coating, automobile refinishing, and the implementation of an improved vehicle Inspection and Maintenance (I/M) program and a ridesharing program. Since the 1999 attainment year, the States have increased the rule effectiveness of Stage I vapor control and have implemented additional Federal regulations on such emission sources as architectural coatings, traffic paints, auto-body refinishing, and commercial/consumer products rules.

It is a technically sound and acceptable analysis to show that air quality improvements are due to permanent and enforceable emission reductions by demonstrating a decline in ozone levels which corresponds to the implementation of the enforceable reductions. An analysis of the ozone values in the Louisville area shows that ambient ozone concentrations dropped after this combination of ozone precursor reductions occurred. Ozone air quality monitoring data shows that the design value [1] changed from 0.149 ppm during the 1987–1989 time period to 0.123 ppm during the 1998–2000 time period. The decline in ozone concentrations indicates that the reduction in ozone precursor emissions in the area has contributed to improved air quality and helped bring about attainment of the 1-hour ozone NAAQS. The Louisville area's decrease in ozone levels is consistent with what other areas have experienced.

While the complex chemistry and meteorology of ozone formation is a factor, the combination of NO_X and VOC emission reductions in the Louisville area have lead to decreases in ozone concentrations, not increases. The commenter has not provided data

[1] The design value is typically the fourth highest ozone concentration recorded at a monitor over a three-year period. This value is calculated for each monitor and the highest value is the design value for the area.

showing that similar decreases in ozone precursor emissions have led to higher levels of ozone elsewhere. Nor did the commenter supply evidence to support the conclusion that the absence of violations during 1998–2000 was due to weather patterns or changes in transport of ozone precursors. Climatological data for the Louisville area from the National Oceanic and Atmospheric Administration [2] (*http://www.cdc.noaa.gov/USclimate/USclimdivs.html*) shows that during the 1998–2000 ozone seasons, local weather conditions were, in fact, more favorable for high ozone concentrations than low concentrations. This data is summarized in Tables 2 and 3. The fact that weather conditions and transport may have a substantial effect on ozone concentrations, both in terms of increasing ozone and decreasing ozone, cannot be controlled. We use a three-year averaging period to account for the year-to-year difference in weather conditions. In the Louisville area, the fact that the preliminary ozone data for 2001 continues to demonstrate attainment of the 1-hour ozone NAAQS increases our confidence that meteorology has not been the controlling factor in the area's attainment.

Table 2 shows the ranking (percentile) for each year of the average temperatures over the April—October period (ozone season) for the listed years compared to the long term average (1895 to 1999). A rank or value of 100 represents the highest temperature percentile and is given to the hottest year. Correspondingly, rank of one represents the lowest temperature percentile and is given to the coolest year. Table 3 shows the standard deviation for the average temperature anomaly (in degrees Fahrenheit) over recent three-year ozone seasons compared to a contemporary long-term average of temperature (1971–2000). In this table, warmer periods are indicated by larger positive values. If favorable weather conditions had been a large factor in Louisville's attainment of the standard, then one would have expected the attainment period to have been cooler than the previous nonattainment period (1997–1999). Instead, during the attainment period of 1998–2000, average temperatures were above the long term average (+1.24) from Table 2. Table 2 also shows that the three attainment years (1998–2000) were relatively warm, ranked in the 82th, 79nd, and 49st percentiles respectively. The temperature rankings and anomalies indicate that the ozone seasons with violations were less conducive to ozone formation based on temperature than the attainment period of 1998–2000 with no violations.

TABLE 2.—TEMPERATURE PERCENTILES (RANKING) FOR THE OZONE SEASONS

Year	Temperature percentiles (ranking) for Louisville, Kentucky
1990	19
1991	92
1992	5
1993	30
1994	29
1995	67
1996	23
1997	5
1998	82
1999	79
2000	49

TABLE 3.—COMPOSITE TEMPERATURE ANOMALIES [1] FOR APRIL—OCTOBER VERSUS 1971–2000 AVERAGE

Three year period of April–October data [2]	Temperature anomaly for Louisville, KY
1992–1994	−0.72
1993–1995	0.22
1994–1996	0.10
1995–1997	−0.50
1996–1998	−0.23
1997–1999	0.45
1998–2000	1.24

[2] The standard deviation for temperature anomaly in degrees Fahrenheit.

The above data shows that the weather conditions in the 1998–2000 attainment years were not unusually favorable towards lower levels of ozone, and that the area has attained the 1-hour ozone NAAQS despite this warmer than average weather. The combination of this analysis of the meteorological conditions in conjunction with the existence of adopted emission controls demonstrates that the improvement in air quality is due to permanent and enforceable emission reductions. In light of this information, EPA believes that photochemical grid modeling is not necessary to support this conclusion, nor is it required by the CAA or guidance.

Comment 4A—Maintenance demonstration using adequate methods: One commenter stated that the attainment inventory approach was inadequate, and that modeling shows continued nonattainment through 2007 and beyond. The specific details of the commenter's remarks and EPA's replies are addressed below in the comments and responses identified as 4Aa, 4Ab, and 4Ac.

Comment 4Aa—Demonstration of maintenance: The commenter asserts that the plan does not demonstrate maintenance as required by the CAA, and that EPA has proposed to find maintenance on the presumption that the area will always be in attainment if emissions remain at or below estimated 1999 levels. The commenter contends that since the area violated the NAAQS in the 1997–99 period, holding emissions to 1999 levels will not assure attainment. The commenter further contends that EPA regulation and guidance explicitly require modeled maintenance demonstrations in multi-state ozone nonattainment areas like Louisville, where modeling was required for the attainment demonstration (see 40 CFR 51.112; 65 FR 6711, rejecting use of rollback analysis for making attainment and nonattainment predictions; and the September 4, 1992, Calcagni memorandum). The commenter insists that until EPA approves such a modeling demonstration, it cannot approve the maintenance plan.

Response 4Aa: In evaluating Kentucky's and Indiana's maintenance plans, EPA determined that the Louisville area's ability to demonstrate attainment for the 1998–2000 time period indicates that the attainment year (1999) level of emissions is adequate to keep the area in attainment (maintenance) for at least the next 10 years. Pursuant to EPA policy, states may demonstrate maintenance by preparing an attainment emissions inventory corresponding to the period during which the area monitored attainment and showing that future emissions will stay below the attainment emissions inventory. (See September 4, 1992, Calcagni memorandum). The Louisville area emissions are indeed projected to remain below the 1999 level for the next 10 years. Holding emissions at or below the level of attainment is, in EPA's view, ''adequate to reasonably assure continued maintenance of the 1-hour ozone NAAQS.'' Thus, under EPA's interpretation, the air quality will be maintained by keeping emissions below the attainment emissions level, continuing to monitor ozone levels, and having maintenance plan contingency measures available. As noted above, in response to comment 3, the U.S. Court of Appeals for the Sixth Circuit recently upheld EPA's emissions inventory

[2] The weather data for Louisville used to develop Tables 2 and 3 was derived from the average of the two weather zones covering Louisville (Kentucky zones 2 and 3)

approach to evaluating maintenance plans in *Wall* v. *EPA*, supra at 17–19.

According to the September 4, 1992, Calcagni memorandum, ''many areas are required to submit modeled attainment demonstrations to show that proposed reductions in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstrations should be based upon the same level of modeling. In areas where no such modeling was required, the State should be able to rely on the attainment inventory approach.'' This guidance does not, as the commenter suggests, require an area such as the Louisville area to submit modeled attainment demonstrations when the States have already produced actual quality-assured data showing attainment. Therefore, the maintenance demonstration need not be based on modeling. As provided for by the September 4, 1992, Calcagni memorandum, ''[a] State may generally demonstrate maintenance of the NAAQS by *either* showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.'' Kentucky and Indiana are not required to submit a modeled attainment demonstration to support their redesignation request, since EPA has concluded that this requirement is not applicable so long as the area actually attained the 1-hour ozone NAAQS. Therefore, EPA has determined that an attainment demonstration that includes photochemical grid modeling is not needed to show that the area has attained the 1-hour ozone NAAQS. Since the States were not required to submit a modeled attainment demonstration under EPA's established interpretation of the statute and its longstanding policy, the States need not submit a modeled maintenance demonstration. EPA finds that the States can rely on the attainment inventory approach as was done here.

In addition, citing 40 CFR 51.112, the commenter contends that EPA's regulations require modeling to show that a maintenance plan is adequate. Section 51.112 provides in relevant part, that ''[e]ach plan must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements.'' Both the language and the context of this regulation indicate that it applies to attainment demonstrations, and not to stand alone maintenance plans submitted under CAA section 175A. There is no reference in the regulation to modeling requirements applicable to a section 175A plan revision for the sole purpose of providing maintenance and not attainment.

Moreover, even if the regulation could be construed as applying such a requirement, by its own terms, the regulation provides authority for EPA to modify requirements through notice and comment rulemaking. The rulemaking proposing redesignation of the Louisville area (66 FR 33505, June 22, 2001) addresses the attainment inventory approach in the maintenance plan, requests comments, and concludes that a modeled demonstration is not required to demonstrate maintenance under the statute. Many of the ozone areas for which EPA has approved ozone redesignations have used an emissions inventory approach to demonstrate maintenance. Indeed, the majority of areas have continued to maintain the 1-hour ozone NAAQS using that approach. There are ozone monitors located in the Louisville area to ensure that the area's air quality remains below the level set by the one-hour ozone NAAQS. Additionally, areas that are not maintaining the 1-hour ozone NAAQS have contingency measures in a maintenance plan to bring them back into attainment. See redesignations listed above in Response 3.

Comment 4Ab—Tier 2/Gasoline Sulfur Ozone Modeling Analysis: The commenter asserts that a modeling analysis set forth in EPA's Tier 2/Gasoline Sulfur Ozone Modeling Analysis, contradicts the premise that the Louisville area's maintenance plan is adequate to maintain the 1-hour ozone NAAQS for the required 10 year period. Specifically, the commenter contends that the Louisville area was included in the Tier 2 modeling analysis as among those that are certain or highly likely to require additional emission reductions in order to attain and maintain the 1-hour ozone NAAQS.

Response 4Ab: In the Tier 2 rulemaking, EPA used a regional ozone modeling system to predict ozone levels in many cities as part of an analytical process to characterize the risk that there would be nonattainment in a large and geographically broad number of areas. The Tier 2 modeling involved many approximations and assumptions because it was conducted for a very large region. While ozone predictions and the characterization of the risk of nonattainment in individual areas was a step toward reaching a conclusion about risks across the group of areas that characterization was not a finding by EPA of violations for any specific area. In addition, EPA's decision to approve the Louisville maintenance plan is based on more recent air quality data than was taken into account in the Tier 2 rulemaking. The Tier 2 rulemaking reflected only air quality data through 1998; it did not reflect the additional two years of air quality data in which the Louisville area attained the 1-hour ozone NAAQS. This is clear from the Tier 2 notice (65 FR 6709, February 10, 2000) which indicated that Louisville was included on a list of areas ''that have current violations of the 1-hour NAAQS.'' (See also the discussion of this issue in the final redesignation rulemaking for the Cincinnati-Hamilton area 65 FR 37882–37883, June 19, 2000).

The Louisville area is not now nor was it in violation of the 1-hour ozone NAAQS at the time it was proposed to be redesignated. In fact, the preliminary air quality data for the Louisville area for 2001 indicates continued attainment. In addition, the emission inventory projections in the maintenance plans show that total NO_X and VOC emissions decline between 1999 and 2012. When the air quality data is combined with a downward trend in total emissions, there is an even stronger basis for not relying completely on the Tier 2 ozone modeling. Even so the Tier 2 reductions are the type of additional reductions that will help ensure maintenance for the next 10 years. The U.S. Court of Appeals for the Sixth Circuit recently upheld EPA's decision to treat Tier 2 findings as inapplicable to an evaluation of an area's maintenance plan in a redesignation action (see *Wall* v. *EPA*, supra at 19–20).

Even if there is some risk of lapse, that would not preclude the redesignation of the Louisville area. In drafting the CAA, Congress did not presume that an area will always be in attainment (62 FR 650). In fact, Congress specifically contemplated that future violations may occur and therefore required that EPA fully approve a maintenance plan and contingency measures for an area consistent with the requirements of section 175A of the CAA before that area can be redesignated to attainment (See 42 U.S.C. 7407(d)(3)(E)(iv)). If the area monitors a violation, then the contingency measures required by section 175A to be included in the maintenance plan would be triggered to bring the area back into attainment. Clearly, the CAA and Congress anticipated that areas redesignated to attainment may violate the NAAQS in the future, and Congress ensured in the CAA that control measures to remedy

the violation are available if such violations occur.

Comment 4Ac—Correlation of emission levels with ozone levels: The commenter asserts that EPA cannot assume that emission levels correlate with ozone levels in a linear or consistent fashion. Because the Charlestown and New Albany monitors violated the 1-hour NAAQS through 1999 and recorded more exceedances in 1997–98 than in 1995–96, even though emissions were declining, the commenter concludes that the States' attainment inventory approach is not a reliable predictor of future attainment.

Response 4Ac: We believe that the monitoring data confirms that the 1999 level of emissions is adequate to keep the area in attainment. Table 4 summarizes the number of estimated exceedances at each monitor in the area from 1995 through 2000. It is considered a violation of the 1-hour ozone NAAQS [3] if the average expected exceedances over a three year period total more than 1.0 at any one monitor (See 40 CFR 50.9 and Appendix H).

During 1999 and 2000 exceedances of the 1-hour ozone standard were measured at only one of the Louisville area monitors. The Buckner monitor in Oldham County, Kentucky had 1.2 exceedances in 1999. Therefore, over the three-year averaging period from 1998 through 2000, there were exceedances but no violations of the 1-hour ozone NAAQS.

TABLE 4.—LOUISVILLE AREA 1-HOUR OZONE NAAQS ESTIMATED EXCEEDANCES FROM 1995 TO 2000

Year	Indiana sites		Kentucky sites				
	Charlestown, Clark County	New Albany, Floyd County	Shepherdsville, Bullitt County	Bates, Jefferson County	Watson, Jefferson County	WLKY–TV Jefferson County	Buckner, Oldham County
1995	2.1	1.0	0.0	1.0	1.0	0.0	0.0
1996	0.0	1.0	0.0	0.0	1.0	1.1	0.0
1997	3.1	2.0	1.2	1.0	0.0	0.0	2.1
1998	[1] 3.1	2.0	0.0	1.2	1.2	1.1	1.1
1999	0.0	0.0	0.0	0.0	0.0	0.0	1.2
2000	0.0	0.0	0.0	0.0	0.0	0.0	0.0

[1] See Response 1 for explanation of the derivation of this value.

Several factors which cannot be controlled have an effect on ozone formation, most notably meteorology and the presence of transported ozone or transported ozone precursors. EPA addresses meteorological variations by using long term averaging (EPA's 3-year ozone averaging period) and evaluating the effectiveness of a local control strategy during ozone-conducive years. As Response 3 described, the local control strategy for Louisville has been effective during warmer than average years. See Tables 2 and 3. See also the discussion of this issue in the final redesignation rulemaking for the Cincinnati-Hamilton area (65 FR 37886–37887, June 19, 2000).

The commenter states that ''[b]oth the Charlestown and New Albany monitors violated the 1-hour NAAQS through 1999, and both recorded more exceedances in 1997–98 than in 1995–96.'' In order to test the commenter's contention that temperature (weather) not emission reductions brought about the lower ozone concentrations in the Louisville area, we ranked the average ozone-season temperatures for the years the commenter referenced. The percentile table (Table 2) compares each year's average temperature to the average temperature during the period 1895–2000, ranks the years from coolest to warmest. Table 2 (see Response 3) shows that the rankings of 1997–1998 are 5 and 86 respectively, and the rankings of 1999–2000 to be 82 and 51 respectively. It also lists the rankings for the years of 1995–1996 as 69 and 24 respectively.

If weather is the sole or most significant influence on ozone levels, then the period with a lower temperature ranking should have a lower number of ozone exceedances The year 1997 was cooler but had more exceedances than 1995 or 1996. During the period 1998–1999, with the two highest temperature rankings between 1995 and 2000, there were fewer exceedances than in the 1996–1997 or 1997–1998 periods. Given that ozone exceedances did not occur more frequently in apparently ozone-conducive high-temperature years (1998–1999), it seems reasonable to conclude that the improvement in air quality that occurred during this timeframe in the Louisville area is due to permanent and enforceable emission reductions. See also the discussion of this issue in the final redesignation rulemaking for the Cincinnati-Hamilton area (65 FR 37886, June 19, 2000). Based on its analyses, EPA continues to believe that reductions in ozone precursors do lead to measurable ozone decreases, and therefore, the attainment inventory approach used by the States is an appropriate predictor of future attainment. *Wall* v. *EPA*, supra at 17–19.

Comment 4B—Understatement of future emissions: The commenter contends that even if the emissions inventory approach was otherwise defensible here, Kentucky has failed to demonstrate that emission reductions projected for future years will in fact be achieved. The Kentucky appears to rely in part on reductions claimed in their 15 percent rate of progress plans, but EPA has never determined that the plans actually demonstrate the claimed emission reductions. The commenter insists that the reductions claimed from various 15 percent plan measures, as well as from other measures, are not creditable. Specifically, the commenter claims that Kentucky's Regulation 1.18 (Rule Effectiveness) does not require any specified minimum level of emission reduction, and that because the content of each rule effectiveness plan is determined solely by the source, these plans provide no assurance of any emission reductions at all. The commenter also claims that emission reductions resulting from Regulation 6.43 (VOC Reduction Requirements) are not creditable, because Kentucky raised questions about the legality of adopting this regulation, and the reductions claimed are also dependent on the adequacy of the APCDJC's emissions trading program, which EPA has not approved.

[3] Estimated exceedances take into account actual monitored exceedances and account for days where there is missing data or the data was invalidated (See Response 1).

Response 4B: EPA is publishing elsewhere in this FR its final rulemaking action approving regulations contained in Kentucky's 15 percent plan. EPA hereby incorporates the rationale and responses of that rulemaking by reference. As EPA explains in that rulemaking, EPA's final attainment determination renders EPA approval of Kentucky's 15 per cent plan unnecessary, since that requirement is no longer applicable. Thus no specific credits are being approved as part of the 15 percent plan. Notwithstanding this circumstance, EPA has taken final action to approve the control measures contained in the plan, and these measures will continue to be implemented after redesignation. Therefore, all reductions by these control measures are permanent and enforceable and will continue to be achieved after redesignation. Indiana's 15 percent plan was approved on May 7, 1997 (62 FR 24815).

Comment 4C—Lack of resource and enforcement commitments: A commenter contends that the maintenance plan is also not approvable because it lacks enforcement programs and commitments of legal authority and resources to implement all of the measures, as required by the CAA (42 U.S.C. 7410(a)(2)(E)). The commenter claims that EPA simply assumes that the various measures relied on for continued and future emission reductions will continue to be implemented. See also 40 CFR 51.111, 51.280, 57 FR 13498, 13564 (1992).

Response 4C: The States have committed to select and implement the maintenance plan contingency measures within 18 months of a violation of the 1-hour ozone NAAQS. The commenter provided no evidence that the maintenance plan fails to satisfy section 110(a)(2)(E). The CAA does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for, and applicable to, the SIP as a whole also applies to the maintenance plan. The U.S. Court of Appeals for the Sixth Circuit recently upheld EPA's approval of a maintenance plan without requiring a separate commitment of resources and authority (see *Wall* v. *EPA*, supra at 17–19).

EPA approved the Kentucky ozone SIP on January 25, 1980, (45 FR 6092) and the Indiana ozone SIP on January 18, 1983, (48 FR 2124), as meeting all of the requirements of section 110, which included section 110(a)(2)(F), the predecessor of current section 110(a)(2)(E). EPA has consistently interpreted section 107(d)(3) as allowing EPA to rely on prior approvals of SIP provisions when reviewing redesignation requests. The September 4, 1992, Calcagni memorandum describes procedures that EPA regions should use to evaluate requests to redesignate areas to attainment status. The memo states: ''An area cannot be redesignated if a required element of its plan is the subject of a disapproval.* * * However, this does not mean that earlier issues with regard to the SIP will be reopened. Regions should not reconsider those things that have already been approved and for which the Clean Air Act Amendments did not alter what is required.'' EPA does not need to reconsider the issue of whether the Kentucky or Indiana SIPs met section 110(a)(2)(E) requirements prior to redesignation. *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984 (6th Cir. 1998).

Even if violations subsequently occur, this does not conclusively establish that state enforcement is so inadequate as to make the state enforcement program deficient under the CAA. EPA has not made such a finding, and even if an area is redesignated, EPA retains authority to make a finding of failure to implement under section 173(b) of the CAA or to require a SIP revision under section 110(a)(2)(H) if it concludes that state implementation and enforcement is deficient. The state would thus remain subject to EPA authority to improve its enforcement even after the area is redesignated. For purposes of redesignation, the area has a fully approved SIP.

Comment 4D—Lack of accurate estimate of Tier II benefit: The commenter contends that there is no accurate estimate of Tier 2 benefits. Since EPA has recognized that better data will be available after the issuance of MOBILE6, the commenter believes that, EPA cannot allow the state to claim credit in its future year emissions projections for a specific level of Tier 2 reductions. The commenter asserts that without the Tier 2 reductions claimed, it does not appear that future year VOC emissions will be lower than 1999 emissions, and therefore, EPA cannot approve the maintenance demonstration.

Response 4D: EPA requires that maintenance plans reflect expected actual emission rates (see September 4, 1992, Calcagni memorandum). Hence, once rules are finalized and enforceable, they need be considered when preparing maintenance plans and establishing MVEBs. The MVEBs represent the emissions budgets for motor vehicles and are closely related to the emission reductions from the Tier 2 program. EPA requires that 1-hour ozone maintenance plans contain MVEBs for ozone precursors. In order to find MVEBs in plans adequate, EPA requires that the MVEBs be consistent with the control measures in the submitted maintenance plan (40 CFR 93.118(e)(4)(v)). EPA believes that once a regulation is finalized and we know that the reductions will occur, it is best professional practice, and thereby required by EPA guidance, to account for those reductions in plan development. The final Tier 2 low sulfur rulemaking was published on February 10, 2000, (65 FR 6697). In this case, the maintenance plans, and the MVEBs, contained in these plans, need to reflect the reductions achieved by the Tier 2 rulemaking.

EPA first estimated emission reductions from Tier 2 for serious and severe 1-hour ozone attainment demonstration areas in a memorandum, ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking,'' from Lydia N. Wegman, Director, Air Quality Standards Division of the Office of Air Quality Planning and Standards and Merrylin Zaw-Mon, Director, Fuels and Energy Division of the (then) Office of Mobile Sources to the Air Directors of EPA Regions 1–6, on November 8, 1999. This memorandum was the result of a detailed analysis to determine the best way to estimate the reductions from Tier 2 given the fact that MOBILE6 had not yet been released. The purpose of the memorandum was to advise the EPA Regional offices of the relationship between 1-hour ozone attainment demonstrations and the emissions reductions that will be achieved by the Tier 2 rule and to provide emissions data related to that rule. A copy of this memorandum and the associated spreadsheet is available on the EPA web site at *http://www.epa.gov/ttncaaa1/t1/meta/m10433.html.*

Subsequently, in April 2000, the Office of Transportation and Air Quality (OTAQ) issued an information sheet so that other areas could use the emission reduction methodology that was used to determine the reductions for the serious and severe ozone areas. That information sheet is titled, ''MOBILE5 Information Sheet #8—Tier 2 Benefits Using MOBILE5'' and is also available on the OTAQ website at *http://www.epa.gov/oms/m5.htm.*

In order to derive these estimates, OTAQ developed a special version of MOBILE called ''Modified MOBILE5b/Version2,'' for the Tier 2 rulemaking. Full documentation of the methods used to develop the estimates for VOC and NO_X Tier 2 emission reductions are

available in the Tier 2 Docket. To briefly summarize here, highway vehicle emissions were first estimated using MOBILE5b with input files that described specific conditions (I/M program, temperatures, fuel parameters, and registration distribution). The resulting emission factors were then multiplied by correction factors in order to simulate emission factors that would result from proposed changes in MOBILE to be incorporated in MOBILE6. Correction factors were developed for both a base case (without Tier 2 control) and a Tier 2 control case. Because the factors used were based on default national MOBILE inputs and for the reasons described above, we do recognize that the results should be viewed as interim approximations which may change when MOBILE6 becomes available.

The differences in grams per mile shown in the tables (see ''MOBILE5 Information Sheet #8—Tier 2 Benefits Using MOBILE5'' April 2000) can be multiplied by the appropriate local vehicle miles traveled (VMT) to develop estimates of Tier 2 reductions in any area in any year starting in 2004. These Tier 2 reductions would then be subtracted from the total on-highway mobile emissions that were calculated using MOBILE5a or MOBILE5b and existing MOBILE information sheets.

EPA understands and acknowledges the limitations of this information and the potential inaccuracies introduced by the use of national defaults and differing baselines. We also recognize the need, consistent with our guidance, to be able to estimate reductions from this program now, since it is a final rule that we know will provide emission reductions within the scope of the 20 year transportation plans, as well as 10 year maintenance plans. Recognizing that this is an interim approach, EPA has required both Kentucky and Indiana to update the MVEBs in their maintenance plans within two years after the release of MOBILE6 and furthermore, any new conformity analysis in the Louisville area can not be found to conform during the second year until budgets based on MOBILE6 calculations are in place.

The modeling process is constantly improving and EPA looks forward to the release of MOBILE6 as an improved MOBILE modeling tool that will fully incorporate the Tier 2 reductions. Until that time, EPA has established this interim approach so that state air quality planning initiatives can continue to make progress toward clean air goals. Furthermore, recognizing the limitations of this approach, EPA has required and the States have committed to use MOBILE6 to develop new MVEBs.

Comment 4E—Mobile source budget: The commenter points out that, given the VOC MVEB safety margin originally proposed by the States in their submittals, the area does not in fact show that 2012 emissions of VOCs will be less than 1999 emissions. The commenter contends that EPA cannot allow the state to revise the maintenance plan (MVEB safety margin) to correct the deficiency in the amendments to the submittal without providing another public notice and comment opportunity prior to approval of the redesignation request and the maintenance plan.

Response 4E: In the FR proposing approval of the redesignation requests, EPA specified the changes that the States intended to make to their VOC MVEB and proposed approval of their plans only if those plans were amended to incorporate the changes. After receiving the submittals, EPA had pointed out this error in the MVEB safety margin to the States. To remedy this issue, Kentucky submitted a letter on May 17, 2001, and Indiana submitted a letter on May 29, 2001, indicating their intent to revise the maintenance plans so that the amended documents would include an approvable VOC MVEB of 48.17 tons/day, 2.76 tons/day less than the MVEB included in the original submittal. Based on the States' letters, EPA was able to specify the exact VOC MVEB of 48.17 tons/day that the States were planning to adopt in their maintenance plans. Our proposed approval demonstrated how this revised VOC MVEB would affect the maintenance plan and that the revised 2012 VOC emission projections were less than the 1999 attainment year emissions. The proposal also stated that we could only take final approval action on the maintenance plans if they were in fact revised to include the 48.17 tons/day VOC MVEB consistent with an approvable maintenance plan.

As noted by the commenter, it is very important that there should be an opportunity for public notice and comment on all significant aspects of a plan. Each revised VOC MVEB was subjected to public hearing with opportunity for public comment. Kentucky's hearing was held on May 16, 2001, and Indiana's was held July 30, 2001. Neither State received any public comments regarding the revised VOC MVEB. Since there has been public notice with comment periods on this VOC MVEB at both the state and federal level, and no public comment has been received on the technical merits of the MVEB itself, EPA does not believe an additional public comment period is necessary.

Comment 5—Contingency plan: Two commenters contend that the contingency measures contained in the maintenance plans submitted by the States do not adequately address the CAA requirement to include measures that ''assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area.'' 42 U.S.C. § 7505a(d). The first commenter claims that EPA does not explicitly address this requirement in the proposed rulemaking: ''Nowhere has EPA proposed to find that the maintenance contingency plan for Louisville 'assures' prompt correction of future violations. Nor is there anything in the record to support such a finding.'' The commenter further contends that the contingency measures do not meet the requirements of EPA guidance (see September 4, 1992, Calcagni memorandum), to ''clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State.''(Note: Responses to the detailed comments for this item are addressed below as Responses 5A–5F).

Comment 5A—Need for clearly-defined contingency measures: Regarding the requirement in EPA guidance to ''clearly identify the measures to be adopted,'' both commenters contend that the measures identified in Kentucky's and Indiana's plans must be more clearly defined. The first commenter notes that contingency measures in both maintenance plans have yet to be adopted, and consist solely of ''lists of largely undefined categories of measures * * *[or] other as-yet unidentified measures * * *.'' The commenter further contends that the subject maintenance plans ''[provide no] procedure for quantifying the reductions needed to correct ambient violations, or any estimate of the potential emission reduction benefit from the listed measures, it provides no basis for concluding that these measures, if ever adopted, would assure correction of any violations.'' The second commenter argues for the importance of having ''a more specific plan to require additional reductions from stationary sources and other sources that can be [readily] implemented by Board Order'', based on ''the difficult history of District efforts to secure across-the-board reductions as part of the 15 percent plan.''

The first commenter claims that more specificity is needed for the Kentucky measures pointing out that ''the Kentucky list includes 'more restrictive

new source review requirements' and 'more rigorous vehicle emissions testing program', without giving any indication of how much 'more restrictive' or 'more stringent' the state has in mind.'' The second commenter states that the contingency measures to require ''implementation of a program to require additional emission reductions at stationary sources for specific types of processes or an across-the-board reduction for the larger stationary sources'' and ''more restrictive new source review requirements'' should be better defined prior to approval of the plan.

In providing more specific arguments of the need for clearly-defined contingency measures in Indiana's maintenance plan, the first commenter notes that the list of contingency measures includes ''such items as 'broader' geographic applicability of existing programs, and application of RACT to 'smaller' sources, without giving any definition to these vague terms.''

Response 5A: EPA believes that Kentucky's and Indiana's maintenance plans, and the contingency measures contained in those plans, are consistent with the structure and intent of the CAA requirements and EPA guidance, and provide adequate assurances of adequate public health benefits. The description of the contingency measures contained in the maintenance plans satisfies the CAA requirement to assure prompt correction of any monitored violations. As stated in the September 4, 1992, Calcagni memorandum, ''For purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered.'' As the commenter notes, the guidance later states that the measures to be adopted should be clearly identified. EPA believes that the measures are adequately identified, and that the goal of returning the area to attainment as expediently as possible may be most effectively achieved by reviewing and refining the precise levels and scope of the contingency measures at the time they are required to be put into effect. Each of the contingency measures now contained in the maintenance plans will clearly achieve emission reductions and contribute to reattainment of the 1-hour NAAQS in the event of a violation. Newer control programs that would be more effective or advantageous for the area may also be developed after the area is redesignated to attainment. Selecting and adjusting the stringency of the measures that will most effectively bring the area back into attainment may best be performed at the time of response to a violation.

As noted by the commenter, and as the above excerpt from the guidance on contingency measures goes on to say, ''* * * the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered.'' Kentucky's maintenance plan satisfies this requirement by establishing a clear schedule to ensure expeditious adoption of clearly defined contingency measures in the event of a violation. First, in the event of a monitored exceedance or if periodic emission inventory updates reveal a greater than 10 percent increase in ozone precursor emissions, Kentucky and APCDJC will identify and evaluate existing control measures, and assess, using available data and technical analyses, the amount of emission reductions needed to ensure that repeated exceedances of the 1-hour ozone NAAQS or further emissions increases do not occur. In the event of an actual violation, they must adopt, within nine months, ''one or more * * *contingency measures to reattain the standard.'' The maintenance plan allows Kentucky the freedom to select the appropriate emission control strategy from a number of emission control measures (including not only one of the contingency measures listed in the plan, but also additional contingency measures if new, more advantageous control programs are developed for the area), but it must still demonstrate to the EPA that the emission controls will be adequate to prevent future violations of the ozone NAAQS. This demonstration process will likely be expedited by considering the results of the evaluation completed to address the exceedances that preceded the violation; that evaluation should provide the agencies with the basis for identifying, at the time, which of these control measures would be most effectively used to achieve the needed reductions and restore the area to attainment. In summary, the schedule presented by the maintenance plan ensures the adoption of contingency measures within nine months of a violation. The inclusion of somewhat broad, but still clearly identified, categories of contingency measures in the maintenance plan, provides Kentucky with flexibility to select the most effective measure(s) available, while ensuring compliance with the contingency measures requirement. Kentucky must implement such measure(s) within 18 months following the confirmation of a 1-hour ozone NAAQS violation in accordance with 175A(b). EPA believes that these are sufficient to assure that the Commonwealth will promptly correct any violation of the standard which occurs after the redesignation of the area.

Indiana's maintenance plan also provides for expeditious action to address future ozone increases. If an ozone exceedance is monitored, or if the level of VOC or NO_X for the entire Louisville area increases above the 1999 baseline, Indiana would study the situation and choose appropriate control measures from those listed in its contingency plan. Some of the measures identified in Indiana's list of contingency measures are clearly defined and could be readily adopted and implemented by the State. The full scope of some other measures in Indiana's plan has not been specifically prescribed, but this allows the State to determine an appropriate level of control to address future ozone exceedances effectively and economically. The State would adopt and implement these control measures as expeditiously as possible, and in no case later than 18 months after Indiana's contingency plan is triggered. If there is a monitored violation of the 1-hour ozone NAAQS in the Louisville area (more than 1.0 expected exceedances over a 3-year period), Indiana has committed to choose, adopt, and implement suitable control measures within 18 months.

Finally, the requirement to adopt any control measures needed to attain the NAAQS as part of the SIP gives the public assurance that these measures will be carried out, if necessary, through federal enforcement or citizen suit. The CAA places the burden on the state to demonstrate that its plan, at all times, provides for attainment and maintenance of the NAAQS, through federally enforceable emission reductions sufficient to avoid violations of the NAAQS. The CAA also provides protections to the public in the event that state plans are not fully and successfully implemented to achieve the scheduled emission reductions and air quality improvements. These protections include federally imposed nonimplementation sanctions and opportunities for citizens to sue to compel implementation.

Comment 5B—Need for prompt implementation schedule: Regarding the requirement in EPA guidance to ''clearly

identify * * * a schedule and procedure for adoption and implementation,'' the second commenter contends that the schedule for implementation of contingency measures in the event of a monitored violation, as contained in Kentucky's maintenance plan, fails to ''assure * * * prompt correct[ion of] any violation''. This schedule allows Kentucky to take up to nine months to adopt, and another nine months to implement, regulatory contingency measures in the event of a monitored violation of the 1-hour ozone NAAQS, which, the commenter contends, is not an assurance of prompt correction of the violation.

Response 5B: EPA believes that the schedule requiring adoption of contingency measures within nine months of a confirmed violation, followed by implementation of the associated regulatory programs within 18 months of a confirmed violation, constitutes prompt, responsive implementation. While in some instances, an identified contingency measure may be adopted and implemented in less than 18 months, more often, a number of complicating factors lengthen the time to complete these actions. For example, in the case of stationary source controls, development of the necessary regulation or source-specific SIP revision specifying additional controls may occur quickly. However, even using emergency rulemaking procedures, the adoption process may take several months. For many types of controls, nine months to install and ensure proper operation of those controls is an ambitious schedule. In the case of many transportation control measures, as noted by one of the commenters, obtaining the necessary budgets or acquiring the necessary property for such measures may entail consultation with numerous local county or city governments or transportation management agencies. Thus, implementation of these measures may proceed quickly following adoption of these measures, but adoption of these measures within nine months from the date of violation is a very expeditious schedule. Overall EPA deems the schedule to comply with the requirements of 175A(d).

Comment 5C—Authority to implement: The second commenter contends that the Kentucky and APCDJC air pollution control agencies lack the legal ability to promptly implement contingency measures identified in the plan, making those measures ''insufficient under Section 175A(d).'' The commenter contends that the agencies cannot assure prompt implementation of measures requiring ''local county or city (or soon, merged city-county) government budgetary or regulatory action.'' Therefore, ''[f]or each of the proposed contingency measures, the state and local air pollution district should be required to explain whether the agency has the authority to implement the contingency measure, and whether that measure would be implemented by Board Order or by regulation.''

The commenter specifically requests additional explanation of the agencies' authority to implement several types of measures. The commenter notes that ''new construction of pedestrian and non-motorized vehicles would require several activities beyond the control of state and local air pollution control agencies including budgeting for construction using funds not available to the air pollution district,* * * which would have to be allocated by local or state government, and [would also require] dedication or acquisition of areas for such construction.'' The commenter also notes that ''the state and local agencies should be required to assess and document whether they have the legal authority to adopt trip-reduction ordinances, to restrict road access to HOVs [high occupancy vehicle lanes], to limit parking and vehicle use in areas of emission concentration, and to broaden emission testing programs.'' No challenge is made to Indiana's authority to promptly implement contingency measures.

Response 5C: Chapters 224.10–100(30) and 77.190 of the Kentucky revised Statutes provide Kentucky and APCDJC with broad authority to enact orders, rules and regulations to reduce air pollution. Other subchapters of KRS 77 give APCDJC the power to ''* * * take by grant, purchase, gift, devise, or lease * * * real or personal property of every kind within or without the district necessary to the full exercise of its powers.'' (KRS 77.060) and to establish an ''air quality trust fund to be used for conducting and funding air quality research and development projects * * * to assist in implementing the policies and purposes of this chapter.'' (KRS 77.127).

Certain control measures that may be applied under diverse circumstances, or implemented on a voluntary basis, may not lend themselves to the development and adoption of specific regulations, but will probably require the development of formal implementation and/or reporting procedures. In such instances, Kentucky and the APCDJC may take an active role in promoting the use of such procedures. In addition, it should be noted that this process may be community-based, with local residents and industries taking the lead rather than Kentucky.

Kentucky recognizes that the budgeting of funds for the construction of certain types of vehicles and roadway improvements requires the approval of various state and local transportation agencies. However, since conformity will continue to apply to the Louisville area following redesignation, Kentucky must continue to work with these agencies to ensure that conformity analyses continue to be conducted to ensure that short- and long-term transportation plans provide for emission levels within the MVEBs provided in the SIP. Kentucky also continues to work with these agencies to improve the consultation process by establishing and/or refining further consultation procedures that will facilitate and streamline the process of making future conformity determinations for all areas, including the Louisville area. Overall EPA finds that there is adequate authority to implement within the meaning of 175A(d).

Comment 5D—Need for measures to prevent violation: Both commenters contend that the Kentucky maintenance plan contains inadequate provisions to respond to exceedances, and/or anticipated violations. They contend that Kentucky's maintenance plan is insufficient, as it only commits to evaluate the list of control measures in the event of recorded exceedances or unexpected growth (i.e. greater than 10 percent growth in ozone precursor emissions, based on the periodic inventories). They are concerned that the plan offers no assurance that Kentucky will adopt additional controls to prevent a future violation, even where analyses show that such a violation is likely. The first commenter contends that ''the lack of commitment [to ever actually adopt additional controls to address anticipated violations] renders the plan inadequate under the Act and EPA policy. EPA guidance explicitly requires the maintenance plan to 'contain any additional measures as necessary to ensure that the standard will not be violated'.'' (57 FR 13563). The guidance further requires that ''Any future measures must be implemented before any violations might be anticipated, based on tracking of the emission inventory.'' Id. The state's plan here meets none of these requirements.'' The second commenter further states that ''any exceedances of the 1-hour standard should be considered as violations triggering the implementation of contingency measures.''

Response 5D: In the event of a monitored exceedance or if periodic emission inventory updates reveal a greater than 10 percent increase in ozone precursor emissions, the maintenance plan requires Kentucky to initiate a study to determine if additional emission controls are needed to prevent a future 1-hour ozone NAAQS violation. EPA views these commitments to be adequate and enforceable. This approach is consistent with the September 4, 1992, Calcagni memorandum, which states that the maintenance plan should ''identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented. The indicators would allow the State to take early action to address potential violations of the NAAQS before they occur.'' Kentucky's maintenance plan addresses this requirement by identifying two occurrences that trigger a study ''to evaluate existing control measures to see if any further emission reduction measures should be implemented at that time.'' This commitment allows Kentucky to take early action. It does require Kentucky to fully evaluate the current air quality status and control status of the area, and determine if, and what level of, action should be implemented to prevent further air quality deterioration. If Kentucky concludes from this evaluation that a violation is likely, and further controls are needed to avoid such occurrence, the maintenance plan indicates that action will be initiated ''at that time.'' The evaluation, in effect, allows Kentucky to pro-actively identify and implement controls deemed necessary to avoid an actual violation. Should any action taken be insufficient to prevent a violation, Kentucky is clearly aware of their obligation to implement controls within 18 months of that violation. Indiana has made similar commitments to implement controls expeditiously to address ozone exceedances and avoid violations of the 1-hour ozone NAAQS.

Comment 5E—Commitment to implement all existing SIP measures: The first commenter contends that Kentucky's and Indiana's contingency plan does not contain the commitment mandated by the CAA that the state will implement all ozone-control measures in the SIP prior to redesignation (42 U.S.C. 7505a(d)). Regardless of whether the state is currently implementing all required SIP measures, the foregoing commitment is crucial to ensuring that the contingency plan will remain adequate in the future if the state stops implementing pre-redesignation SIP measures. EPA does not have the discretion to approve the maintenance plan without this mandatory commitment.

Response 5E: 42 U.S.C. 7505(d) (section 175A(d)) requires that ''[s]uch provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.'' There are no unimplemented measures in the Kentucky SIP to which any commitments under section 175A(d) could apply. There is no need for the Commonwealth to commit to further implementation in light of the fact that they are continuing to implement all measures contained in their SIP. Since the section 175A(d) requirement to implement all measures is being satisfied, there is no requirement for an additional commitment.

Kentucky's redesignation request includes the following statement: ''The DAQ, APCD, and EPA have instituted programs that will remain enforceable and are hereby submitted as a plan to maintain air quality which meets the 1-hour ozone standard for the Kentucky portion of the Louisville 1-hour ozone attainment area. Sources are prohibited from reducing emissions controls following the redesignation of the area unless such a relaxation is first approved by the EPA as a revision to the Kentucky SIP.'' This is a clear statement of the requirement that the regulatory programs (adopted by both the Kentucky Division of Air Quality (DAQ), and the APCDJC; as well as, EPA's Federal measures relative to control of ozone levels) which constitute the regulatory scheme for reduction of ozone precursors instituted to attain the 1-hour ozone NAAQS in the Kentucky portion of the Louisville area, having been implemented will remain enforceable. It is clear that Kentucky has stated that it prohibits sources from reducing emission controls after redesignation unless EPA approves any change via a SIP revision. Such a revision would have to meet the requirements of 110(l) which requires that the revision could not interfere with ''* * * any applicable requirement concerning attainment * * *'' EPA considers that under these circumstances, the requirements of 42 U.S.C. 7505(d) are satisfied.

Similarly, in its maintenance plan, Indiana stated that it intends to maintain its current control measures after redesignation. Indiana has committed that any changes to its rules or emission limits applicable to VOC and/or NOX sources, as required for maintenance of the ozone standard in Clark and Floyd Counties, will be submitted to EPA for approval as a SIP revision. Indiana further stated that through the Indiana Department of Environmental Management's Office of Air Quality and its Office of Enforcement it has the necessary resources to actively enforce any violations of its rules or permit provisions. After redesignation, it intends to continue enforcing all rules that relate to the emissions of ozone precursors in Clark and Floyd counties. Thus Indiana also satisfies the requirements of section 175A(d).

Comment 5F—Adequate demonstration of maintenance: The second commenter voices concern over the accuracy of the Kentucky maintenance plan's demonstration that the area's attainment status will be maintained for at least the next 10 years, ''due in large part to the increases in mobile source emissions traceable to both increases in vehicle miles traveled and to lower fuel efficiency among the ''SUV'' [Sport Utility Vehicles] and light duty truck classes of vehicles that populate Louisville's highways'.

Response 5F: The redesignation request submitted by Kentucky addresses the issue of ''SUVs'' as follows: ''In 2000–2001, responding to advice by EPA, the District undertook to update the fleet characterization data to support redesignation to attainment status. The primary concern was that market research had shown a significant shift from passenger automobiles toward sport utility vehicles (SUVs) over the 1990's decade. It was prudent to reflect the shift toward larger, higher-emitting vehicles in the MOBILE modeling for Jefferson County. In response, the District produced updated tables based on 1999 Vehicle Emission Testing operations data, Federal Highway Administration VMT mix data for Indiana and Kentucky, and draft MOBILE6 mileage accumulation rates. A spreadsheet (RDIST99Q.WK1) was developed to construct the necessary tables from raw data in a transparent manner, and to fill in certain gaps in the data. The spreadsheet reconciled unavailable Heavy Duty Vehicle (HDV) count and usage data with overall VMT mix and reasonable assumptions about local daily VMT. Following local peer review of this spreadsheet, the updated tables were implemented into District MOBILE modeling.

As expected, the net effect of the updated fleet tables was a significant increase in all emission factors over prior estimates. This reflected both the

move toward SUVs and a significantly higher, more accurate estimate of the local contribution of HDVs, particularly interstate transport vehicles.''

It is clear from the discussion above that Kentucky and the APCDJC did address the issue of increases in emissions from SUVs and light trucks in the modeling of the mobile source emissions. They found as the commenter had suggested that there was a significant increase in all emission factors over prior estimates. However, the commenter's ''concern over the accuracy of the maintenance plan's demonstration that the area's attainment status will be maintained for at least the next ten years' is unfounded. The increased emissions were accounted for and the States have made a commitment to revise the mobile modeling using MOBILE6 when appropriate.

EPA, in proposing to approve Kentucky's and Indiana's requests to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS, required both States to revise their maintenance plans to include an enforceable commitment to revise the MVEBs using MOBILE6 (once it becomes available) and to revise the VOC MVEB so that the area's 2012 projected emissions do not exceed the 1999 attainment year emissions. Both States met these requirements by submitting enforceable commitment to revise the MVEBs using MOBILE6 and a revised MVEB that does not exceed the 1999 attainment year emissions.

Comment 6: One commenter expressed concern over the possible implementation of more restrictions, in reference to the list of contingency measures at 66 FR 33516, on individuals or personal vehicles. This commenter also expressed the opinion that the listed contingency measures were oppressive, ''designed to punish an ordinary citizen.'' In addition, the commenter objects to the statement ''Kentucky [also] reserves the right to implement other contingency.'' (sic) [The complete statement is ''Kentucky also reserves the right to implement other contingency measures if new control programs should be developed and deemed more advantageous for the area.''] The commenter's objection is on the basis that this is an open ended ''political ploy to do something secret that is not on the list.'' The commenter was concerned that ''something secret'' might include higher ''gas prices.'' The commenter questioned how the process of instituting contingency measures could be allowed without public involvement and requested that this not be allowed.

Response 6: There are contingency measures listed at 66 FR 33516 which if implemented in the event of a triggering mechanism or violation of the 1-hour ozone NAAQS may impact in some limited manner the operation or use of private vehicles. The implementation of the contingency measures must follow applicable public notice and public hearing procedures during which the public is invited and encouraged to make comments or bring forth information which would influence the decision under consideration. If contingency measures are required to be implemented, they would be for the purpose of protecting the public health and environment of the citizens in the Louisville area and only implemented after following CAA procedures.

Neither the CAA nor the regulatory requirements adopted by the elected officials in the Louisville area are ''designed to punish an ordinary citizen.'' They were and are required by law to be adopted or amended in a public forum requiring public notice and a public hearing process allowing for citizen input. Just as the items on the list of contingency measures have, or will have to, undergo the public adoption process, any ''other contingency'' measures will also have to meet the same requirements. All regulations adopted for submittal to meet federal requirements and SIP revisions submitted to EPA for approval must contain proof of public notice and a public hearing before they are considered complete. The process for adoption of contingency measures in response to federal requirements must be done in a manner which allows for public participation or they will not be approved at the federal level.

III. What Actions Are We Taking?

We are determining that the Louisville area has attained the 1-hour ozone NAAQS. The Louisville area includes the Kentucky Counties of Bullitt, Jefferson, Oldham; and the Indiana Counties of Clark, and Floyd. On the basis of this determination, EPA is also determining that SIP revisions to address certain requirements of part D of title I of the CAA need not be submitted, since they would no longer be considered applicable requirements under section 107(d)(3)(E) for so long as the area continues to attain the 1-hour ozone NAAQS. These requirements include RFP (see the general requirements of section 172(c)(2) and the more specific requirement of section 182(b)(1) for a plan that reduces VOC emissions by 15 percent), attainment demonstration requirements (see the general requirement of section 172(c)(1)) and the specific requirement of section 182(j) for a multi-state attainment demonstration) and contingency measures (see the general requirement of section 172(c)(9)).

We are approving Kentucky's redesignation request and redesignating the Kentucky portion of the Louisville nonattainment area to attainment for the 1-hour ozone NAAQS. We are also approving as revisions to the Kentucky SIP, the maintenance plan and associated MVEBs for the Kentucky portion of the Louisville nonattainment area that were submitted by Kentucky with its redesignation request. In this final rule, we are notifying the public that we believe the MVEBs for VOC and NO_X in the Kentucky portion of the Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan. We are approving Indiana's redesignation request and redesignating the Indiana portion of the Louisville nonattainment area to attainment for the 1-hour ozone NAAQS. We are also approving as revisions to the Indiana SIP, the maintenance plan and associated MVEBs for the Indiana portion of the Louisville nonattainment area that were submitted by Indiana with its redesignation request. In this final rule, we are notifying the public that we believe the MVEBs for VOC and NO_X in the Indiana portion of the Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan. We are also approving 11 Board Orders to control NO_X emissions consistent with RACT requirements from major NO_X sources in Jefferson County, Kentucky.

Any challenge to EPA's actions regarding the redesignation of one portion of the Louisville area shall not be deemed to affect the validity of the redesignation of the other portion. The Commonwealth of Kentucky and the State of Indiana have satisfied all of the necessary requirements of the CAA relative to these actions.

IV. Why Are We Taking These Actions?

We are making a determination that the area has attained the 1-hour ozone NAAQS. EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1998–2000 ozone seasons that demonstrate that the 1-hour ozone NAAQS has been attained in the entire Louisville area, and preliminary data for the 2001 ozone season that shows continuing attainment. Regarding the need to

address the requirements of part D of title I of the CAA, EPA interprets the general provisions of subpart 1 of part D of title I (sections 171 and 172) and the more specific attainment demonstration and related provisions of subpart 2 (section 182) to not require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures for areas where the monitoring data show that the area is attaining the 1-hour ozone NAAQS (See *Sierra Club* vs *EPA, 99 F.3d 1551 (10th Cir. 1996)).* This rationale is described in the May 10, 1995, Seitz memorandum. EPA has previously applied this interpretation in a number of areas, including Salt Lake and Davis Counties, Utah (60 FR 36723, July 18, 1995); Grand Rapids, Michigan (61 FR 31831, June 21, 1996); Cleveland-Akron-Lorrain (61 FR 20458, May 7, 1996); and Cincinnati, Ohio (65 FR 37879, June 19, 2000). All previously-approved SIP revisions are not affected by this action and must continue to be implemented and enforced. This includes Indiana's 15 percent plan approved on May 7, 1997, (62 FR 24815).

We are redesignating the Kentucky and Indiana portions of the Louisville area because the area has attained three years of ambient air quality monitoring data demonstrating that the 1-hour ozone NAAQS has been attained, and both the Kentucky and Indiana portions of the area have satisfied the other criteria for redesignation. We are approving Kentucky's and Indiana's maintenance plans, including the MVEBs, that were submitted with the State's redesignation requests as revisions to the Kentucky and Indiana SIPs, because these plans meet the requirements of section 175A and 107(d). We are also notifying the public that we believe the MVEBs for VOC and NO_X for the Kentucky and Indiana Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plans, because in addition to meeting the requirements of section 175A and 107(d), adequate opportunity for public comment on these MVEBs was provided through the adequacy process (posted April 13, 2001) and in the NPR (66 FR 33505, June 22, 2001). In the NPR, EPA explained that we could not approve the originally-submitted VOC MVEB unless the States revised this MVEB, by adjusting the safety margin, so that the MVEB would not exceed attainment year VOC emissions. The States corrected the VOC MVEB accordingly in July 9, 2001 and August 24, 2001 supplements to their original redesignation requests.

Finally, we are approving 11 Board Orders relating to control of NO_X sources in Jefferson County, Kentucky submitted by Kentucky on November 12, 1999, and May 23, 2001, because they satisfy the NO_X RACT requirements of 182(f) of the CAA.

V. What Are the Effects of These Actions?

These actions determine that the Louisville area has attained the 1-hour ozone NAAQS and that the requirements of sections 172(c)(1) and 182(j) concerning submission of an ozone attainment demonstration, the requirements of sections 172(c)(2) and 182(b)(1) concerning submission of a 15 percent VOC emission reduction plan, and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment are not applicable to the Louisville area. However, all controls previously approved for the area by EPA must continue to be implemented. Kentucky and Indiana must continue to operate an appropriate ozone air quality monitoring network, in accordance with 40 CFR part 58, to verify the ozone attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance.

The redesignation changes the official designation of the Kentucky Counties of Bullitt, Jefferson, Oldham, and the Indiana Counties of Clark, and Floyd from nonattainment to attainment for the 1-hour ozone NAAQS. It also approves as a SIP revision and puts into place plans for maintaining the 1-hour ozone NAAQS for the next 10 years. These maintenance plans include contingency measures to correct any future violations of the 1-hour ozone NAAQS. These maintenance plans establish MVEBs for the Louisville area for the purposes of transportation conformity. These MVEB are now 48.17 tons per summer day VOC and 92.93 tons per summer day NO_X for the year 2012. Finally, this action also approves 11 Board Orders for sources of NO_X in Jefferson County, Kentucky.

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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This action also redesignates an area to attainment, an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action also redesignates an area to attainment. The redesignation merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health

Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 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

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 3, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Dated: October 3, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

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 52.777 is amended by adding paragraph (x) to read as follows:

§ 52.777 Control strategy: photochemical oxidants (hydrocarbons).

* * * * *

(x) The request submitted by Indiana on April 11, 2001 and supplemented on August 24, 2001, to redesignate the Indiana portion of the Louisville moderate interstate ozone nonattainment area from nonattainment to attainment was approved on October 23, 2001. The motor vehicle emissions budgets for VOC and NO_X in the Indiana portion of the Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan. The 1-hour ozone standard maintenance plan motor vehicle emission budgets for the entire interstate Louisville area for the purposes of transportation conformity are now 48.17 tons per summer day of VOC and 92.93 tons per summer day of NO_X for the year 2012.

Subpart S—Kentucky

3. Section 52.920 is amended:

a. By adding new entries to the end of the table in paragraph (d).

b. By adding a new entry in numerical order to the table in paragraph (e). The additions read as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Federal Register Notice
*	*	*	*	*	*	*
Board Order American Synthetic Rubber Company.	NO_X RACT Plan 12/20/00.	01/01/01	10/23/01	66 FR 53684
Board Order E. I. du Pont de Nemours & Company.	NO_X RACT Plan 02/21/01.	03/01/01	10/23/01	66 FR 53684
Board Order Ford Louisville Assembly Plant	NO_X RACT Plan 11/08/99.	01/01/00	10/23/01	66 FR 53684
Board Order General Electric Company	NO_X RACT Plan 01/17/01.	03/01/01	10/23/01	66 FR 53684
Board Order Kosmos Cement Company	NO_X RACT Plan 11/15/00.	01/01/01	10/23/01	66 FR 53684
Board Order Louisville Gas and Electric Company, Cane Run Generating Station.	NO_X RACT Plan 10/18/00.	01/01/01	10/23/01	66 FR 53684
Board Order Louisville Gas and Electric Company, Mill Creek Generating Station.	NO_X RACT Plan 10/18/00.	01/01/01	10/23/01	66 FR 53684

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS—Continued

Name of source	Permit number	State effective date	EPA approval date	Federal Register Notice
Board Order Louisville Medical Center Steam Plant.	NO_X RACT Plan 2/21/01.	04/01/01	10/23/01	66 FR 53685
Board Order Oxy Vinyls, LP	NO_X RACT Plan 12/20/00.	01/01/01	10/23/01	66 FR 53685
Board Order Rohm and Haas Company	NO_X RACT Plan 12/20/00.	01/01/01	10/23/01	66 FR 53685
Board Order Texas Gas Transmission	NO_X RACT Plan 11/08/99.	01/01/00	10/23/01	66 FR 53685

(e) * * *

EPA-APPROVED KENTUCKY NONREGULATORY PROVISIONS

Appendix	Title/subject	State effective date	EPA approval date	Federal Register notice
*	*	*	*	*
23	Louisville Ozone Maintenance Plan	10/23/01	66 FR 53685	
*	*	*	*	*

4. Section 52.930 is amended by adding paragraph (k) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(k) The redesignation request submitted by the Commonwealth of Kentucky, on March 30, 2001, and supplemented on July 9, 2001, for the Kentucky portion of the Louisville moderate interstate ozone nonattainment area from nonattainment to attainment was approved on October 23, 2001. The motor vehicle emissions budgets for VOC and NO_X in the Kentucky portion of the Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan. The 1-hour ozone standard maintenance plan motor vehicle emission budgets for the entire interstate Louisville area for the purposes of transportation conformity are now 48.17 tons per summer day of VOC and 92.93 tons per summer day of NO_X for the year 2012.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. Section 81.315 is amended by revising the entry for the ''Louisville Area'' in the Indiana-Ozone (1-Hour Standard) table to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Louisville Area:				
Clark County	10/23/01	Attainment		
Floyd County	10/23/01	Attainment		
*	*	*	*	*

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

3. Section 81.318 is amended by revising the entry for the ''Louisville Area'' in the Kentucky-Ozone (1-Hour Standard) table to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Louisville Area:				
Bullitt County	10/23/01	Attainment		
Jefferson County	10/23/01	Attainment		
Oldham County	10/23/01	Attainment		
* * *	*	*	*	*

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

[FR Doc. 01–25894 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–75–1; KY–97–1–200109, FRL–7082–8]

Approval and Promulgation of Implementation Plans Kentucky: Approval of Revisions to Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 13, 1999, EPA published a direct final rule approving and an accompanying notice of proposed rulemaking proposing to approve the 15 percent Rate-of-Progress Plan (15 percent plan) for the Louisville moderate 1-hour ozone nonattainment area which was submitted on November 12, 1993, and amended on April 5, 1994, and June 30, 1997. As stated in the **Federal Register** document, if adverse or critical comments were received by October 13, 1999, the effective date would be delayed and timely notice would be published in the **Federal Register**. Due to receipt of adverse comments within the comment period, EPA withdrew the direct final rule on November 3, 1999, in order to address all public comments received.

This action addresses the adverse comments related to the approvability of the emission reduction measures and grants final approval to the rule revisions and the 1990 Base Line Emissions Inventory. No comments were received relating to the 1990 Base Line Emissions inventory.

EFFECTIVE DATE: This rule will be effective November 23, 2001.

ADDRESSES: Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, Division of Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Scott Martin of the EPA Region 4 staff at (404) 562–9036. martin.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 13, 1999, EPA published a direct final rule (64 FR 49404) approving and an accompanying notice of proposed rulemaking (64 FR 49425) proposing to approve the 15 percent plan for the Louisville moderate 1-hour ozone nonattainment area which was submitted on November 12, 1993, and amended on April 5, 1994, and June 30, 1997. This submittal was required by Section 182(b)(1)(A) of the Clean Air Act, as amended in 1990 (CAA) in order to demonstrate reasonable further progress (RFP) in attaining the National Ambient Air Quality Standard (NAAQS) for ozone. As stated in the **Federal Register** document, if adverse or critical comments were received by October 13, 1999, the effective date would be delayed and timely notice would be published in the **Federal Register**. Due to receipt of adverse comments within the comment period, EPA withdrew the direct final rule on November 3, 1999, (64 FR 59644) in order to address all public comments received in a subsequent final rule.

In a separate action, EPA is finalizing it's proposal (66 FR 27483) to determine that the Louisville moderate ozone nonattainment area has attained the public health-based 1-hour ozone NAAQS. The Louisville area includes the Kentucky Counties of Jefferson, Bullitt and Oldham and the Indiana Counties of Clark and Floyd. This determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1998 to 2000 ozone seasons that demonstrate that the area has attained the ozone NAAQS. On the basis of this determination, EPA is also determining that State implementation plan (SIP) submissions for certain RFP and attainment demonstration requirements, along with certain other related requirements, of part D of title 1 of the CAA are no longer required for the Louisville area. All previously approved SIP revisions must continue to be implemented and enforced and are not affected by this action.

EPA's final action on the determination of attainment eliminates the need for approval of the 15 percent plan and therefore no further action will be taken on the demonstration that this reduction was achieved. However, the control measures contained in the 15 percent plan have been implemented prior to attainment of the 1-hour ozone NAAQS. This action addresses comments related to the approvability of the control measures and grants final approval to the rule revisions and the 1990 Base Line Emissions Inventory, although no action is taken on the 15 percent demonstration itself since it is no longer required.

II. Analysis of State's Submittal

The comment and response is summarized below:

Comment 1

Regulation 1.18: Rule Effectiveness

Jefferson County is claiming 6.37 tons per day in volatile organic compound (VOC) reductions from its ''Rule Effectiveness'' program. This program requires sources to develop and

implement a ''rule effectiveness improvement plan.'' There is no minimum level of effort or improvement required under the rule, no standard for judging whether a particular plan is adequate or inadequate, and no requirement that the County actually review and approve or disapprove the plan. Nor does the County explain how it developed the 6.37 ton per day estimate of VOC reductions from this program. Further, although the rule requires plans to be implemented by November 15, 1996, there is no evidence in the record that this in fact occurred.

Under these circumstances, the County's Rule Effectiveness program is neither approvable nor creditable. Because the rule does not require any specified level of emission reduction, and the content of each rule effectiveness plan is determined solely by the source, there is no assurance of any emission reductions at all. The Clean Air Act (the Act) and EPA guidance do not allow approval or crediting of undefined, hypothetical SIP measures. EPA can approve and credit only clearly defined, real, permanent, and enforceable measures. 57 FR 13498, 13509 (1992). In fact, EPA guidance explicitly requires that any benefits claimed from rule effectiveness improvement must be documented at a minimum by conducting a post-implementation source specific emissions study. EPA, *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of Progress Plans,* at 45 (EPA–452/R–93–002, March 1993) (hereinafter, ''15 percent guidance''). Only where such studies have documented additional emission reductions due to rule effectiveness measures can EPA grant credit for such measures toward the required 15 percent rate of progress. For all the foregoing reasons, the County's rule effectiveness program cannot be credited with any emission reductions.

Response

Regulation 1.18, Rule Effectiveness, states that all sources subject to this regulation shall complete and return, by the date specified, a questionnaire supplied by the District that will determine the current procedures that impact rule effectiveness evaluation, including but not limited to: employee training, maintenance procedures, monitoring procedures, and record keeping methods. Sources were required to submit a detailed rule effectiveness implementation plan to the District. These plans were implemented as expeditiously as practicable but no later than November 15, 1996, as required by the District's rule. The District has submitted the rule effectiveness plans to EPA, and they are available for inspection at the Region 4 offices.

The above referenced EPA guidance states that rule effectiveness improvements must reflect real emissions reductions resulting from specific implementation program improvements. However, the guidance does not require a specified level of emission reductions be established in rule effectiveness improvement plans. Additionally, as stated above, the final action on the determination of attainment for the Louisville area eliminates the need for the approval of the 15 percent plan and the specific level of emission reduction credits. Therefore, EPA is granting approval to Regulation 1.18.

Comment 2

Regulation 6.43: VOC Emission Reduction Requirements

The County claims 3.56 tons per day in reductions from regulation 6.43. During the County's process for adopting this rule, the Commonwealth raised questions about the legality of adopting source specific emission limits by rule. The County responded by offering assurances that it would obtain written commitments from each source not to challenge the legality of the rule on this basis. The record does not indicate whether these written commitments were ever obtained from all affected sources. Given the legal doubts raised by the Commonwealth, EPA cannot credit emission reductions from any source that has not signed such a commitment.

Response

According to the December 13, 1996, Air Pollution Control District Comment and Response Document relating to Regulation 6.43, the following comment was made by Mr. John Hornback, Director, Kentucky Division for Air Quality: ''The regulation, as proposed, specifically identifies each company by name and sets the required emission, equipment, and operational requirements for that company. The regulation states that the listed companies have voluntarily agreed to the requirements of the regulation. This regulation, as written, would probably constitute special legislation in violation of Sections 59 and 60 of the Commonwealth's Constitution. The Division recommends that the regulation be rewritten and promulgated without the specific listing of company names and their individual emission reduction limits.'' The following response was given: ''The District disagrees. The District does not believe that this regulation constitutes special legislation. The category of stationary sources to which this regulation applies is all of the stationary sources who volunteered to be regulated pursuant to this regulation. Each stationary source is treated equally in that each is required to meet the requirements for which they have voluntarily agreed. The District will ask the Air Pollution Control Board (Board) to adopt the proposed changes.''

The revisions were adopted by the Board on December 18, 1996. Based on responses from the District, and the Board's action, EPA believes that the District has the authority to adopt and implement these regulations without need for additional commitments from regulated entities and that the regulations are therefore creditable as SIP measures. Additionally, as stated above, the final action on the determination of attainment for the Louisville area will eliminate the need for the approval of the 15 percent plan and the specific level of emission reduction credits. Therefore, EPA is granting approval to Regulation 6.43.

Comment 3

Regulation 6.43: VOC Emission Reduction Requirements

Because the emission limits set by rule 6.43 can be met by emissions trading, the reductions claimed from the rule 6.43 are dependent on the adequacy of the County's emissions trading program. Accordingly, we question how EPA can propose to credit all of the claimed reductions from the rule when the County's trading program has not been approved by EPA, and when the Agency has specifically stated that the program does not meet EPA guidance 64 FR 49406.

Response

The June 30, 1997, SIP submittal contains three different versions of Regulation 6.43 adopted September 21, 1994, December 18, 1996, and May 21, 1997. The September 1994 and December 1996 versions contained section 5: Compliance Plan and Schedule. This section did allow the affected sources to meet the emission reduction requirements by utilizing the emissions trading program in Regulation 2.12: Emission Trading. However, the May 1997 version deletes section 5: Compliance Plan and Schedule. Therefore, sources cannot meet the emission reduction requirements through an emissions trading program. Thus, EPA concludes that this regulation is approvable.

Comment 4

Audit Privilege and Immunity Law

EPA seeks to discount the impact of Kentucky's audit privilege and immunity (API) law by asserting that it does not impact on federal enforcement. In order to be approvable, however, the plan must be enforceable by the state as well as the federal government. 42 U.S.C. 7410(a)(2)(A), (C), (E). Among other things, the state must adopt enforceable emission limits, adopt a program for enforcement of the plan, and provide assurances that it will have adequate authority to carry out the plan (and is not prohibited by any provision of state law from doing so). An API law that hampers state and local enforcement is flatly contrary to these requirements of the Act. EPA has previously identified Kentucky's law as an impediment to approval of state programs under the CAA, and must address this matter squarely prior to final approval of the submitted plan. Further, EPA cannot credit any emission reductions claimed under the plan for sources that can evade enforcement action via the state API law.

Response

On December 6, 2000, EPA issued a notice of deficiency (NOD) to Kentucky (65 FR 76230). This NOD was based upon EPA's finding that the Commonwealth's audit privilege and immunity law, KRS 224.01–040, unduly restricted Kentucky's ability to adequately administer and enforce the criminal enforcement, civil penalty and public access provisions of its title V program, which was previously granted interim approval status. In response, the Kentucky General Assembly amended KRS 224.01–040 to address these deficiencies. This amendment was signed by the Governor on March 19, 2001 and became effective on June 16, 2001. EPA reviewed the amendments and concluded that, as of the effective date, all issues identified in the NOD were resolved.

Approval of Supporting Regulations

EPA is granting final approval to the following regulations:

Regulation 1.18 Rule Effectiveness, adopted September 21, 1994.

Regulation 6.40 Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control), amended August 9, 1993.

Regulation 6.43 Volatile Organic Compound Reduction Requirements, adopted May 21, 1997.

Regulation 6.44 Standards of Performance for Existing Commercial Motor Vehicles and Mobile Equipment Refinishing Operations, adopted February 2, 1994.

Regulation 6.45 Standards of Performance for Existing Solid Waste Landfills, adopted February 2, 1994.

Regulation 7.79 Standards of Performance for New Commercial Motor Vehicle and Mobile Equipment Refinishing Operations, adopted February 2, 1994.

Regulation 8.03 Commuter Vehicle Testing Requirements, amended September 15, 1993.

Please see the **Federal Register** document published on September 13, 1999, (64 FR 49404) for further discussion of the rule revisions.

Withdrawn Regulations

Regulation 1.16 Standards for Volatile Organic Compound Content of Architectural and Industrial Maintenance Coatings and Modification of Alternate Fuels Vehicle Conversion Program was withdrawn on February 25, 2000.

Regulation 2.12 Emissions Trading (including Banking and Bubble Rules) was withdrawn on May 10, 2001.

1990 Base Line Emissions Inventory

In this action, the EPA is approving the 1990 base line emissions inventory for the Louisville area. Detailed information on the emissions calculations can be obtained at the Region 4 office. The following table is a summary of the base line emissions inventory.

LOUISVILLE 1990 BASE LINE EMISSIONS INVENTORY

[tons/day]

Source type	VOC	NO_X	CO
Point	83.75	147.87	10.14
Area	38.69	4.5	28.04
Mobile	92.81	40.49	541.22
Nonroad	12.68	16.58	54.61
Biogenic	20.9	N/A	N/A
Total	248.83	209.44	634.01

The EPA is approving this inventory as satisfying the requirements of section 182(a)(1) of the CAA.

III. Final Action

EPA is granting final approval of the Louisville 1990 Base Line Emissions Inventory and the aforementioned rule revisions because they are consistent with the requirements of the CAA and EPA policy.

Also included in this submittal were revisions to Regulation 1.02 Definitions; Regulation 1.04 Performance Tests; Regulation 1.06 Source Self Monitoring and Reporting; Regulation 1.07 Emissions During Shutdowns, Malfunctions, and Emergencies; Regulation 1.08 Administrative Procedures; Regulation 2.02 Air Pollution Regulation; Regulation 2.03 Permit Requirements—Non-Title V Operating Permits and Construction/Demolition Permits; Regulation 2.07 Public Notification; Regulation 2.08 Emission Fees, Permit Fees, and Permit Renewal Procedures; Regulation 5.14 Hazardous Air Pollutants; and Regulation 6.42 VOC and nitrogen oxide reasonably available control technology (NO_X RACT). Action on these regulations will be taken in a separate notice.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule

will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 3, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

2. Section 52.920 is amended by revising the entry for 8.03 and by adding new entries in numerical order to the last table in paragraph (c) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
	Reg 1 General Administrative Procedures			
	* * *	*	*	
1.18	Rule Effectiveness	11/23/01	66 FR 53689	9/21/94
	* * *	*	*	
	Reg 6 Standards of Performance for Existing Affected Facilities			
	* * *	*	*	
6.43	Volatile Organic Compound Reduction Requirements	11/23/01	66 FR 53689	5/21/97
	* * *	*	*	
6.45	Standards of Performance for Existing Solid Waste Landfills	11/23/01	66 FR 53689	2/2/94

EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
*	* *	*	*	
Reg 7 Standards of Performance for New Affected Facilities				
*	* *	*	*	
7.79	Standards of Performance for New Commercial Motor Vehicles and Mobile Equipment Refinishing Operations.	11/23/01	66 FR 53690	2/2/94
*	* *	*	*	
Reg 8 Mobile Source Emission Control				
*	* *	*	*	
Requirements 8.03.	Commuter Vehicle Testing	11/23/01	66 FR 53690	2/2/94
*	* *	*	*	

* * * * *

[FR Doc. 01–25895 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
October 23, 2001

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Proposed Plan for Fiscal Year 2002; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1337]

Proposed Plan for Fiscal Year 2002

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of Proposed Program Plan for fiscal year 2002.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this notice of its Proposed Plan for fiscal year (FY) 2002.

DATES: Comments must be received on or before December 7, 2001.

ADDRESSES: Comments may be mailed to Terrence S. Donauhue, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531. In the lower left hand corner of the envelope clearly write, ''Proposed Program Plan Comments.''

FOR FURTHER INFORMATION CONTACT: The Office of Juvenile Justice and Delinquency Prevention at 202–307–5911. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of Section 204 (b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. § 5601 *et seq.* (JJDP Act), the Acting Administrator of OJJDP is publishing for public comment a Proposed Plan describing the program activities that OJJDP proposes to carry out during fiscal year (FY) 2002 under Parts C and D of Title II of the JJDP Act, codified at 42 U.S.C. § 5651–5665a, 5667, 5667a. Taking into consideration comments received on this Proposed Plan, the Acting Administrator will develop and publish OJJDP's Final Plan describing the particular program activities that OJJDP intends to fund during FY 2002, using in whole or in part funds appropriated under Parts C and D of Title II of the JJDP Act.

OJJDP acknowledges that at this time its FY 2002 appropriation is not yet final. Depending on the final appropriation, OJJDP may alter how its programs are structured and will make any necessary modifications to this Proposed Program Plan when it is published in final form following the public comment period. The proposals presented here represent OJJDP's current thinking and initial priorities for this fiscal year. These priorities also reflect feedback from OJJDP's ongoing outreach to the field asking for ideas on priority areas and the most promising types of programs for those areas.

Notice of the official solicitation of grant or cooperative agreement applications for competitive programs to be funded under the Final Plan will be published at a later date in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Background

In 1974, the JJDP Act established OJJDP as the Federal agency responsible for providing national leadership, coordination, and resources to develop and implement effective methods to prevent and reduce juvenile delinquency and improve the quality of juvenile justice in the United States. OJJDP performs its role of national leadership in juvenile justice and delinquency prevention through a cycle of activities. These include the following:

- Collecting data and statistics to determine the extent and nature of issues affecting juveniles.
- Supporting research studies that can lead to program demonstrations; testing and evaluating demonstration projects; and sharing lessons learned from the field with practitioners through a range of information dissemination vehicles.
- Providing seed money to States and local governments through formula and block grants to implement programs, projects, or reform efforts.
- Providing training and technical assistance to assist States and local governments to implement programs effectively and to maintain the integrity of model programs as they are being replicated.

OJJDP administers State Formula Grants under Part B of Title II, State Challenge Grants under Part E of Title II, and Community Prevention Grants under Title V of the JJDP Act to assist States and territories to fund a range of delinquency prevention, control, and juvenile justice system improvement activities. OJJDP provides support activities for these programs under statutory set-asides that are used to provide related research, evaluation, statistics, demonstration, and training and technical assistance services.

Under Part C of Title II of the JJDP Act, OJJDP funds Special Emphasis programs and—through its National Institute for Juvenile Justice and Delinquency Prevention—numerous research, evaluation, statistics, demonstration, training and technical assistance, and information dissemination activities. OJJDP funds school- and community-based gang prevention, intervention, and suppression programs under Part D and funds mentoring programs under Part G of Title II of the JJDP Act. OJJDP also coordinates Federal activities related to juvenile justice and delinquency prevention through the Concentration of Federal Efforts Program and serves as the staff agency for the Coordinating Council on Juvenile Justice and Delinquency Prevention. Both of these activities are authorized in Part A of Title II of the JJDP Act. Under Title IV, OJJDP administers the Missing and Exploited Children's Program.

Other programs administered by OJJDP include the following:

- Drug Prevention Program.
- Enforcing Underage Drinking Laws Program.
- Safe Schools Initiative.
- Tribal Youth Program.
- Safe Start: Children Exposed to Violence Initiative.
- Juvenile Accountability Incentive Block Grants program.
- Programs under the Victims of Child Abuse Act of 1990, as amended, 42 U.S.C. 13001 *et seq.*

In this Proposed Plan, OJJDP provides a brief overview of its FY 2002 program priorities. The plan also describes projects that may receive funding under Part C (National Programs) and Part D (Gang-Free Schools and Communities; Community-Based Gang Intervention) of Title II of the JuvenileJustice and Delinquency Prevention Act. The described projects are those that may receive Part C or Part D FY 2002 continuation funding under project period or discretionary continuation assistance awards. In addition to this plan, OJJDP intends to publish *An Overview of OJJDP's FY 2002 Program Plan,* which will summarize proposed activities to be supported under OJJDP's other funding streams. Readers can order a copy of the publication from OJJDP's Juvenile Justice Clearinghouse via the Web (http://puborder.ncjrs.org/Content/search.asp) or by calling 800–638–8736 (choose option 2 to speak to a specialist or choose option 1 to have a copy faxed to you). OJJDP's Web site (www.ojjdp.ncjrs.org) lists all OJJDP grants and funding opportunities.

Fiscal Year 2002 Program Planning Activities

The OJJDP program planning process for FY 2002 is being coordinated with the Assistant Attorney General, Office of Justice Programs, and all OJP components. The program planning process involves the following steps:

• Internal review of existing programs by OJJDP staff.
• Internal review of proposed programs by OJP bureaus and Department of Justice components.
• Review of information and data from OJJDP grantees and contractors.
• Review of information contained in State comprehensive plans.
• Review of comments from youth service providers, juvenile justice practitioners, and researchers who provide input in proposed new program areas.
• Consideration of suggestions made by juvenile justice policymakers concerning State and local needs.
• Consideration of all comments received during the period of public comment on this Proposed Comprehensive Plan.

FY 2002 Program Priorities

During FY 2002, OJJDP will focus its efforts on programs that help prevent or intervene in delinquent behavior by funding activities that provide youth with the skills and values necessary to make choices that lead to positive outcomes. OJJDP also will focus on programs that hold youth accountable for their delinquent actions and on initiatives that prepare serious and violent juvenile offenders to successfully return home to their communities after they leave correctional institutions and training schools.

OJJDP program priorities in FY 2002 will encompass the following five broad areas:
• Capacity building in community- and faith-based organizations.
• Youth reentry programs.
• Juvenile drug use prevention programs.
• Juvenile gun violence prevention programs.
• School violence prevention programs.

OJJDP will design a new discretionary Community Initiative to mobilize and maximize the resources of community- and faith-based organizations and build their capacity to address the needs of at-risk and delinquent youth through prevention, intervention, and treatment services. The initiative will support community-based organizations, including those that are faith-based, in applying for and implementing Federal, State, and local programs. These services could include mentoring at-risk youth and children of prisoners, providing shelter for abused and neglected children, and sponsoring afterschool programs. OJJDP also hopes to assist community- and faith-based organizations in establishing partnerships with Federal, State, and local justice and social service agencies and to encourage their cooperation, sharing of resources, and expansion of efforts within States. In addition, OJJDP encourages community- and faith-based organizations to apply for Juvenile Mentoring Program grants funded under Part G of Title II of the JJDP Act.

A new Youth Reentry Initiative will address issues related to three target populations: Serious youthful offenders (ages 14–18), Native American youth, and juvenile sex offenders. OJJDP will develop and provide information resources and training and technical assistance to help communities design programs, based on promising and best practices, that will help serious juvenile offenders when they return home to their communities after leaving State training or correctional facilities. These reentry programs will direct resources at housing, substance abuse and mental health intervention and treatment, education, and employment, and will assist these youth in establishing support systems integral to their ultimate success in remaining crime- and drug-free.

Recognizing the importance of breaking the cycle of juvenile drug abuse and the serious delinquent behavior which often results, OJJDP will develop a demonstration program to help communities select and replicate promising and model drug prevention programs. The initiative also will include a national evaluation.

During FY 2002, OJJDP will consider developing or enhancing existing programs that address juvenile gun violence policies that deter juveniles from purchasing or carrying guns and encourage stricter enforcement of existing gun laws. OJJDP plans to fund programs that help prevent school violence by stressing zero tolerance of seriously disruptive students and tougher penalties for youth who bring guns to school.

Primary Program Goals

In addition to the above priorities, the discretionary programs OJJDP administers under Parts C and D of Title II typically address one or more of the four goals that OJJDP has identified as necessary to ensure public safety and security while establishing effective juvenile justice and delinquency prevention programs. Achieving these goals, which are discussed below, is vital to protecting the long-term safety of the public from juvenile delinquency and violence.

• OJJDP promotes *delinquency prevention and early intervention* efforts that reduce the flow of juvenile offenders into the juvenile justice system, the numbers of serious and violent offenders, and the development of chronic delinquent careers. While removing serious and violent juvenile offenders from the street serves to protect the public, long-term solutions lie primarily in taking aggressive steps to stop delinquency before it starts or becomes a pattern of behavior.
• OJJDP seeks to *improve the juvenile justice system* and the response of the system to juvenile delinquents, status offenders, and dependent, neglected, and abused children.
• OJJDP supports efforts in the area of *corrections, detention, and community- and faith-based alternatives* to preserve the public safety in a manner that serves the appropriate development and best use of secure detention and corrections options, while at the same time fostering the use of community-based programs for juvenile offenders.
• OJJDP seeks to *support law enforcement, public safety, and other justice agency efforts* to prevent juvenile delinquency, intervene in the development of chronic delinquent careers, and collaborate with the juvenile justice system to meet the needs of dependent, neglected, and abused children.

Fiscal Year 2002 Programs

OJJDP has organized its proposed programs under four broad categories that reflect these four program goals. These categories are Public Safety and Law Enforcement, Delinquency Prevention and Intervention, Strengthening the Juvenile Justice System, and Child Abuse and Neglect and Dependency Cases. A fifth category (Overarching) contains programs with significant elements common to more than one of the other four categories. The programs that OJJDP may support in FY 2002 with Parts C and D funds (based on funding availability, grantee performance, and other factors) are listed alphabetically and summarized below.

As part of the appropriations process, Congress is likely to identify a number of programs for funding consideration with regard to the grantee(s), the amount of funds, or both. These programs will be listed in the Final Program Plan.

Continuation Discretionary Grants

The continuation projects listed in this proposed program plan are those currently funded in whole or in part with Part C and Part D funds and eligible for continuation funding in FY 2002, either as part of an existing project period or through an extension for an additional project or budget period. A

grantee's eligibility for continued funding for an additional budget period within an existing project period depends on the grantee's compliance with funding eligibility requirements and achievement of the prior year's objectives. The amount of award is based on prior projections, demonstrated need, and the availability of funds.

OJJDP will base consideration for continuation funding for an additional project period for previously funded discretionary grant programs on several factors, including the following:

- The extent to which the project meets the applicable requirements of the JJDP Act.
- Responsiveness to OJJDP and Department of Justice FY 2002 program priorities and goals.
- Compliance with performance requirements of prior grant years.
- Compliance with fiscal and regulatory requirements.
- Compliance with any special conditions of the award.
- Availability of funds (based on appropriations and program priority determinations).

In accordance with section 262 (d)(1)(B) of the JJDP Act, as amended, 42 U.S.C. 5665a, the competitive process for the award of Part C funds is not required if the (Acting) Administrator makes a written determination waiving the competitive process:

1. With respect to programs to be carried out in areas with respect to which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act codified at 42 U.S.C. 5121 *et seq.* that a major disaster or emergency exists, or

2. With respect to a particular program described in Part C that is uniquely qualified.

Fiscal Year 2002 Program Listing

Overarching

American Statistical Association Crime and Justice Committee Coalition for Juvenile Justice
Insular Area Support
Juvenile Justice Clearinghouse
Juvenile Justice Telecommunications Assistance Project
National Reporting System for Formula Grants Program
National Resource Center for Safe Schools
National Training and Technical Assistance Center
OJJDP Management Evaluation Contract
OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center
Program of Research on the Causes and Correlates of Delinquency
Technical Assistance for State Legislatures
Understanding and Monitoring the ''Whys'' Behind Juvenile Crime Trends

Public Safety and Law Enforcement

Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program
Evaluation of the Comprehensive Gang Model: An Enhanced School Approach
Evaluation of the Rural Gang Initiative
Gang-Free Schools and Communities Initiative
Gang Prevention Through Targeted Outreach (Boys & Girls Clubs)
Law Enforcement Training and Technical Assistance Program
National Youth Gang Center
Rural Gang Initiative Demonstration Sites
Technical Assistance to the Gang-Free Schools and Communities Initiative

Delinquency Prevention and Intervention

Assessing Alcohol, Drug, and Mental Disorders Among Juvenile Detainees
Comprehensive Children and Families Mental Health Training and Technical Assistance
Evaluation of the Truancy Reduction Demonstration Program
Integrated Information Sharing To Prevent Juvenile Delinquency: A Training and Technical Assistance Approach
Intergenerational Transmission of Antisocial Behavior
Investing in Youth for a Safer Future
Juvenile Defender Training, Technical Assistance, and Resource Center
Multisite, Multimodal Treatment Study of Children With Attention Deficit/Hyperactivity Disorder
National Center for Conflict Resolution Education
National Youth Court Center
Pathways to Desistance: A Prospective Study of Serious Adolescent Offenders
Race Against Drugs/Stay on Track Curriculum Evaluation
Technical Assistance for the Title V Community Prevention Programs
Truancy Reduction Demonstration Program
Violence Intervention and Prevention Protocol

Strengthening the Juvenile Justice System

Accountability-Based Training for Staff in Juvenile Confinement Facilities
Balanced and Restorative Justice
Building Blocks for Youth
Census of Juveniles in Residential Placement
Center for Students With Disabilities in the Juvenile Justice System
Connecticut/Cook County (IL) Girls Collaborative
Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders
Evaluation of Teen Courts
Girls Study Group Project
Improving Juvenile Sanctioning: An Intensive Training and Technical Assistance Delivery Program
Intensive Community-Based Juvenile Aftercare Dissemination and Technical Assistance Program
James E. Gould Memorial Program for Training and Technical Assistance for Juvenile Corrections and Detention
Juvenile Justice Prosecution Unit
Juvenile Residential Facility Census
Longitudinal Study To Examine the Development of Conduct Disorder in Girls
Meta-Analysis Project
National Census and Survey of Juvenile Probation
National Evaluation of the Performance-based Standards Project
National Juvenile Justice Data Analysis Project
National Juvenile Justice Program Directory
National Juvenile Sex Offenders Training Project
National Longitudinal Survey of Youth
National Training and Technical Assistance for Effective Juvenile Detention and Corrections Practices
Performance-based Standards Project
Survey of Youth in Residential Placement
Systems Improvement Training and Technical Assistance
Training Programs for Juvenile Justice Professionals in Corrections and Detention
Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement

Child Abuse and Neglect and Dependency Courts

Evaluation of the Parents Anonymous® Program
National Evaluation of the Safe Kids/Safe Streets Program
Research on Child Neglect
Safe Kids/Safe Streets: Community Approaches To Reducing Abuse and Neglect and Preventing Delinquency

Overarching

American Statistical Association Crime and Justice Committee

In 2001, OJJDP, through an intra-agency agreement with the Bureau of

Justice Statistics (BJS), began funding the American Statistical Association (ASA) Committee on Crime and Justice Statistics to support the committee's work and to sponsor a methodology and statistics grant program. ASA-sponsored grants and activities seek to improve the quality and utility of juvenile-related Federal Bureau of Investigation (FBI) data, in particular county-level arrest and homicide data. A specific research agenda for these funds will be developed jointly by OJJDP, BJS, the FBI, and the ASA Law and Justice Statistics Committee. This joint OJJDP and BJS activity should improve the processing of these files and make the two offices' public presentation of the final data more consistent. Funds in FY 2002 would support the further development of the research agenda and the continued improvement of the juvenile justice data.

This project would be implemented by the current grantee, the American Statistical Association. No additional applications would be solicited in FY 2002.

Coalition for Juvenile Justice

This project supports the Coalition for Juvenile Justice, an organization composed of member representatives of State Advisory Groups appointed by State Governors under section 223(a)(3) of the JJDP Act to establish policies and priorities for the Formula Grants program. Pursuant to statutory requirements, the Coalition will conduct an annual conference of member representatives; disseminate information on data, standards, advanced techniques, and program models developed and funded by OJJDP; offer training on how to work with the media on juvenile justice issues; and review Federal policies regarding juvenile justice and delinquency prevention. The Coalition also advises the OJJDP Administrator with respect to the work of OJJDP and advises the President and Congress with regard to State perspectives on the operation of OJJDP and on Federal legislation pertaining to juvenile justice and delinquency prevention.

This project would be implemented by the current grantee, the Coalition for Juvenile Justice. No additional applications would be solicited in FY 2002.

Insular Area Support

The purpose of this statutorily required program is to provide support to the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Funds are available to address the special needs and problems of juvenile delinquency in these insular areas, as specified by section 261(e) of the JJDP Act of 1974, as amended, 42 U.S.C. 5665(e).

Juvenile Justice Clearinghouse

A component of the National Criminal Justice Reference Service (NCJRS), the Juvenile Justice Clearinghouse (JJC) collects, synthesizes, and disseminates information on all aspects of juvenile justice. OJJDP established the Clearinghouse in 1979 to serve the information needs of the juvenile justice community, policymakers, the media, and the public. JJC offers toll-free telephone access to information; prepares specialized responses to information requests; produces, warehouses, and distributes OJJDP publications; exhibits at national conferences; maintains a comprehensive juvenile justice library and database; and operates several electronic information resources, including OJJDP's Web site. NCJRS is administered by the National Institute of Justice (NIJ) under a competitively awarded contract to Aspen Systems Corporation. FY 2002 is the fourth year of a 4-year project period.

This project will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 2002.

Juvenile Justice Telecommunications Assistance Project

The Juvenile Justice Telecommunications Assistance Project (JJTAP) has been funded by OJJDP since 1995. The grantee, Eastern Kentucky University (EKU), provides OJJDP with the technical expertise and necessary equipment to conduct national satellite videoconferences and technical assistance for training and information dissemination purposes. Through the use of live videoconferences and Internet technology, OJJDP has reached thousands of juvenile justice professionals simultaneously to inform the field of the latest developments in research, best practices, and promising programs in an expeditious and relatively inexpensive manner. These videoconferences are designed to address specific issues and allow interaction between experts and the viewing audience during call-in segments.

In addition to satellite technology, this project has used the Internet since 1999 to reach an even greater audience. Five of the videoconferences have been Webcast live on the Internet, and all past videoconferences are available for viewing, in their entirety, on the project's Web site archive. Written materials accompanying each broadcast are sent to each downlink site and are available to anyone to download from the Internet. Videotapes and associated written materials for all past videoconferences are available for purchase through the Juvenile Justice Clearinghouse. JJTAP has provided technical assistance on satellite videoconferencing to a large number of organizations and has published the *Satellite Teleconferencing Resource Manual,* a resource document for agencies interested in delivering training via satellite.

In FY 2002, all videoconferences will be available via satellite and the Internet. Four new videoconferences will be developed and marketed through the National Criminal Justice Reference Service. EKU also will continue providing limited technical assistance in the use of telecommunications technology to other juvenile justice agencies.

This project would be implemented by the current grantee, Eastern Kentucky University. No additional applications would be solicited in FY 2002.

National Reporting System for Formula Grants Program

The National Reporting System will allow OJJDP to continue assisting States in reporting program information as required for participation in the Title II, Part B State Formula Grants Program. Under this project, States gain the capacity to efficiently submit program information to OJJDP. In this second year of the cooperative agreement, a new data collection tool will be piloted and subsequently refined. The data obtained using this new collection tool will be analyzed and disseminated to provide a national picture of juvenile justice programming.

This project will be implemented by the current grantee, the Justice Research and Statistics Association. No additional applications will be solicited in FY 2002.

National Resource Center for Safe Schools

OJJDP established the National Resource Center for Safe Schools (NRCSS) in 1998 by funding, along with the U.S. Department of Education's Safe and Drug-Free Schools Program, the Northwest Regional Educational Laboratory (NWREL) to provide intensive training, technical assistance, and data collection to strengthen statewide and local safe school initiatives. The mission of NRCSS is to implement a training and technical assistance program that helps schools

and communities create and maintain safe learning environments that are free of crime and violence. NRCSS's approach assumes that the development of a safe school environment cannot be isolated from an overall school improvement plan that includes community services agencies. This approach provides safe schools programs with a solid foundation that embraces diversity, builds resiliency, and provides educational programming, such as anger management, peer mediation, and conflict resolution (however, such programming is not appropriate in cases involving dating violence or sexual harassment).

NRCSS's accomplishments to date include developing a database and services to support crisis response referrals; holding 3 advisory committee meetings; publishing 8 newsletters, 12 fact sheets, and 1 case study; establishing a training and technical assistance calendar, a pool of providers, and a toll-free phone number; and developing a training curriculum protocol and a curriculum manual for the project.

In FY 2002, NRCSS will identify and focus on the 10 areas of concern that are most important to creating safer schools. NRCSS will take a consolidated approach to these 10 areas of concern and will support schools in their efforts to implement other effective OJJDP initiatives such as mentoring, youth courts, bullying, and conflict resolution.

This project would be implemented by the current grantee, the Northwest Regional Educational Laboratory. No additional applications would be solicited in FY 2002.

National Training and Technical Assistance Center

The National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center (NTTAC) was established in FY 1995 under a competitive 3-year project period award. In FY 2000, a competitive 1-year contract was awarded to Caliber Associates to continue implementation of the Center; a second contract was awarded to Caliber through a competitive process in FY 2001. Renewal of this contract for project implementation is anticipated annually over a 3-year period, based on availability of funds and satisfactory performance.

NTTAC serves as a national training and technical assistance repository, inventorying and coordinating the integrated delivery of juvenile justice training and technical assistance resources and establishing a database of these resources. Past NTTAC activities included convening the first in a series of annual OJJDP training and technical assistance grantee-contractor meetings, finalizing the jurisdictional team training and technical assistance packages on critical needs in the juvenile justice system, developing a bimonthly newsletter (NTTAC News), and responding to training and technical assistance requests from the field.

NTTAC also brokered more than 500 training and technical assistance requests in FY 2001 and revamped its marketing and outreach strategy to include a redesign of its marketing materials, indicating ''a family-of-products'' look. NTTAC expanded and enhanced its Web site, increasing its usership by approximately 40 percent. In addition, NTTAC developed the OJJDP Core Performance Standards, which serve as minimum expectations for training and technical assistance providers in the planning, delivery, and evaluation of their services.

During FY 2002, NTTAC will disseminate the Core Performance Standards and a toolkit series of fact sheets and bulletins to facilitate the implementation of the Standards. The NTTAC will continue to develop an Information Resource Management System (IRMS). NTTAC will complete development of its training and technical assistance product and curriculum review process and will endeavor to complete the Office of Management and Budget clearance process for its User Feedback Form. The Center will also provide assistance to State juvenile corrections training academies in facilitating the reoccurring revisions and updates of basic job descriptions and will serve as a repository of training materials developed by juvenile corrections training academies.

This project will be implemented by the current grantee, Caliber Associates. No additional applications will be solicited in FY 2002.

OJJDP Management Evaluation Contract

This contract was competitively awarded in FY 1999 to Caliber Associates for a period of 4 years to provide OJJDP with an expert resource to perform independent program evaluations and assist in implementing evaluation activities. The contractor provides assistance to OJJDP staff in determining the evaluation needs of programs and develops evaluation designs that OJJDP can use in defining the requirements for a grant or contract to implement the evaluation. Caliber is currently conducting two full-scale program evaluations for OJJDP. One is a national evaluation to examine the viability and effectiveness of Title V-Community Prevention Grants for Local Delinquency Prevention Programs. The contractor also is completing a process evaluation of the implementation of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. The contractor also may provide training to OJJDP program managers and other staff on evaluation-related topics.

This contract will be implemented by the current contractor, Caliber Associates. No additional applications will be solicited in FY 2002.

OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center

The Juvenile Justice Resource Center (JJRC) provides technical assistance and support to OJJDP, its grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention in the areas of program development, evaluation, training, and research. With assistance from expert consultants, JJRC coordinates the peer review process for OJJDP grant applications and grantee reports, conducts research and prepares reports on current juvenile justice issues, plans meetings and conferences, and provides administrative support to various Federal councils and boards. FY 2002 is the fourth year of a 4-year project period.

This project will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 2002. Since this is the final year of funding, a new solicitation will be issued and a contract awarded through a competitive contract action so there will not be a break in services.

Program of Research on the Causes and Correlates of Delinquency

Since 1986, this longitudinal study has addressed a variety of issues related to juvenile violence and delinquency and has produced a massive amount of information on the causes and correlates of delinquent behavior. Three project sites participate: The Institute of Behavioral Science, University of Colorado at Boulder; the Western Psychiatric Institute and Clinic, University of Pittsburgh; and Hindelang Criminal Justice Research Center, University at Albany, State University of New York. These projects are designed to improve the understanding of serious juvenile delinquency, violence, and drug use by examining how youth develop within the context of family, school, peers, and community. The three sites engage in both collaborative

and site-specific research. The three research teams worked together to ensure that certain core measures were identical across the sites. This strengthens the findings from these projects by allowing for replications of findings in individual sites and enabling cross-site analyses.

In the upcoming year, the Causes and Correlates projects will continue collaborative and site-specific analyses of the data. Future reports will address such topics as mental health problems and interventions, gangs, and the transition from school to work. In addition, researchers at the three sites will provide greater access to the study data. Confidentiality concerns prohibit the release of the data sets to the general public. However, OJJDP and the researchers have been exploring alternative methods of making the data more accessible to other researchers, the most promising being a remote access system. Plans for the next year include developing and testing a remote access system at one of the sites.

This program would be implemented by the current grantees, The Institute of Behavioral Science, University of Colorado at Boulder; The Western Psychiatric Institute and Clinic, University of Pittsburgh; and Hindelang Criminal Justice Research Center, University at Albany, State University of New York. No additional applications would be solicited in FY 2002.

Technical Assistance for State Legislatures

The Technical Assistance for State Legislatures project was established in FY 1995, when OJJDP awarded funds to the National Conference of State Legislators (NCSL) to provide juvenile justice information on recent research, legislation, reform options, and innovative program models and provide customized technical assistance for State legislatures. NCSL also aids State legislators in the improvement of State juvenile justice systems by exploring causes and crafting comprehensive responses to youth crime and violence. The NCSL project provides State legislatures with extensive consultation and technical assistance on key juvenile justice reform issues.

The project's accomplishments since FY 1995 include provision of onsite assistance by NCSL on 25 occasions to 14 State legislatures, with 4 occurring in FY 2001. Technical assistance is being planned in Louisiana and is ongoing in Vermont and Wyoming. The project has produced a 38-minute audiotape based on *Comprehensive Juvenile Justice: A Legislator's Guide* and distributed 600 copies of the tape to new lawmakers . Eleven lawmakers from five States (Hawaii, Kansas, Michigan, Mississippi, and Texas) participated in two juvenile justice study tours to learn how communities planned and implemented OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.

During FY 2001, NCSL information services responded to 1,500 information requests. The grant has improved capacity for delivery of information services to State legislatures. The project also supports increased communication between State legislators and other State and local leaders who make decisions about juvenile justice issues.

In FY 2002, the Technical Assistance for State Legislatures project will continue to provide technical assistance to State legislatures; hold an invitational ''Leadership Forum'' on comprehensive juvenile justice in January 2002; and develop, prepare, and distribute publications to highlight current trends, juvenile justice approaches, and issues in the States. Two topics will be researched, prepared, and distributed as part of the NCSL LegisBriefs (fact sheets) series. Research/information clearinghouse activities will continue to inform State legislatures on juvenile justice issues, enactments, and research.

This project would be implemented by the current grantee, the National Conference of State Legislators. No additional applications would be solicited in FY 2002.

Understanding and Monitoring the ''Whys'' Behind Juvenile Crime Trends

The purpose of this research project is to identify and understand the principal reasons behind the trends in juvenile crime and violence. As national rates of youth violence have dropped substantially in recent years, a number of theories have been advanced to explain this trend. However, the lack of empirical evidence to fully support various theories enables proponents of vastly different policy orientations to claim victory for the recent declines and continue to assert their policy objectives. Not all localities experienced the same trends in juvenile violent crime during either the increases in the late 1980s or the subsequent declines that began in the early 1990s, and there is considerable variation in local juvenile crime rates across the country. In FY 2001, under a competitive award, the University of Pennsylvania's Jerry Lee Center on Criminology began a 5-year study to address these issues. The Center recruited six ''developmental sites'' and produced a report addressing the trends, theories discarded and remaining, feasibility of testing these theories, and limitations of various designs. In FY 2002, the University of Pennsylvania will begin testing these theories and will issue additional reports on the onsite testing process, experience, and feasibility.

This program will be implemented by the current grantee, the University of Pennsylvania. No additional applications will be solicited in FY 2002.

Public Safety and Law Enforcement

Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

OJJDP proposes to continue funding this evaluation in FY 2002. Under a competitive cooperative agreement awarded in FY 1995, the evaluation grantee helped the five program sites (Bloomington, IL; Mesa, AZ; Riverside, CA; San Antonio, TX; and Tucson, AZ) establish realistic and measurable objectives, document program implementation, and measure the impact of this comprehensive approach. The grantee has trained the local site interviewers and also provided interim feedback to the program implementors. The grantee would continue to analyze data required to evaluate the program, monitor and oversee the quality control of data, and prepare final reports for the full evaluation.

This project would be implemented by the current grantee, the University of Chicago, School of Social Service Administration. No additional applications would be solicited in FY 2002.

Evaluation of the Comprehensive Gang Model: An Enhanced School Approach

This initiative is a continuation of ongoing efforts to test OJJDP's Comprehensive Gang Model. In FY 2000, four sites were competitively selected to conduct comprehensive assessments of their local gang problem and develop programs to implement the Comprehensive Gang Model. Program designs will be communitywide but will emphasize school-based responses. The four sites are Dade County, FL; East Cleveland, OH; Houston, TX; and Pittsburgh, PA. The evaluation grantee, COSMOS Inc., is conducting case studies to document and analyze the four sites' 1-year community assessment and program planning efforts. COSMOS is also developing an outcome evaluation design for the sites that would be funded to implement the model.

This program would be implemented by the current grantee, COSMOS Inc. No

additional applications would be solicited in FY 2002.

Evaluation of the Rural Gang Initiative

This initiative is a continuation of ongoing efforts to test OJJDP's Comprehensive Gang Model. In FY 1999, four competitively selected rural sites (Elk City, OK; Glenn County, CA; Longview, WA; and Mt. Vernon, IL) conducted comprehensive assessments of their local gang problems and developed program designs to implement the Comprehensive Gang Model. The evaluation grantee, the National Council on Crime and Delinquency (NCCD), has conducted case studies to document and analyze the 1-year community assessment and program planning efforts in all four sites. NCCD has developed and is conducting an outcome evaluation design for the sites that are being funded to implement the model: Glenn County, CA, and Mt. Vernon, IL.

This program will be implemented by the current grantee, the National Council on Crime and Delinquency. No additional applications will be solicited in FY 2002.

Gang-Free Schools and Communities Initiative

In FY 2000, OJJDP launched a multisite effort to continue to demonstrate, test, and replicate the implementation of the OJJDP Comprehensive Gang Model in as many as 16 sites around the country. In response to a competitive solicitation, 10 new sites were selected to participate in this initiative, which consists of the two separate programs described below.

The Comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime program is designed to demonstrate and test the Model's ability to assist communities in addressing youth gang problems in both the school setting and in the community, through a tightly coordinated approach, including antiviolence efforts. The four participating communities are the City of East Cleveland, OH; the City of Houston, TX; the City of Pittsburgh, PA; and the City and County of Miami-Dade, FL. In FY 2001, these sites received initial training in conducting an assessment of the youth gang problem and began collecting data. In FY 2002, these sites will be eligible for funding to begin implementing the OJJDP Comprehensive Gang Model to address the problems identified. An independent evaluation of this effort is being conducted by the COSMOS Corporation.

The Gang-Free Communities program is designed to offer ''seed'' support to communities selected to replicate the OJJDP Comprehensive Gang Model. The communities selected to participate are Broward County, FL; East Los Angeles, CA; Jefferson County, KY; the City of Lakewood, WA; San Francisco, CA; and Washington, DC. The goal of this program is to reduce youth gang violence in the community. In FY 2001, these sites also received initial training in conducting an assessment of the youth gang problem and began collecting the necessary data. In FY 2002, these sites would be eligible for funding to begin implementing the OJJDP Comprehensive Gang Model to address the problems identified.

The National Youth Gang Center is providing training and technical assistance for communities participating in both programs.

These two programs would be implemented by the current grantees: East Cleveland, Houston, Miami-Dade, and Pittsburgh for the comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime and Broward County, FL; East Los Angeles, CA; Jefferson County, KY; the City of Lakewood, WA; San Francisco, CA; and Washington, DC, for the Gang-Free Communities program. No new applications would be solicited in FY 2002 for these programs.

Gang Prevention Through Targeted Outreach (Boys & Girls Clubs)

The purpose of this program is to enable local Boys & Girls Clubs to prevent youth from entering gangs, intervene with gang members in the early stages of gang involvement, and divert youth from gang activities into more constructive programs. The Boys & Girls Clubs of America provides training and technical assistance to local gang prevention and intervention sites, including some at OJJDP's gang program demonstration sites, and to other clubs and organizations through regional trainings and national conferences. In FY 2000, the Boys & Girls Clubs added new gang prevention sites, gang intervention sites, and ''Targeted Reintegration'' sites where clubs work to provide services to youth returning to the community from juvenile correctional facilities to prevent them from returning to gangs and violence. A national evaluation of the Gang Prevention Through Targeted Outreach Program was completed in FY 2001. The evaluation, conducted by Public/Private Ventures, Inc., concluded in part that ''participants demonstrated positive change'' and that ''the clubs were successful in reaching an underserved, high-risk population through direct outreach and referral-network-building activities.'' In FY 2002, the Boys & Girls Clubs of America will identify and support up to 30 new gang prevention sites. Evaluation of the Targeted Reintegration program component may also begin in FY 2002. In addition, the Boys & Girls Clubs will jointly sponsor OJJDP's National Youth Gang Symposium in June 2002, in partnership with the National Youth Gang Center.

This program would be implemented by the current grantee, the Boys & Girls Clubs of America. No additional applications would be solicited in FY 2002.

Law Enforcement Training and Technical Assistance Program

The Law Enforcement Training and Technical Assistance Program was initially funded through a competitive award in 1999 to the International Association of Chiefs of Police (IACP) for a 3-year project period. The purpose of the program is to increase the capacity of law enforcement and allied professions to address juvenile crime, delinquency, and victimization, through multiagency system responses to school violence; juvenile gang, gun, and drug activity; and serious, violent, and chronic juvenile crime. Training workshops and technical assistance strengthen existing multiagency collaboration and facilitate creation of new partnerships.

In FY 2001, program activities included 19 workshops for more than 1,000 participants from 600 jurisdictions in 12 States. In addition, a marketing database was developed that allows the program to promote each individual product by State, via fax, directly to police, sheriffs, school administrators, school resource officers, juvenile probation and corrections agencies, juvenile mental health service officials, and other juvenile justice stakeholders. An OJJDP/IACP Training and Technical Assistance Web page was created for the IACP Web site. The page includes the training schedule and registration forms for specific training sessions and onsite technical assistance.

In FY 2002, the following deliverables will be provided under this program: 18 workshops, 12 onsite technical assistance projects, and 8 Chief Executive Officer Exchange Forums. Additionally, 1,500 CD–ROMs with relevant OJJDP literature and reference materials will be created and disseminated among training attendees; a Fact Sheet for OJJDP distribution and an article for a professional periodical will be written.

The program will be implemented by the current grantee, the International Association of Chiefs of Police. No additional applications will be solicited in FY 2002.

National Youth Gang Center

The proliferation of gang problems over the past two decades led OJJDP to develop a comprehensive, coordinated response that involved five program components, one of which was implementation and operation of the National Youth Gang Center (NYGC). Competitively funded in 1994 to expand and maintain the body of critical knowledge about youth gangs and effective responses to them, NYGC provides support services to the National Youth Gang Consortium, composed of Federal agencies with responsibilities in this area. NYGC is also providing technical assistance for OJJDP's Gang-Free Communities Program, Gang-Free Schools Program, and Rural Gang Initiative. In FY 2001, NYGC (1) conducted indepth analyses of the National Youth Gang Survey results, which track changes in gang membership and activity, (2) developed and administered a survey of youth gangs in American Indian communities, (3) produced timely information on the nature and scope of the youth gang problem, (4) continued tracking gang-related legislation at both the State and Federal levels, and (5) continued to provide training and technical assistance for OJJDP's Gang-Free Communities Program, Gang-Free Schools Program, and Rural Gang Initiative.

With FY 2002 funds, the Center would continue to collect, analyze, and disseminate current, comprehensive, and accurate national-level gang-related information. It would continue to assist State and local jurisdictions in the collection, analysis, and exchange of information on gang-related demographics, legislation, literature, research, and promising program strategies. The Center would also continue to provide indepth technical assistance to grantees of OJJDP gang programs.

This program would be implemented by the current grantee, the Institute for Intergovernmental Research. No additional applications would be solicited in FY 2002.

Rural Gang Initiative Demonstration Sites

During FY 2000, OJJDP competitively funded four rural communities (Elk City, OK; Glenn County, CA; Longview, WA; and Mount Vernon, IL) to conduct a comprehensive assessment of their local youth gang problems. Each site collected and analyzed comprehensive local data to determine the nature and scope of the existing local youth gang problem(s). A steering committee of community representatives in each site used the final assessment findings to develop a response to the problems identified. In FY 2001, two of these four communities, Glenn County, CA, and Mt. Vernon, IL, began implementing the OJJDP Comprehensive Gang Model to address the most serious problems identified in their assessments. In each site, intervention teams of workers from police, probation, schools, community-based agencies, and others have begun working in gang violence hotspots to provide services and supports to gang-involved youth, with a goal of reducing and eventually eliminating youth gang violence in the community. In FY 2002, these sites will continue implementing the OJJDP Comprehensive Gang Model. Ongoing assessment and data collection will be used to assist in selecting intervention targets.

An independent evaluation of these two sites also will be conducted and technical assistance will be provided through the National Youth Gang Center.

This initiative would be implemented by the current grantees, Glenn County, CA, and Mount Vernon, IL. No additional applications would be solicited for this initiative in FY 2002.

Technical Assistance to the Gang-Free Schools and Communities Initiative

In FY 2000, OJJDP launched a multisite replication of the OJJDP Comprehensive Gang Model and a four-site demonstration program to implement the Model and further enhance the Model's school component. In FY 2001, the National Youth Gang Center (NYGC) developed a manual to assist these communities in conducting the assessment, developed and provided these sites with tools and instruments for data collection, developed Web-based technical assistance resources for these communities, and provided initial gang problem assessment training to 10 participating sites and followup technical assistance and training to five of these sites. NYGC also developed a web page to enable unsuccessful applicants to access technical assistance in conducting an assessment and the OJJDP Model. In FY 2002, OJJDP will fund NYGC to provide training and technical assistance during the implementation stages of this initiative in selected communities across the country. The National Youth Gang Center is currently providing technical assistance on OJJDP's Model to communities involved in OJJDP's Rural Gang Initiative and to other OJJDP grantees.

OJJDP would provide a supplemental award to the National Youth Gang Center to provide the technical assistance. No additional applications would be solicited in FY 2002.

Delinquency Prevention and Intervention

Assessing Alcohol, Drug, and Mental Disorders Among Juvenile Detainees

This project, which was funded competitively in 1999, is a major longitudinal study assessing alcohol, drug, and mental disorders among juveniles in the Cook County Detention Center in Chicago, IL. The project has three primary goals: (1) To determine how alcohol, drug, and mental disorders develop over time among juvenile detainees, (2) to investigate whether juvenile detainees receive needed psychiatric services after their cases reach disposition (whether they return to the community or are incarcerated), and (3) to study the development and interrelationship of dangerous and risky behaviors related to violence, substance use, and HIV/AIDS. This project is unique because the sample is so large: It includes 1,829 youth from Chicago who were arrested and originally interviewed between 1995 and 1998. The sample is stratified by gender, race (African American, Hispanic, non-Hispanic white), and age. Initial interviews have been completed, and extensive archival data (e.g., arrest and incarceration history, health and mental health treatment) have been collected on each subject. The investigators have been tracking the subjects, and they have completed several sets of followup interviews. A significant number of subject deaths, virtually all of them linked to violence (e.g., gunshot wounds) have already occurred. The large sample size has provided sufficient statistical power to study the prevalence of co-occurring disorders. Researchers are preparing an OJJDP Bulletin that compares subjects' self-reported substance use with the results of urine screens conducted shortly after arrest.

This project will be implemented by the current grantee, Northwestern University. No additional applications will be solicited in FY 2002.

Comprehensive Children and Families Mental Health Training and Technical Assistance

OJJDP has entered into an interagency agreement with the Center for Mental Health Services (CMHS) of the

Substance Abuse and Mental Health Services Administration to support the CMHS-funded Comprehensive Mental Health sites. CMHS currently funds 45 sites, a technical assistance provider, and an evaluation. OJJDP funds are used to fund the juvenile justice specialist member of the technical assistance team, which also includes child welfare, mental health, education, and parent specialists. This team oversees technical assistance to the sites and coordinates technical assistance to meet their needs. The juvenile justice specialist responsibilities include efforts to assist with the development of increased coordination between the juvenile justice and mental health systems in the 45 sites.

This initiative will be implemented through an interagency agreement with CMHS. No additional applications will be solicited in FY 2002.

Evaluation of the Truancy Reduction Demonstration Program

OJJDP currently funds seven sites that are implementing truancy reduction programs. Grantees include Contra Costa, CA; Honolulu, HI; Houston, TX; Jacksonville, FL; King County, WA; Suffolk County, NY; and Tacoma, WA. OJJDP also funds the Colorado Foundation for Families and Children (CFFC) to conduct the national evaluation of the Truancy Reduction Demonstration Program. As part of the evaluation, CFFC is working with the sites to (1) determine how community collaboration can reduce truancy and lead to systemic reform and (2) assist OJJDP in developing a community collaborative truancy reduction program model and identifying the essential elements of that model. To that end, CFFC continues to assist project sites to identify and document the nature of the truancy problem in their communities, enhance effective truancy reduction planning and collaboration, and incorporate that process into the implementation of the Truancy Reduction Demonstration Program at each site. In addition, CFFC is assisting sites in collecting information on truant youth and documenting services.

This project would be implemented by the current grantee, the Colorado Foundation for Families and Children. No additional applications would be solicited in FY 2002.

Integrated Information Sharing To Prevent Juvenile Delinquency: A Training and Technical Assistance Approach

The Integrated Information Sharing To Prevent Juvenile Delinquency: A Training and Technical Assistance Approach project was established in FY 2001 under a competitive 2-year cooperative agreement between OJJDP and the Center for Non-Profit Development/Center for Network Development (CND). The project is designed to launch OJJDP's integrated information-sharing (IIS) effort. CND works to increase the capacity of State and local collaboratives to establish and manage effective multidisciplinary, multiagency information-sharing systems; support proactive solutions to juvenile delinquency; and improve coordination, decisionmaking, and services to at-risk youth and their families.

Under this cooperative agreement, CND has completed several key tasks to accomplish the project's goals. The results of a national training needs assessment survey and focus group meeting influenced the content of instructional materials for regional training workshops scheduled for FY 2001 and FY 2002. Similarly, a curriculum design team has outlined particular training modules and engaged practitioners at various levels of experience with IIS systems to critique the designs and discuss the challenges, barriers, and solutions to building effective partnerships and planning and implementing IIS systems.

In FY 2001, CND collected lists of collaborative groups interested in enhancing IIS efforts from OJJDP program managers and added these lists to the IIS database. The national training needs assessment was developed and mailed to 953 youth-focused collaborative practitioners interested in developing and/or enhancing an IIS system.

In FY 2002, the final year of this 2-year project, CND will continue developing, marketing, and piloting level 1 and level 2 trainings, providing followup assistance, and evaluating the application of knowledge and skills gained in the trainings to improve IIS's collaborative performance.

This project will be implemented by the current grantee, the Center for Non-Profit Development/Center for Network Development. No additional applications will be solicited in FY 2002.

Intergenerational Transmission of Antisocial Behavior

The purpose of the Intergenerational Transmission of Antisocial Behavior study is to examine the development of childhood antisocial behavior in a three-generation prospective panel study by making the children of the current participants in the OJJDP-sponsored Rochester (NY) Youth Development Study the focal subjects of a new long-term study. Forty percent of the original Rochester participants were parents by age 21. The Youth Development Study began in 1986. The new study is being funded under an FY 1998 interagency agreement with the National Institute of Mental Health. The grantee will combine data on the original study's participants and their parents with new data on the children of the original participants. The combined data will enable researchers to examine and track the development of delinquent behavior across three generations in a particularly high-risk sample. The results of the study should provide useful findings that will have policy implications for prevention programs. In FY 2002, the program will continue data collection.

The project will be implemented by the current grantee, the University at Albany, State University of New York. No additional applications will be solicited in FY 2002.

Investing in Youth for a Safer Future

This program supports the ''Investing in Youth for a Safer Future'' public service program and other advertising and media initiatives of the National Citizens' Crime Prevention Campaign. The ''Investing in Youth for a Safer Future'' campaign educates the public about prevention programs and intervention strategies that reduce youth violence and delinquency. The campaign develops creative public service advertisements that aim to motivate adults to become positively involved in the lives of young people.

The program would be implemented under an interagency agreement with the Bureau of Justice Assistance by the current grantee, the National Crime Prevention Council. No additional applications would be solicited in FY 2002.

Juvenile Defender Training, Technical Assistance, and Resource Center

The Juvenile Defender Training, Technical Assistance, and Resource Center (Juvenile Defender Center), now in its third year of funding under a 5-year project period grant, was competitively awarded to the American Bar Association (ABA) in FY 1999. The Juvenile Defender Center fills a major gap in resources and support for juvenile defenders in the United States by providing training and technical assistance services. Nationally focused training and technical assistance for juvenile defenders did not exist before OJJDP funded the original Due Process Advocacy project from 1993 to 1999. Building on that project, the Juvenile Defender Center project is designed to

facilitate the development of a permanent training and technical assistance capability for juvenile defenders. Improving the capabilities and skills of juvenile defenders strengthens the juvenile justice system and provides greater assurance that juveniles charged with delinquency will receive the due process and adequate representation they are guaranteed under the U.S. Constitution.

The ABA has competitively selected eight regional centers to provide training and technical assistance in their regions. Each year the ABA organizes and holds a National Juvenile Defender Summit that brings together juvenile defenders and related practitioners to address key issues in juvenile defense work. The ABA operates under a unique incentive funding scheme that enables it to receive additional funds over a base amount if they raise money in the private sector or obtain in-kind services. The ABA has been very successful in raising private funds and obtaining donated resources.

This project will be implemented in FY 2002 by the American Bar Association, the current grantee. No additional applications will be solicited in FY 2002.

Multisite, Multimodal Treatment Study of Children With Attention Deficit/ Hyperactivity Disorder

In 1992, the U.S. Department of Health and Human Services' National Institute of Mental Health (NIMH) began a study of the long-term efficacy of stimulant medication and intensive behavioral and educational treatment for children with attention deficit/ hyperactivity disorder (ADHD). Although ADHD is classified as a childhood disorder, up to 70 percent of affected children continue to experience symptoms in adolescence and adulthood. Researchers at six primary study sites and three subcontractor sites are following children in the three treatment groups (medication management only, behavioral treatment, and a combination of medication and behavioral treatment) and a control group (community care).

OJJDP's participation in the study, which began in FY 1998, supports continued investigation into the subjects' aggressive and delinquent behavior and contact with the legal system, including arrest, detention, and incarceration. In FY 2002, OJJDP will transfer funds to NIMH through an interagency agreement that will support the collection of data related to subjects' delinquent and criminal behavior and contact with the juvenile justice system.

This program will be implemented through an interagency agreement with the National Institute of Mental Health. No additional applications will be solicited in FY 2002.

National Center for Conflict Resolution Education

This project will assist communities in providing quality conflict resolution programs by providing training and technical assistance opportunities and developing products to expand the knowledge of conflict resolution skills, processes, implementation, and application. Program objectives include: (1) Increasing the number of conflict resolution programs that use effective design elements, (2) enhancing the skills of conflict resolution program volunteers and professional staff, and (3) facilitating the development and use of research-driven training and technical assistance materials. The major clients to be served are educational agencies and organizations, juvenile justice programs, and community youth service organizations.

This project will be implemented by the current grantee, Illinois State Bar Association, in FY 2002. It is anticipated that OJJDP will issue a solicitation in FY 2002 and the grantee selected in response to the solicitation will implement the program in FY 2002.

National Youth Court Center

OJJDP established the National Youth Court Center (NYCC) in 1999 to provide intensive training, technical assistance, data collection, and considerable programmatic resources to strengthen statewide and local youth court initiatives. NYCC supports the establishment of youth courts consistent with effective design elements for the purposes of preventing delinquency and holding young people accountable for their delinquent and criminal behavior within the context of constructive peer group community sanctions. Youth courts are programs where juvenile offenders are sentenced by their peers. These programs are rapidly becoming an integral component of the juvenile justice system in communities across America.

OJJDP is the lead Federal agency responsible for supporting the national youth court movement, with the U.S. Department of Transportation providing a small amount of support through an annual interagency agreement. With more than 800 programs currently operating and hundreds of jurisdictions planning to develop programs, youth courts have experienced tremendous growth in the past few years.

Accomplishments of the project to date include publication of *National Youth Court Guidelines,* which provides programmatic blueprints for operating effective youth court programs; *National Youth Court Directory,* which provides the largest and most accurate listing of youth court programs in the United States; and *A Street Law Curriculum for Youth Courts.* NYCC has also developed a comprehensive youth court Web site and a national youth court center newsletter that offer the most comprehensive and up-to-date information on youth courts, provided onsite technical assistance to jurisdictions in support of local or statewide youth court development efforts, launched a national lawyer/law student recruitment campaign (a nationwide initiative linking lawyers and law students with local youth court programs), and published *Youth Court and Balanced and Restorative Justice.*

In FY 2002, NYCC will produce three instructional videos about youth court benefits, responsibilities, and training for volunteer jurors. NYCC will also develop a training Web site to aid youth volunteers in preparing for their cases online. New documents will include a manual for a 10-week training program for youth volunteers; instructor's guides for adult volunteers who train volunteer youth; a daily operations handbook that will serve as a resource guide for coordinators of youth court programs; a ''road map to youth court,'' designed to teach those in the legal community about youth court; and a community service workbook that will teach program coordinators to set up task- and service-oriented community service projects for youthful offenders. Educational community service modules for youthful offenders will be designed around the most common victim issues and alcohol and marijuana offenses handled in youth court.

Training events for FY 2002 include a national youth court conference and a ''train the trainers'' session that will prepare one person from each State as the key State trainer for both the community service education and student membership training programs. Public education campaigns also will be developed and launched in FY 2002.

This project would be implemented by the current grantee, the American Probation and Parole Association with a subgrant to the American Bar Association. No additional applications would be solicited in FY 2002.

Pathways to Desistance: A Prospective Study of Serious Adolescent Offenders

In FY 2001, OJJDP, along with the Centers for Disease Control and

Prevention and several private foundations, provided funding for the first year of data collection for the Pathways to Desistance study. This multisite, longitudinal, collaborative research project follows approximately 1,200 serious juvenile offenders from adolescence to young adulthood. Interviews are conducted regularly with these youth and their family members and friends for several years following their involvement with the court for felony-level offenses. The aims of the investigation are to: (1) Identify initial patterns of desistance from antisocial activity in serious adolescent offenders, (2) describe the role of social context and developmental changes in promoting positive behavioral change, and (3) compare the effects of sanctions and interventions in promoting positive change and desistance from criminal behavior. The larger goals of the study are to improve decisionmaking by court and social services personnel and to clarify policy debate about dispositional alternatives for serious adolescent offenders. The project is anticipated to last at least 3 years. In FY 2002, OJJDP, in conjunction with the U.S. Department of Justice's National Institute of Justice, the William T. Grant Foundation, the Robert Wood Johnson Foundation, and the John D. and Catherine T. MacArthur Foundation, will support the project's second year of data collection.

This project will be implemented by the current grantee, the University of Pittsburgh. No additional applications will be solicited in FY 2002.

Race Against Drugs/Stay on Track Curriculum Evaluation

Since 1995, OJJDP has supported Race Against Drugs (RAD), a partnership in substance abuse prevention that includes the Drug Enforcement Administration, the Federal Bureau of Investigation, the Center for Substance Abuse Prevention, the National Child Safety Council, and U.S. motor sports organizations. The primary goals of RAD are to educate youth about the dangers of substance abuse and provide them with the skills they need to resist drugs. RAD also empowers the motor sports industry, communities, schools, and local law enforcement agencies to play greater roles in keeping their neighborhoods and schools drug free. With OJJDP support, RAD has established a national network of dedicated volunteers who have implemented more than 5,000 drug prevention/education programs at schools, shopping malls, trade shows, youth organizations, civic centers, and motor sports events. Drug prevention materials, including posters, public service announcements, decals, T-shirts, hats, coloring books, and education kits, are available to complement all activities.

In FY 2000, with funding from OJJDP, RAD worked with prevention scientists at the University of Maryland's Center for Substance Abuse Research and a panel of experts to develop a new science-based drug prevention curriculum, Stay on Track, for use in middle schools (grades six through eight) and other structured environments. This curriculum capitalizes on the knowledge gained during RAD's 10 years of youth drug prevention experience. Stay on Track is currently being implemented in selected schools in Phoenix, AZ, and may expand to other communities. OJJDP is funding a comprehensive evaluation of the curriculum by researchers from Embry Riddle University.

This project would be implemented by the current grantee, the National Child Safety Council. No additional applications would be solicited in FY 2002.

Technical Assistance for the Title V Community Prevention Programs

The purpose of this project is to provide OJJDP with the capacity to provide communities with training and technical assistance support for implementation of the Title V Community Prevention Grants program. The contract was awarded in FY 2000 through a competitive process. The contractor will continue to provide nationwide training and technical assistance for State and local jurisdictions on developing and implementing comprehensive communitywide, data-based delinquency prevention strategies. Through training and technical assistance, community leaders develop the knowledge and skills necessary to assess local risk factors for and protective factors against delinquency and to address risk factors using community resources. To build training capacity within States and national regions, instruction on data-based, risk- and protection-focused prevention will be provided for trainers.

This project will be implemented by the current contractor, Development Services Group, Inc. No additional applications will be solicited in FY 2002.

Truancy Reduction Demonstration Program

In FY 1998, OJJDP, the Executive Office for Weed and Seed and the U.S. Department of Education supported a grant program to reduce truancy. The Truancy Reduction Demonstration Program is a comprehensive program designed to combine education, justice and law enforcement, social services, and community resources to identify and track truant youth and cooperatively design and implement comprehensive systemwide programs to meet the needs of these youth. The four components of the Truancy Reduction Program are (1) system reform and accountability, (2) a service continuum to address the needs of truant children and adolescents, (3) data collection and evaluation, and (4) a community prevention education and awareness program for kindergarten through grade 12. OJJDP has awarded grants to seven sites to implement the comprehensive truancy program. Three were non-Weed and Seed (Honolulu, HI; Jacksonville, FL; and King County, WA), and four were Weed and Seed sites (Houston, TX; Martinez, CA; Tacoma, WA; and Yaphank, NY). Operation Weed and Seed is a two-pronged strategy within the Office of Justice Programs (OJP) that seeks to prevent, control, and reduce violent crime, drug abuse, and gang activity in targeted high-crime neighborhoods. All the sites are in the implementation phase of the program. Examples of the program strategies include the following: Case managers conducting home visits, attendance monitoring, tutoring, and case management referral of youth and families to community agencies for needed services. In FY 2001, the Truancy Reduction Program served approximately 2,085 students and 1,180 families. The Colorado Foundation for Families and Children (CFFC) is conducting a process evaluation that will help to identify key elements of an effective truancy program.

The current grantees (Honolulu, HI; Houston, TX; Jacksonville, FL; King County, WA; Martinez, CA; Tacoma, WA; and Yaphank, NY) would continue to carry out the truancy activities. No additional applications would be solicited in FY 2002.

Violence Intervention and Prevention Protocol

In 2001, OJJDP began a project with the American Academy of Pediatrics (AAP) to develop a Violence Intervention and Prevention Program (VIPP). The Academy has a long history of educating pediatricians and families about unintentional injuries and those caused by child abuse.

The overall goal of this project is to develop a theory-based comprehensive program for the primary prevention of violence-related injury to children and

adolescents that will be incorporated into the primary care of all American children seen by pediatricians. This research project will be conducted in three phases: Design decisions, development of materials and protocols, and small-scale pilot testing.

This project will be implemented by the current grantee, the American Academy of Pediatrics. No additional applications will be solicited in FY 2002.

Strengthening the Juvenile Justice System

Accountability-Based Training for Staff in Juvenile Confinement Facilities

The Accountability-Based Training for Staff in Juvenile Confinement Facilities program, provided through the National Juvenile Detention Association's (NJDA's) Center for Research and Professional Development (CRPD), offers extensive training that enhances the ability of staff in juvenile confinement facilities around the country to handle and care for confined youth. OJJDP has funded this program for 6 years to enable staff working in secure facilities to avail themselves of state-of-the-art training. With OJJDP's support, CRPD has provided more than 101,600 training hours to line staff in juvenile justice facilities and programs in 33 States. In addition to training through CRPD, NJDA provides comprehensive technical assistance to State and local juvenile detention centers that are experiencing problems with their operations.

During FY 2002, CRPD will continue to provide onsite training and technical assistance to direct care staff in juvenile confinement and custody facilities with the existing materials and curriculums. CRPD also will develop and pilot a new 40-hour curriculum, ''BARJ-ing into Juvenile Confinement: Practical Application of BARJ [Balanced And Restorative Justice] Principles for Line Staff''; develop advanced training curriculums in the areas of suicide prevention and management of mentally ill residents; and revise the curriculum for juvenile detention careworkers.

This project would be implemented by the current grantee, the National Juvenile Detention Association, Center for Research and Professional Development. No additional applications would be solicited in FY 2002.

Balanced and Restorative Justice

OJJDP established the Balanced and Restorative Justice (BARJ) training and technical assistance project in FY 1992 by awarding funds to Florida Atlantic University to provide training, technical assistance, and guidelines on implementing the BARJ model, which encourages the juvenile justice system to address three goals equally: (1) Ensuring community safety, (2) holding offenders accountable to victims, and (3) promoting competency development for offenders in the juvenile justice system so they are equipped to pursue noncriminal lines of work after release. The project is national in scope. However, to use limited resources efficiently, BARJ technical assistance works with seven ''special emphasis'' States—California, Florida, Illinois, Michigan, New York, Pennsylvania, and Texas—and with several local jurisdictions across the Nation to help them plan and implement BARJ. The project also works with key justice system and community leaders to clarify BARJ concepts and to seek their help in advancing BARJ goals and activities.

In FY 2001, the BARJ project developed, helped organize, or participated in more than 40 major training and technical assistance events on restorative justice. BARJ roundtables provided training and technical assistance to teams of juvenile justice managers and practitioners from the seven special emphasis States. In addition, the project has updated its instructional materials for the BARJ courses and produced new reference publications on restorative justice. The project also publishes a quarterly BARJ newsletter, *Kaleidoscope of Justice.*

In FY 2002, the BARJ project will conduct the BARJ Academy workshops, the introduction to restorative justice and training for trainers courses, and a graduate BARJ trainers conference. The project will develop new training courses on restorative justice in schools, training of trainers for group conferencing, and strategic BARJ management. One or more specialized workshops on selected BARJ topics are also planned. The project plans to present workshops at national and regional conferences sponsored by groups representing judges, prosecutors, probation and corrections personnel, law enforcement, victims advocates, child welfare practitioners, and others. Resource documents will be developed, and the program's existing training materials and Web site will be updated.

This project would be implemented by the current grantee, the Florida Atlantic University. No additional applications would be solicited in FY 2002.

Building Blocks for Youth

OJJDP established the Building Blocks for Youth project in FY 1998 by funding the Youth Law Center to: (1) Conduct research on issues such as the impact on minority youth of new State laws and the implications of privatization of juvenile facilities by profitmaking corporations; (2) undertake an analysis of decisionmaking in the justice system and develop model decisionmaking criteria that reduce or eliminate the disproportionate impact of the system on minority youth; (3) build a constituency for change at the national, State, and local levels; and (4) develop communication strategies for disseminating information. The goals of this initiative are to protect minority youth in the juvenile justice system and promote rational and effective juvenile justice policies.

FY 2001 activities include developing and implementing a strategy to support the analysis of decisionmaking and a significant increase in the number of partner organizations to create constituencies for change; site-based work in Phoenix, AZ; Portland, OR; Seattle, WA; and Watsonville, CA, and conducting research and developing resources on the disparate numbers of minority youth in the juvenile justice system and the effects of State laws and zero-tolerance polices on these populations.

In FY 2002, the fifth year of the initiative, Building Blocks for Youth will focus on following up its research projects and using a number of its project studies and reports as tools for change. Site-based work will continue and associated analyses and findings will be completed; results will be shared to assist others in reducing the number of minority youth in the juvenile justice system. The initiative will continue its work in establishing and maintaining relationships with other national and State organizations through its extensive information and dissemination activities, including the monthly newsletter, bulletins, and comprehensive Web site.

This project would be implemented by the current grantee, the Youth Law Center. No additional applications would be solicited in FY 2002.

Census of Juveniles in Residential Placement

The Census of Juveniles in Residential Placement (CJRP) collects individual-level data on all juveniles in residential placement on a specific reference day (the fourth Wednesday in October). The data elements collected include each offender's age, sex, race, placing agency, legal status, and most serious offense. Because this project is a census, it allows for State-level reporting of juveniles in residential placement. The

census is mailed to all facilities that can and do hold juvenile offenders for reasons of the offense. Personnel report on all offenders younger than 21 years old residing in their facilities on the reference day. The facilities also provide some basic information on any other persons who do not fit these criteria. The CJRP was first conducted in October 1997 and again in October 1999. In 2002, the Census Bureau would continue to conduct the 2001 CJRP including data collection, data editing, data inputting, and data file preparation.

This program would be implemented through an existing interagency agreement with the Bureau of the Census. No additional applications would be solicited in FY 2002.

Center for Students With Disabilities in the Juvenile Justice System

During FY 1999, OJJDP undertook a joint initiative with the Office of Special Education and Rehabilitative Services, U.S. Department of Education, to establish a Center for Students with Disabilities in the Juvenile Justice System. This project is expected to improve the juvenile justice system's services for students with disabilities in the areas of prevention, educational services, and reintegration based on a combination of research, training, and technical assistance. The Center guides and assists States, schools, juvenile justice programs, families, and communities in designing, implementing, and evaluating comprehensive educational programs, based on research-validated practices, for students with disabilities in the juvenile justice system.

This program will be implemented under an existing 5-year interagency agreement with the U.S. Department of Education by the current grantee, the University of Maryland. No additional applications will be solicited in FY 2002.

Connecticut/Cook County (IL) Girls Collaborative

A national collaboration between the State of Connecticut and Cook County, IL, has been forged around the needs of court-involved girls. The primary goal of this collaboration is the creation of a replicable model of systems change for court-involved girls, including girls who are pregnant and/or young mothers. Since this project began in FY 1997, the sites have shared lessons learned and have taken action to improve services to court-involved girls. Specific accomplishments include developing a profile of the juvenile female offender and conducting a technical mapping of the juvenile justice system in Cook County, completing an evaluation of a pilot gender-specific case management system for girls, developing a Web site to identify and link service providers in metropolitan Cook County and surrounding counties in Illinois, training mentors to work with girls on probation and girls detained in the detention center, completing a study of Connecticut court-involved girls age 18 and under, and creating a gender-specific team of juvenile probation officers in Connecticut. OJJDP would support this national collaboration in FY 2002 in order to continue to develop innovative responses to the female offender population and girls at-risk of entering the juvenile justice system.

The program would be implemented by the current grantees, Cook County Board of Commissioners and Connecticut Judicial Branch. No additional applications would be solicited in FY 2002.

Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders

This continuation grant would enable OJJDP's grantees to continue providing State and local jurisdictions with training and technical assistance in developing and implementing strategic plans for reducing juvenile delinquency based on research included in the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. Through training and technical assistance, communities will develop the knowledge and skills necessary to assess risk and protective factors, develop and implement research-based programs and prevention and graduated sanctions services, and more effectively address juvenile crime in their communities.

This project would be implemented by the current grantees, Developmental Research and Programs, Inc., and the National Council on Crime and Delinquency. No additional applications would be solicited in FY 2002.

Evaluation of Teen Courts

OJJDP initiated the Evaluation of Teen Courts project to assess the impact of teen courts (or youth courts) on nonserious juvenile offenders. The project is the first national, multisite evaluation of this emerging diversion strategy for at-risk youth.

The Evaluation of Teen Courts was structured to determine the impact of teen courts on subsequent delinquency or recidivism, perceptions of justice among youth referred to teen courts, and their commitment to prosocial norms and normative institutions (e.g., school). The evaluation includes three components—an impact evaluation, a process evaluation, and a new enhancement that will employ a random assignment design in new teen court sites. The impact evaluation will examine what effect teen court programs have on youth, what happens to youth as a result of a teen court experience, and whether the results differ from those observed in youth handled in a traditional juvenile justice system. The process evaluation will determine what happens in teen court programs, what they do, and how well they do it.

This project would be implemented by the current grantee, the Urban Institute. No additional applications would be solicited in FY 2002.

Girls Study Group Project

The purpose of the Girls Study Group project, which OJJDP competitively awarded to the Regents of the University of Michigan in FY 2001, is to develop the research foundation that will help communities make sound decisions on how best to prevent and reduce delinquency and violence by girls. The University of Michigan will bring together a multidisciplinary group of 15 scholars to examine the nature of offending by adolescent females and to identify effective prevention and intervention strategies and programs for this population. In the first year of this 2-year project, the entire Girls Study Group will convene twice for 2- to 3-day meetings to identify research needs and questions. The Girls Study Group will also be divided into approximately six working groups based on broad areas of concern. Products from the first year will include a comprehensive annotated bibliography of relevant research and preliminary reports from the working groups.

This program will be implemented by the current grantee, the University of Michigan. No additional applications will be solicited in FY 2002.

Improving Juvenile Sanctioning: An Intensive Training and Technical Assistance Delivery Program

The purpose of this program is to improve the capacity of the juvenile justice system by providing intensive training and technical assistance to at least 10 selected jurisdictions to strengthen and enhance existing juvenile accountability-based sanctioning programs and to support development of new ones, within the context of community-based programs that support competency development in youth. The primary target population for this program is youthful offenders who could be referred by law enforcement, schools, or juvenile courts

to community-managed alternatives to detention and secure confinement. The program's goal is to create or improve juvenile accountability-based programs at the front end of the continuum, while enhancing the competencies and skills of youth, in order to strengthen the juvenile justice system's capability to respond appropriately to delinquent behavior.

This project, initially funded in FY 2001 through a competitive solicitation, is designed as a 5-year project, with funding of up to $1 million each year, given the availability of funds and satisfactory grantee performance.

This program will be implemented by the grantee selected through the FY 2001 competition. No additional applications will be solicited in FY 2002.

Intensive Community-Based Juvenile Aftercare Dissemination and Technical Assistance Program

This initiative supports replication of, training and technical assistance for, and information dissemination about the Intensive Aftercare Program (IAP) model, which was implemented in three competitively selected demonstration sites. The overall goal of the IAP model is to identify and assist adjudicated juvenile offenders who are in secure confinement to make a successful transition to the community upon release. An independent evaluation of the IAP demonstration is currently underway, with a final report due in the winter of 2002.

As the demonstration period for the three pilot sites has ended, the focus of this initiative has shifted to six distinct areas: (1) Replication of the model with emphasis on specialized youth populations; (2) linkage with select Performance-Based Standards correctional sites; (3) provision of technical assistance to DOL's Youth Offender Demonstration sites; (4) provision of technical assistance to select Boys & Girls Clubs sites participating in OJJDP's Targeted Outreach initiative; (5) creation of a national juvenile reintegration and aftercare center; and (6) creation of a new Web site.

This initiative would be implemented by the current grantee, the Johns Hopkins University. No additional applications would be solicited in FY 2002.

James E. Gould Memorial Program for Training and Technical Assistance for Juvenile Corrections and Detention

OJJDP established the Training and Technical Assistance Program for Juvenile Corrections and Detention staff 16 years ago by funding the American Correctional Association (ACA) to provide leadership to the juvenile justice field through training and technical assistance to staff working in juvenile corrections, detention, community residential, and nonresidential facilities. ACA conducts an annual National Juvenile Corrections and Detention Forum on behalf of OJJDP. In addition to the forums, ACA developed a curriculum addressing increased privatization in the field of juvenile justice and conducted three regional privatization workshops on writing requests for proposals, writing good contracts, and monitoring contracts. ACA publishes articles on juvenile justice issues in each issue of its *Corrections Today* magazine and recently published a monograph and a curriculum on privatization. ACA also provides technical assistance to juvenile justice professionals concerning detention and corrections issues.

In FY 2002, the project will continue to coordinate with other national juvenile justice organizations to provide technical assistance to juvenile justice agencies and will hold the 17th annual National Juvenile Corrections and Detention Forum. ACA will update mailing lists of both public and private juvenile facilities and develop a listserv and Internet service to enhance knowledge and facilitate sharing of information among juvenile justice detention and corrections professionals. Texts, papers, monographs, and related juvenile corrections and detention resource materials will be developed and disseminated to the juvenile justice community. Three 3-day regional workshops on issues related to privatization and two 1-day national workshops that address needs and trends in juvenile corrections and detention will be held.

This project would be implemented by the current grantee, the American Correctional Association. No additional applications would be solicited in FY 2002.

Juvenile Justice Prosecution Unit

OJJDP supports the Juvenile Justice Prosecution Unit's (JJPU's) training and technical assistance program for prosecutors under a grant to the American Prosecutors Research Institute (APRI), which was first awarded in FY 1995. JJPU develops and presents training workshops to chief prosecutors, juvenile unit chiefs, and deputy district attorneys assigned to juvenile courts. The training deals with leadership roles of prosecutors in the juvenile justice system, handling of juvenile delinquency cases, and significant juvenile justice issues that are of concern to prosecutors. Approximately six training workshops are held annually, and curriculums and appropriate reference materials are developed for each training event.

In FY 2001, APRI developed and presented two workshops on disproportionate minority confinement (DMC); conducted five JUMPSTART courses for newly assigned juvenile prosecutors, several short workshops at the National Juvenile Justice Conference, a course on juvenile justice prosecution for prosecutor coordinators, and a serious and violent offender workshop; and created two new workshops for prosecutors on balanced and restorative justice and interdisciplinary issues. The training and technical assistance materials developed by APRI include curriculums and topical resource guides for the courses offered. In addition, APRI developed a Web page, continued updating the *Compendium of Juvenile Programs for Prosecutors*, and produced four *In Re* newsletters.

In FY 2002, APRI will provide training (including two new courses) and technical assistance to new groups of prosecutors. APRI will provide a Webcast for prosecutors, conduct five JUMPSTART courses, and present a juvenile justice prosecution track at the National Juvenile Justice Conference. The project will continue updating its training curriculums and materials, including its Web page, and preparing new training and resource documents. The project also will keep prosecutors informed on developments in restorative justice and expand the *Compendium of Juvenile Programs for Prosecutors* as new programs are reported from the field.

This project would be implemented by the current grantee, the American Prosecutors Research Institute. No additional applications would be solicited in FY 2002.

Juvenile Residential Facility Census

OJJDP designed the Juvenile Residential Facility Census (JRFC) to collect important information on facility characteristics, services provided to residents in the facility, and the conditions within the facility. Similar to the Census of Juveniles in Residential Placement, JRFC is a biennial census of residential facilities used by the juvenile justice system to hold youth accused of or adjudicated for an offense. The data collection forms are mailed to each facility for personnel to complete. The JRFC collects information on health care services, mental health counseling or treatment, substance abuse treatment,

and education and whether youth in the facility have access to the particular services they need. The methods used in the census cannot make evaluative statements on the quality of those services; rather the JRFC indicates the availability of such services. The JRFC also asks specific questions about the nature of the facility itself, specifically about the conditions of confinement, the number of beds used (including makeshift beds), and the use of isolation or restraints. Finally, the JRFC collects information on any deaths in custody, a subject on which OJJDP must report annually. The first full JRFC was conducted in October 2000. In FY 2002, the Census Bureau would prepare for the second full implementation of the JRFC, mail out the necessary forms, and begin full data collection.

This project would be conducted through an interagency agreement with the Bureau of the Census, Governments Division and Statistical Research Division. No additional applications would be solicited in FY 2002.

Longitudinal Study To Examine the Development of Conduct Disorder in Girls

The purpose of this project, which is being funded under an FY 1999 interagency agreement between OJJDP and the National Institute of Mental Health, is to examine the development of conduct disorder in a sample of 2,500 inner-city girls who are ages 6–8 at the beginning of the study. The study will follow the girls annually for 5 years and will provide information that is critical to the understanding of the etiology, comorbidity, and prognosis of conduct disorder in girls. Delinquency in girls has been steadily increasing over the past decade, and a better understanding of developmental processes in girls will help identify effective means of prevention and provide direction for juvenile justice responses to delinquent girls. In FY 2002, the program will continue data collection.

The project will be implemented by the current grantee, the University of Pittsburgh. No additional applications will be solicited in FY 2002.

Meta-Analysis Project

In FY 2001, Vanderbilt University began a program to update a significant existing database of juvenile justice program evaluations and to provide various meta-analyses of the data for OJJDP. Meta-analysis is defined as ''a statistical analysis that combines or integrates the results of several independent clinical trials considered by the analyst to be combinable.'' [1] This technique creates a larger research framework to make broad generalizations about, for example, the impact of specific types of interventions on different types of outcomes. Meta-analysis allows for the results of small, weak, and/or methodologically flawed studies to be combined and reanalyzed. Vanderbilt University has created a database that contains data from more than 500 published and unpublished studies of programs involving a wide range of treatments and services. Each study is codified using 156 variables, including characteristics of the study, types of interventions, and measures of outcomes.

In FY 2001, the project was updated to include approximately 100 new studies that were completed in the past several years. In FY 2002, the study will expand the analysis to include different measures of outcomes and recidivism. The resulting series of reports will be made available to juvenile justice practitioners and policymakers.

This program will be implemented by the current grantee, Vanderbilt University. No additional applications will be solicited in FY 2002.

National Census and Survey of Juvenile Probation

In FY 2001, OJJDP entered into an interagency agreement with George Mason University (GMU) to develop and test a new survey and census of juvenile probation. OJJDP worked with the U.S. Bureau of the Census's Center for Survey Methods Research to develop this project; the GMU team would complete the work. The project consists of developing questionnaires for both a census and a survey of juvenile probation. GMU would also fully test the questionnaires in cooperation with the data collection agency, the U.S. Bureau of the Census.

This project would be conducted through an interagency agreement with George Mason University. No additional applications would be solicited in FY 2002.

National Evaluation of the Performance-based Standards Project

OJJDP funded the National Academy of Public Administration (NAPA) to conduct an independent evaluation of OJJDP's Performance-based Standards (PbS) Project. This formative evaluation provides feedback to the PbS project development team on how to improve the program design and implementation supports to the sites. The evaluation is collecting both quantitative and qualitative data describing the processes used to implement the PbS model in 80 juvenile detention and correctional facilities across the country. To date, the evaluator has completed a chronicle that tracks major program decisions and improvements. In addition to conducting two all-site surveys, the evaluator also has contributed to the conceptualization and design of key program elements, including the Program Monitoring System, the expansion of the program to reintegration outcomes, and the migration of the project to integrate with agencies' management information systems (MIS) and has developed materials for meeting privacy and human subjects issues. A new focus of the evaluation is to develop six case studies to capture in depth the process of a facility's journey from initiation to institutionalization of PbS in its day-to-day operations.

As the PbS project expands in FY 2002 to include community-based correctional functions and deals with the launching of an MIS integrated system, it will be necessary to continue to independently review the work, both to chronicle its development and to capture, through the case studies and surveys, how the innovations are being carried out in the field.

This project would be implemented by the current grantee, the National Academy of Public Administration. No additional applications would be solicited in FY 2002.

National Juvenile Justice Data Analysis Project

First funded in FY 1999 under a competitive process, the National Juvenile Justice Data Analysis Project (NJJDAP) provides research and analysis into a wide variety of juvenile justice issues including juvenile placement, custody, arrests, victimization, and juvenile offending. However, the topics of interest to juvenile professionals are not limited to these typical justice topics. As research expands, the field learns more about the intersections of delinquency and other problems, such as mental health disorders, education needs, and physical injury. Attention to these problems can help the field design effective prevention or intervention measures and identify what problems the juvenile justice system will face in dealing with delinquent youth. NJJDAP will examine such issues of concern through cooperation with experts in the fields of interest and with data collected in those fields. This project produces

[1] Huque, M.F. 1988. Experiences with meta-analysis in NDA submissions. *Proceedings of the Biopharmaceutical Section of the American Statistical Associaiton* 2:28–33.

quick, unique analyses of these issues for publication by OJJDP.

In FY 2002, NJJDAP will expand its roster of available consultants who can provide either expertise in data analysis or knowledge of particular aspects of adolescent development, juvenile delinquency, or the juvenile justice system. NJJDAP will also investigate innovative data sets at the State and local levels.

This project will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in FY 2002.

National Juvenile Justice Program Directory

To conduct statistical projects, OJJDP and the Census Bureau require a support infrastructure that enables both to perform the necessary survey tasks efficiently and effectively. This infrastructure includes as a basic component the maintenance of a list or frame of all survey or sampling units. For example, the surveying of residential facilities could not take place without a list of such facilities. Indeed, as OJJDP moves toward surveying these facilities once a year, this list must be maintained continuously. Also, as the Office moves toward surveying juvenile probation offices, OJJDP and the Census Bureau will need a current list of all such offices in the United States. Other areas of interest might include juvenile courts, police departments, State agencies, etc. Maintenance of the lists includes contacting various key State and local officials or practitioners, who can provide the names of agencies or facilities associated with their respective agencies. It also requires maintaining current contact information for these agencies or facilities. Finally, it requires developing and updating a database of these facilities that contains information necessary for sampling or stratification purposes. This project fills the needs for lists of juvenile agencies, programs, and facilities.

This project would be conducted through an interagency agreement with the Bureau of the Census, Governments Division. No additional applications would be solicited in FY 2002.

National Juvenile Sex Offenders Training Project

The purpose of this program is to develop and deliver training to police, intake workers, school counselors, detention line staff, judges, prosecutors, and other juvenile justice personnel to increase the accuracy of information in the field about juvenile sex offending. The availability of accurate information will lead to improved prevention, intervention, and treatment services for the youth population. The dissemination of knowledge that specifically deals with juvenile sex offender issues will help ensure that the drafting and implementation of any policy or legislation on this issue are based on accurate and timely information, focus on juvenile offenders, and use juvenile-based research versus adult research that is often applied to young people.

Project staff and other subject matter experts within the Office of Justice Programs will collaborate to develop a matrix that identifies and categorizes the major portals of entry (e.g., youth-serving agencies and organizations, schools) for children with sexual behavior problems and juvenile sex offenders. In the first year of this project, training goals and objectives will be developed, and curriculums will be written in collaboration with juvenile justice personnel. The next step will establish the priority for testing and delivering training to the range of personnel working with sex offending youth. In the final year of the project, it is anticipated that curriculums will have been developed for all identified portals of entry that work with juvenile sex offenders and current knowledge will have been disseminated that impacts the ongoing treatment and handling of these youth.

This program will be implemented by the current grantee, the University of Oklahoma. No additional applications will be solicited in FY 2002.

National Longitudinal Survey of Youth

Since 1997, OJJDP has supported the U.S. Department of Labor's Bureau of Labor Statistics (BLS) as it conducts the National Longitudinal Survey of Youth (NLSY). Using a nationally representative sample, youth who were in the eighth grade in 1997 are surveyed about their school experiences, family background, and employment. The NLSY will provide critical information on these young peoples' transition from school to work. With OJJDP support, BLS includes a wide battery of questions on delinquency such as theft and assault and problem behaviors such as alcohol and tobacco use. Because the NLSY follows the same youth each year, the data from this effort will provide important national information on the onset of delinquency, trends in offending, and correlation with other factors such as family, school, health, etc. So far, the NLSY project has collected four waves of data (one each year). The fourth wave will be released in 2002. OJJDP expects to continue contributing to this effort until the sampled youth have reached young adulthood.

This project would be conducted through an interagency agreement with the Bureau of Labor Statistics. No additional applications would be solicited in FY 2002.

National Training and Technical Assistance for Effective Juvenile Detention and Corrections Practices

Since FY 1996, OJJDP has funded the National Juvenile Detention Association's (NJDA's) National Training and Technical Assistance for Effective Juvenile Detention and Corrections Practices project (Overcrowding Project) to combat overcrowding in the Nation's juvenile detention facilities. The Overcrowding Project is an intensive, onsite training and technical assistance program that assists selected jurisdictions in reducing overcrowding in their juvenile detention facilities. NJDA and the Youth Law Center, a partner in the project, have considerable experience with juvenile facility overcrowding. The original Overcrowding Project is being broadened significantly to include a greater emphasis on capacity building to achieve meaningful systemic reform and to incorporate nationally recognized operational ''best practices'' within juvenile confinement facilities.

Accomplishments during previous grant years included providing intensive technical assistance to Camden County, NJ; Oklahoma County, OK; Santa Cruz County, CA; and the States of Rhode Island and South Carolina and technical assistance to juvenile detention or corrections systems in Arkansas, Illinois, Louisiana, Michigan, Nebraska, Nevada, and Ohio. The project also developed and delivered a jurisdictional team training curriculum on overcrowding to five jurisdictions. It also helped develop and produce OJJDP's national videoconference on overcrowding in juvenile detention and eight major training and technical assistance documents.

During FY 2002, the Overcrowding Project will expand its focus to address broader systemic issues through delivery of intensive technical assistance to six to eight new jurisdictions. This effort will be supported by a partnership with OJJDP and the Annie E. Casey Foundation, which will focus on development of a strategy for initiating a national juvenile detention reform movement. The project also will coordinate and complete intensive technical assistance to the West Virginia Division of Juvenile Justice.

This project would be implemented by the current grantee, the National Juvenile Detention Association. No additional applications would be solicited in FY 2002.

Performance-Based Standards Project

To date, the Performance-based Standards (PbS) project has developed an integrated set of goals, performance standards, outcome measures, and implementation tools to help facilities improve in six key areas of operations: safety, order, security, programming, health/mental health, and justice of facility operations. Participating sites submit data on 96 outcome measures at 6-month intervals via a secure Internet Web site (www.performance-standards.org), and the results are fed back to the PbS sites within a month of data closeout. The Council of Juvenile Correctional Administrators (CJCA) has worked very closely with the juvenile corrections field in developing and testing a program that focuses on accountability, performance, and the attainment of measurable goals. Currently more than 80 juvenile detention and correctional facilities from 23 States are participating in the PbS project. Five State youth corrections agencies are implementing PbS agencywide.

FY 2002 funding would support implementation of significant innovations in the program that have been under design, development, and testing during the past 2 years. Full implementation would include revisions of the data collection instruments for youth and staff, specifically the incorporation of survey items that track the national Survey of Youth in Residential Placement; implementation of the reintegration standards, outcome measures currently being tested in three States; testing and implementation of an MIS-integrated system that would allow facilities to track performance on a daily basis, rather than at 6-month intervals, as is currently the case. In addition, the scope of the project would expand to include community-based correctional functions as an extension of the work on reintegration standards and also would enable the project to increase the number of participating sites.

This project would be implemented by the current grantee, the Council of Juvenile Correctional Administrators. No additional applications would be solicited in FY 2002.

Survey of Youth in Residential Placement

The first national Survey of Youth in Residential Placement (SYRP) will interview a sample of 10,000 youth in residential placement. It will be conducted in March and April 2003 and will use audio-assisted computerized interviews. The survey will collect critical research information on youth history with the justice system, family life, education, and current treatment needs.

SYRP will follow up on the FY 1998 Planning for the Survey of Youth in Residential Placement cooperative agreement with Westat, Inc. That project developed the data collection instrument, the sampling scheme, and an analysis plan. The planning project also extensively tested the questions used in the instrument, the computer-assisted interviewing method, and the complete instrument and survey methodology in a sample of 40 facilities in a specific geographic region of the country. The new project will implement the finalized Audio-Computer Assisted Survey Instrument (A–CASI) and produce a report based on the data collected.

This project will be implemented by the current grantee Westat, Inc. No additional applications will be solicited in FY 2002.

Systems Improvement Training and Technical Assistance

In FY 2000, OJJDP continued funding to the Institute for Educational Leadership (IEL) for training and technical assistance programs that strengthen and sustain the capacity of SafeFutures and Safe Kids/Safe Streets demonstration sites and selected other communities to assist them with changing their systems. The project seeks to help sites (1) address their system goals and effectively address challenges, (2) educate and inform other communities and the juvenile justice field about how they can more effectively pursue community-based systems reform, (3) enhance the skills of community and staff leadership so they can better sort through the complexities of systems reform, and (4) build the overall capacity of the selected sites to engage in strategic planning, develop policies and programs, and build community collaboratives to address specific substantive challenges and achieve measurable results.

Since the project was awarded, IEL has established a pool of consultants with expertise in systems improvement; developed useful resources for communities addressing issues critical to systems improvement, including using data effectively, achieving sustainability, and building consumer capacity and cultural competence; and provided assistance to several OJJDP comprehensive initiatives.

In FY 2002, OJJDP will continue to fund the project to further assist selected OJJDP grantee communities interested in systems reform and change and to continue disseminating ''lessons learned'' to other communities.

This project will be implemented by the current grantee, the Institute for Educational Leadership. No additional applications would be solicited in FY 2002.

Training Programs for Juvenile Justice Professionals in Corrections and Detention

The Training Programs for Juvenile Justice Professionals in Corrections and Detention, provided by the National Institute of Corrections (NIC) through an interagency agreement funded by OJJDP, was established in 1990. NIC provides a variety of training and technical assistance, primarily geared toward supervisors and administrators who work in the juvenile justice system. NIC offers comprehensive training courses at its academy in Longmont, CO, and at various sites around the country. The training program is designed to enhance professional development and leadership skills of juvenile justice corrections and detention administrators and supervisors. Through this interagency agreement, training is also offered on critical elements of aftercare, services and programs for juvenile female offenders, restorative justice, curriculum design and development, and training for juvenile justice agency training coordinators and directors. NIC also provides training for newly appointed chief executive officers of juvenile justice corrections agencies and new facility directors.

In FY 2002, NIC will continue to support standards for training juvenile justice professionals through its Juvenile Justice Training Academy project. This project will also provide technical assistance to enhance existing academies and training programs. NIC will conduct several regional training sessions and will provide national training and workshops at their academy during FY 2002.

This project would be implemented through an interagency agreement between OJJDP and the National Institute of Corrections. No additional applications would be solicited in FY 2002.

Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement

The goal of this project is to assist States and local jurisdictions in their efforts to reduce the overrepresentation of minority youth in secure facilities. States participating in the Formula Grants Program are required to determine whether the proportion of minorities in confinement exceeds their proportion in the population and, if so, demonstrate efforts to reduce it. Research and Evaluation Associates (REA) is one of several Office of Juvenile Justice and Delinquency Prevention (OJJDP) grantees with responsibility for support of the Disproportionate Minority Confinement (DMC) requirement. This project, funded in FY 2001, follows a 3-year grant that supported development of a curriculum for policymakers and practitioners on DMC issues.

In FY 2001, REA developed a set of strategic tools and materials to assist jurisdictions to address this issue and managed delivery of intensive technical assistance to five selected States. In working with the five States, project staff established a protocol for the delivery of technical assistance in response to DMC issues, which will help States identify and prioritize interventions that provide both an immediate and a long-term impact on DMC.

In FY 2002, the grantee's activities will include identifying and training consultants to support the expansion of the intensive technical assistance, evaluating the use of the protocol in technical assistance delivery, conducting a DMC training of trainers, updating the DMC Web site, and continuing to develop strategies and approaches that will aid in implementing and monitoring the DMC effort.

This project will be implemented by the current grantee, Research and Evaluation Associates. No additional applications will be solicited in FY 2002.

Child Abuse and Neglect and Dependency Courts

Evaluation of the Parents Anonymous® Program

In FY 2001, OJJDP began this project through a competitive process to evaluate the Parents Anonymous® program. Parents Anonymous, Inc., is a national child abuse prevention program dedicated to family strengthening in partnership with local communities. The purpose of the evaluation is to assess the implementation and effectiveness of the Parents Anonymous® program in preventing and treating child abuse and neglect. The National Council on Crime and Delinquency is conducting this evaluation in two phases. Phase I is an ongoing process evaluation that is investigating how the theoretical premises, principles, best practices, and model of Parents Anonymous® are operationalized in a sample of programs selected by the evaluator. Phase II will present a preliminary approach to conducting the outcome evaluation of the selected programs. This will include a detailed discussion of the overall design of the outcome evaluation and methods for selecting programs and comparison groups, designing and testing data collection instruments, and collecting and analyzing data.

This project will be implemented by the current grantee, the National Council on Crime and Delinquency. No additional applications will be solicited in FY 2002.

National Evaluation of the Safe Kids/Safe Streets Program

OJJDP will continue funding the grant competitively awarded in FY 1997 to Westat, Inc., Rockville, MD, for the National Evaluation of the Safe Kids/Safe Streets Program. The evaluation has three main goals: to document and explicate the process of community mobilization, planning, and collaboration taking place before and during the Safe Kids/Safe Streets award; to inform program staff of performance levels on an ongoing basis; and to determine the effectiveness of the implemented programs in achieving the goals of the Safe Kids/Safe Streets Program. The initial 18-month grant began a process evaluation and a feasibility study for a future impact evaluation. With FY 2001 funding, Westat continued the process evaluation, which focuses on tracking the implementation efforts at each of the sites, and continued working with local evaluators to develop their skills and capacity for program evaluation. With funding in FY 2002, Westat will continue the impact evaluation, which includes a pilot study of its proposed case tracking procedure.

This evaluation will be implemented by the current grantee, Westat, Inc. No additional applications will be solicited in FY 2002.

Research on Child Neglect

This project is a collaborative effort of several Federal agencies concerned with research in the area of child abuse and neglect. The National Institutes of Health Child Abuse and Neglect Working Group (CANWG) is a consortium of Federal agencies that was formed in 1997. CANWG's goals are to assess the state of the science in child abuse and neglect, make recommendations for a research agenda, and develop plans for future coordination efforts across Federal agencies and institutes. In 1998, OJJDP joined CANWG to participate in funding a research program focused specifically on child neglect. OJJDP funds are supporting two research projects within the overall CANWG research program.

This project will be implemented through the current interagency agreement with the National Institutes of Health Child Abuse and Neglect Working Group. No additional applications will be solicited in FY 2002.

Safe Kids/Safe Streets: Community Approaches To Reducing Abuse and Neglect and Preventing Delinquency

This 5½-year demonstration is designed to break the cycle of early childhood victimization and later delinquency and criminality by reducing child and adolescent maltreatment and fatalities. Several components of the Office of Justice Programs joined in FY 1996 to develop this coordinated community response program. These components provide fiscal and technical support for local efforts to restructure and strengthen the justice system and the child welfare, family services, education, health, and related systems to be more comprehensive and proactive in helping children, adolescents, and their families. Safe Kids requires the five funded sites to develop, implement, and/or expand cross-agency strategies and to partner with natural networks in their communities. OJJDP awarded competitive cooperative agreements in FY 1997 to Chittenden County, VT; Huntsville, AL; Kansas City, MO; the Sault Ste. Marie Tribe of Chippewa Indians, MI; and Toledo, OH. Funds were provided by OJJDP, the Executive Office for Weed and Seed, and the Violence Against Women Office. FY 2002 is the fifth year of the demonstration project period.

This demonstration will continue to be implemented in FY 2002 by the current grantees: Chittenden County, VT; Huntsville, AL; Kansas City, MO; the Sault Ste. Marie Tribe of Chippewa Indians, MI; and Toledo, OH. No additional applications will be solicited in FY 2002.

Dated: October 17, 2001.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 01–26537 Filed 10–22–01; 8:45 am]

BILLING CODE 4410–18–P

Reader Aids

Federal Register

Vol. 66, No. 205

Tuesday, October 23, 2001

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–3447**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.nara.gov/fedreg**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service for notification of recently enacted Public Laws. To subscribe, send e-mail to **listserv@listserv.gsa.gov**

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, OCTOBER

49823–50094 1
50095–50286 2
50287–50524 3
50525–50808 4
50809–51290 5
51291–51554 9
51555–51818 10
51819–52014 11
52015–52306 12
52307–52482 15
52483–52656 16
52657–52848 17
52849–53072 18
53073–53328 19
53329–53502 22
53503–53710 23

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7471 50097
7472 50099
7473 50287
7474 50289
7475 50525
7476 50527
7477 51295
7478 51297
7479 51807
7480 51808
7481 51810
7482 52011
7483 52015
7484 52303
7485 52845
7486 52847

Executive Orders:
11145 (Amended by EO 13225) 50291
11183 (Amended by EO 13225) 50291
11287 (Amended by EO 13225) 50291
12131 (Amended by EO 13225) 50291
12196 (Amended by EO 13225) 50291
12216 (Amended by EO 13225) 50291
12333 (See EO 13231) 53063
12345 (Amended by EO 13225) 50291
12367 (Amended by EO 13225) 50291
12382 (Amended by EO 13225) 50291
12382 (See EO 13231) 53063
12472 (See EO 13231) 53063
12656 (Amended by EO 13228) 51812
12882 (Revoked by EO 13226) 50523
12900 (Amended by EO 13225) 50291
12900 (Revoked by EO 13230) 52841
12905 (Amended by EO 13225) 50291
12907 (Revoked by EO 13226) 50523
12958 (See EO 13231) 53063
12978 (See Notice of October 16, 2001) 53073
12994 (Amended by EO 13225) 50291
13021 (Amended by EO 13225) 50291
13045 (Amended by EO 13229) 52013
13075 (Revoked by EO 13225) 50291
13080 (Revoked by EO 13225) 50291
13090 (Revoked by EO 13225) 50291
13130 (Revoked by EO 13231) 53063
13134 (Amended by EO 13225) 50291
13138 (Amended by EO 13225) 50523
13138 (Amended by EO 13226) 50291
13168 (Revoked by EO 13225) 50291
13225 50291
13226 50523
13227 51287
13228 51812
13228 (See EO 13231) 53063
13229 52013
13230 52841
13231 53063

Administrative Orders:
Presidential Determinations:
No. 2001–27 of September 18, 2001 50807
No. 2001–28 of September 22, 2001 50095
No. 2001–30 of September 28, 2001 51291
No. 2001–31 of September 28, 2001 51293
No. 2002–02 of October 16, 2001 53503
No. 2002–03 of October 16, 2001 53505
Notices:
October 16, 2001 53073

5 CFR

550 53507
1604 50712

7 CFR

29 53075
246 52849
457 53076
718 53507
723 53507
916 52307
948 52309

1464 53507
Proposed Rules:
75 53550
301 53123
330 51340
987 52363
1032 53551
1260 ..... 53124, 53127

8 CFR

204 51819
212 51821

9 CFR

94 52483
317 52484
381 52484
Proposed Rules:
381 52715
391 52548
441 52715
590 52548
592 52548

10 CFR

30 51823
55 52657
70 51823
72 ..... 51823, 52486
150 51823
Proposed Rules:
2 52721
15 50860
20 52551
50 ..... 51884, 52065, 52551
72 52554
430 53554
431 50355
852 53130

11 CFR

Proposed Rules:
100 50359
114 50359
117 50359

12 CFR

201 52850
204 53076
950 50293
951 50296
952 50293
Proposed Rules:
Ch. IX 50366
609 53348
620 53348

13 CFR

123 53329
400 53078

14 CFR

Ch. VI 52270
23 ..... 50809, 50819
25 ..... 51299, 52017
35 50302
39 ..... 49823, 49825, 50304, 50306, 50307, 50529, 51555, 51843, 51849, 51853, 51856, 51857, 51860, 52020, 52023, 52027, 52312, 52313, 52489, 52492, 52496, 52498, 52668, 53080, 53083, 53332, 53335, 53337
61 52278
63 52278
71 50101
73 50310
91 50531
97 ..... 50821, 50823, 53085, 53087
121 ..... 51546, 52278, 52834
135 ..... 51546, 52278
142 ..... 51546, 52278
382 51556
1300 ..... 51546, 52270
Proposed Rules:
13 52878
39 ..... 50125, 50578, 50580, 50582, 50584, 50586, 50588, 50870, 50872, 50873, 50875, 50877, 50880, 50872, 50884, 50886, 50888, 50891, 50894, 50897, 50899, 50901, 50903, 50906, 50910, 50912, 50915, 50917, 51358, 51607, 51611, 52066, 52068, 52070, 52072, 52073, 53131
61 52878
71 52076
73 53132
91 52878
119 52878
125 52878
135 52878
142 52878

15 CFR

14 49827
742 50090
744 50090
Proposed Rules:
990 50919

16 CFR

6 51862
Proposed Rules:
1633 51886

17 CFR

1 53510
3 53510
4 53510
140 53510
155 53510
230 50102
232 49829
239 50102
240 50103
270 50102
274 50102
Proposed Rules:
1 50786
41 ..... 50720, 50786
190 50786
230 50744
232 50744
239 50744
240 ..... 49877, 50744, 50786
242 50720
249 50744
269 50744

18 CFR

Proposed Rules:
Ch. 1 50591
37 50919
161 50919
250 50919
284 ..... 50919, 53134
358 50919

19 CFR

10 ..... 50534, 51864
122 50103
163 50534

20 CFR

655 51095

21 CFR

101 50824
1308 ..... 51530, 51539
310 53088
Proposed Rules:
589 50929
1308 51535
1309 52670
1310 52670

22 CFR

41 ..... 49830, 52500
139 52502

23 CFR

Proposed Rules:
627 53288
635 53288
636 53288
637 53288
710 53288

24 CFR

599 52675
888 50024
985 50004
3500 53052

25 CFR

Proposed Rules:
580 50127

26 CFR

1 52675
301 50541
602 50541
Proposed Rules:
1 53555
48 53564

27 CFR

9 50564
Proposed Rules:
40 52730

28 CFR

2 51301
Proposed Rules:
100 50931

29 CFR

Ch. XL 51864
102 50310
1904 52031
4022 52315
4044 52315
Proposed Rules:
470 50010

30 CFR

210 50827
218 50827
920 50827
Proposed Rules:
901 52879
904 50952
950 51891

31 CFR

285 51867
586 50506
587 50506

32 CFR

320 52680
706 ..... 53523, 53524, 53525, 53526, 53528, 53529, 53530, 53531, 53532

33 CFR

110 50315
117 ..... 51302, 51313, 51304, 51305, 51557, 52317, 52684, 52685, 52686, 52687, 52689, 53088
160 50565
165 ..... 50105, 50106, 50108, 50315, 51305, 51307, 51309, 51558, 51562, 52035, 52036, 52038, 52039, 52041, 52043, 52689, 52691, 52693, 52851
Proposed Rules:
117 51614
155 49877
156 49877
165 52365

36 CFR

Proposed Rules:
1234 51740

37 CFR

Proposed Rules:
260 51617

38 CFR

19 53339
20 53339
Proposed Rules:
3 ..... 49886, 53139, 53565
4 49886
17 50594
20 50318
36 51893

39 CFR

20 53089
Proposed Rules:
20 52555
111 51617

40 CFR

9 53044
52 ..... 50319, 50829, 51312, 51566, 51568, 51570, 51572, 51574, 51576, 51578, 51868, 51869, 52044, 52050, 52055, 52317, 52322, 52327, 52333, 52338, 52343, 52359, 52506, 52511, 52517, 52522, 52527, 52533, 52694, 52695, 52700, 52705, 52711, 52851, 52857, 52862, 52867, 53090, 53094, 53340, 53658, 53662, 53665, 53686
55 53533
60 ..... 49830, 50110
61 50110
62 ..... 49834, 52060, 52534
63 ..... 50110, 50116, 50504,

52361, 52537
70 .....49837, 49839, 50321, 50325, 50574, 51312, 51318, 51581, 52538, 52874
81 .....53094, 53106, 53665
122.....53044
123.....53044
124.....53044
130.....53044
180 .....50329, 50829, 51585, 51587, 53342
257.....53535
258.....53535
261.....50332
271.....49841, 50833
403.....50334
Proposed Rules:
51.....50135
52 .....50252, 50375, 51359, 51619, 52367, 52560
257.....53566
258.....53566
60.....49894
62 .....49895, 52077, 52561
63.....50135, 50768
70 .....49895, 50136, 50375, 50378, 50379, 51359, 51360, 51620, 51895, 52368, 52561, 52562, 52881, 52882, 53140, 53148, 53151, 53155, 53159, 53163, 53167, 53170, 53174, 53178, 53354, 53370
89.....51098
90.....51098
91.....51098
93.....50954
94.....51098
124.....52192
136.....51518
141.....50961
142.....50961
228.....51628
260.....52192
261.....50379
267.....52192
270.....52192
271.....49896
281.....50963
300.....50380
1048.....51098
1051.....51098
1065.....51098
1068.....51098

41 CFR

61–250.....51998
101–46.....51095
102–39.....51095

42 CFR

51d.....51873
Proposed Rules:
81.....50967
82.....50978

43 CFR

2560.....52544

44 CFR

64.....51320
65 .....53112, 53114, 53115
67.....53117
Proposed Rules:
67.....53182, 53190

45 CFR

Ch. V.....49844

46 CFR

32.....49877
126.....53542

47 CFR

0.....50833
1.....50834
2.....50834
22.....50841
24.....50841
27.....51594
64.....50841, 53545
73 .....50576, 50843, 51322, 52547, 52711, 52712
Proposed Rules:
2.....51905, 53191
21.....51905
64.....50139, 50140
73 .....50602, 50991, 51360, 51361, 51905, 52565, 52566, 52567, 52733, 52734, 52735, 53192
76.....51905

48 CFR

Ch. 1.....53478, 53500
1.....53479
2 .....53483, 53485, 53487
12.....53483, 53487
13.....53487
19.....53492, 53500
22.....53479, 53487
32.....53485
46.....53483
52 .....53479, 53483, 53485, 53487, 53492
53.....53492
202.....49860
204.....49860
211.....49860
212.....49860, 49862
215.....49862
219.....49860, 49863
223.....49864
225.....49862
226.....50504
232.....49864
236.....49860
237.....49860
242.....49860
243.....49865
245.....49860
248.....49865
252 .....49860, 49862, 49864, 49865, 50504, 51515
253.....49862, 51515
442.....49866
1804.....53545
1807.....53545
1808.....53545
1815.....53545
1816.....53545
1817.....53545
1819.....53545
1822.....53545
1832.....53545
1835.....53545
1836.....53545
1837.....53545
1842.....53545
1843.....53545
1844.....53545
1852.....53545
Proposed Rules:
1.....53314
36.....53314
52.....53050
53.....53314
552.....53193

49 CFR

27.....51556
325.....49867
355.....49867
356.....49867
360.....49867
365.....49867
366.....49867
367.....49867
370.....49867
371.....49867
372.....49867
373.....49867
374.....49867
375.....49867
376.....49867
377.....49867
378.....49867
379.....49867
381.....49867
383.....49867
384.....49867
385.....49867
386.....49867
387.....49867
388.....49867
389.....49867
390.....49867
391.....49867
392.....49867
393.....49867
395.....49867
396.....49867
397.....49867
398.....49867
399.....49867
572.....51880
Proposed Rules:
171.....50147
173.....50147
174.....50147
175.....50147
176.....50147
177.....50147
178.....50147
209.....51362
234.....51362
236.....51362
390.....53373
391.....53373
392.....53373
393.....53373
395.....53373
396.....53373
571.....51629, 53376
579.....51907
587.....51629

50 CFR

17 .....50340, 51322, 51598
18.....50843
223.....50350, 52362
230.....52712
600.....50851
635.....53346
660 .....49875, 50851, 52062
679 .....50576, 50858, 52713, 53122
Proposed Rules:
10.....52282
17 .....50383, 51362, 53573
20.....51919, 52077
21.....52077
222 .....50148, 53194, 53385
223 .....50148, 52567, 53194, 53195, 53385
229 .....49896, 50160, 50390
600.....53575
622.....52370, 53579
648.....51000, 53575
660.....51367
679 .....49908, 51001, 52090

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 23, 2001

AGRICULTURE DEPARTMENT

Loan and purchase programs:

Tobacco; published 10-23-01

AGRICULTURE DEPARTMENT

Farm marketing quotas, acreage allotments, and production adjustments:

Tobacco; published 10-23-01

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Commodity interest transactions; intermediaries; amendments; published 10-23-01

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Outer Continental Shelf regulations—

Alaska; consistency update; published 10-23-01

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Miscellaneous amendments; published 10-23-01

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Papayas grown in—

Hawaii; comments due by 10-29-01; published 9-28-01

AGRICULTURE DEPARTMENT

Plant-related quarantine, foreign:

Phytosanitary certificates for imported fruits and vegetables; comments due by 10-29-01; published 8-29-01

AGRICULTURE DEPARTMENT

Acquisition regulations:

North American Industrial Classification System; comments due by 10-29-01; published 9-27-01

COMMERCE DEPARTMENT

International services surveys:

BE-20; benchmark survey of selected services transactions with unaffiliated foreign persons; comments due by 10-29-01; published 8-28-01

COMMERCE DEPARTMENT

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

West Coast salmon; comments due by 10-29-01; published 10-12-01

Marine mammals:

Atlantic Large Whale Take Reduction Plan; comments due by 11-2-01; published 10-3-01

Incidental taking—

Atlantic Large Whale Take Reduction Plan; comments due by 10-31-01; published 10-1-01

Atlantic Large Whale Take Reduction Plan; comments due by 11-1-01; published 10-2-01

Protected species special exception permits; comments due by 11-2-01; published 8-22-01

COMMERCE DEPARTMENT

Patent and trademark cases:

Registration applications and other documents; electronic submission; comments due by 10-29-01; published 8-30-01

DEFENSE DEPARTMENT

Military justice:

Legal assistance matters; military testamentary instruments, powers of attorney, and advance medical directives; comments due by 10-29-01; published 8-28-01

ENERGY DEPARTMENT

Consumer products; energy conservation program:

Energy conservation standards—

Commericial unitary air conditioners and heat pumps; comments due by 11-1-01; published 9-27-01

ENERGY DEPARTMENT

Practice and procedure:

Electronic service of documents; comments due by 11-2-01; published 10-4-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

Arizona; comments due by 11-1-01; published 10-2-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

Delaware; comments due by 11-2-01; published 10-3-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

Delaware; comments due by 11-2-01; published 10-3-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

Massachusetts; comments due by 10-29-01; published 9-28-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

Massachusetts; comments due by 10-29-01; published 9-28-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

Rhode Island; comments due by 10-31-01; published 10-1-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

Rhode Island; comments due by 10-31-01; published 10-1-01

Vermont; comments due by 10-29-01; published 9-28-01

Virginia; comments due by 11-2-01; published 10-3-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

West Virginia; comments due by 11-2-01; published 10-3-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

West Virginia; comments due by 11-2-01; published 10-3-01

Air pollution; standards of performance for new stationary sources:

Industrial-commercial-institutional steam generating units; comments due by 10-31-01; published 10-1-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Industrial-commercial-institutional steam generating units; comments due by 10-31-01; published 10-1-01

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Texas; comments due by 10-31-01; published 10-1-01

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Texas; comments due by 10-31-01; published 10-1-01

ENVIRONMENTAL PROTECTION AGENCY

Air programs; State authority delegations:

Delaware; comments due by 11-1-01; published 10-2-01

ENVIRONMENTAL PROTECTION AGENCY

Air programs; State authority delegations:

Delaware; comments due by 11-1-01; published 10-2-01

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 11-1-01; published 10-2-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and

promulgation; various States:
California; comments due by 11-2-01; published 10-3-01

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 11-2-01; published 10-3-01
Hazardous waste program authorizations:
Missouri; comments due by 10-31-01; published 10-1-01

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste program authorizations:
Missouri; comments due by 10-31-01; published 10-1-01

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste:
Identification and listing—
Mixture and derived-from rules; treatment, storage, or disposal; comments due by 11-2-01; published 10-3-01

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste:
Identification and listing—
Mixture rule revisions; comments due by 11-2-01; published 10-3-01
Solid wastes:
Products containing recovered materials; comprehensive procurement guideline; comments due by 10-29-01; published 8-28-01
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 11-2-01; published 10-3-01
Water programs:
Pollutants analysis test procedures; guidelines—
Biological pollutants in ambient water; analytical methods; comments due by 10-29-01; published 8-30-01
Water supply:
National primary drinking water regulations—
Arsenic; compliance and new source contaminants monitoring; clarifications; comments due by 10-31-01; published 7-19-01
Arsenic; compliance and new source contaminants monitoring; clarifications; correction; comments due by 10-31-01; published 8-16-01
Arsenic; compliance and new source contaminants monitoring; clarifications; comments due by 10-31-01; published 10-5-01

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
In-region interexchange services provided by incumbent independent local exchange carriers; special affiliate requirements; biennial regulatory review; comments due by 11-1-01; published 10-2-01
Telecommunications carriers' use of customer proprietary network and other customer information; non-accounting safeguards implementation; comments due by 11-1-01; published 10-2-01
Digital television stations; table of assignments:
Minnesota; comments due by 10-29-01; published 9-14-01
Pennsylvania; comments due by 10-29-01; published 9-14-01
South Carolina; comments due by 10-29-01; published 9-14-01
Radio stations; table of assignments:
Tennessee; comments due by 10-29-01; published 9-18-01
Texas; comments due by 10-29-01; published 9-18-01
Various States; comments due by 10-29-01; published 9-18-01

FEDERAL HOUSING FINANCE BOARD
Affordable Housing Program; amendments; comments due by 11-2-01; published 10-3-01
Federal home loan bank system:
Multiple Federal home loan bank memberships; comments due by 11-2-01; published 10-3-01

HEALTH AND HUMAN SERVICES DEPARTMENT
Food for human consumption:
Food labeling—
Allergens presence and labeling in foods; meeting; comments due by 10-29-01; published 7-25-01

INTERIOR DEPARTMENT
Outer Continental Shelf; oil, gas, and sulphur operations:
Pipeline modifications and repairs; safety measures and procedures; comments due by 10-29-01; published 8-28-01

LABOR DEPARTMENT
Aliens:
Labor certification and petition process for temporary employment of nonimmigrant aliens in U.S. agriculture; fee structure modification; comments due by 10-29-01; published 9-27-01

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Acquisition regulations:
Broad agency announcements; safety and risk-based management; comments due by 10-30-01; published 8-31-01

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Prompt corrective action and insurance requirements—
Financial and Statistical Reports; filing requirements; comments due by 11-1-01; published 8-3-01

INTERIOR DEPARTMENT
Indian Gaming Regulatory Act:
Environment, public health, and safety; comments due by 10-31-01; published 10-2-01

TRANSPORTATION DEPARTMENT
Boating safety regulations review; comments due by 10-29-01; published 8-30-01

TRANSPORTATION DEPARTMENT
Airworthiness directives:
Agusta; comments due by 10-29-01; published 8-30-01

TRANSPORTATION DEPARTMENT
Airworthiness directives:
Agusta S.p.A.; comments due by 10-29-01; published 8-29-01
Boeing; comments due by 10-29-01; published 8-29-01

TRANSPORTATION DEPARTMENT
Airworthiness directives:
Eurocopter France; comments due by 10-29-01; published 8-29-01
EXTRA Flugzeugbau GmbH; comments due by 10-31-01; published 9-26-01
Fairchild; comments due by 10-29-01; published 8-21-01
Pratt & Whitney; comments due by 10-29-01; published 8-30-01
Raytheon; comments due by 10-31-01; published 8-27-01

TRANSPORTATION DEPARTMENT
Airworthiness standards:
Special conditions—
Dassault Aviation Mystere-Falcon 50 airplanes; comments due by 10-29-01; published 9-27-01

TRANSPORTATION DEPARTMENT
Class E airspace; comments due by 10-29-01; published 8-29-01

TRANSPORTATION DEPARTMENT
Class E airspace; comments due by 11-1-01; published 9-24-01
; comments due by 11-1-01; published 9-24-01

TREASURY DEPARTMENT
Income taxes:
Constructive and property transfers to third party on behalf of spouse; comments due by 11-1-01; published 8-3-01
Tax shelter rules IIst; modification; comments due by 10-31-01; published 8-7-01

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1583/P.L. 107–49
To designate the Federal building and United States courthouse located at 121 West Spring Street in New Albany, Indiana, as the ''Lee H. Hamilton Federal Building and United States Courthouse''. (Oct. 15, 2001; 115 Stat. 262)

H.R. 1860/P.L. 107–50
Small Business Technology Transfer Program Reauthorization Act of 2001 (Oct. 15, 2001; 115 Stat. 263)

H.J. Res. 42/P.L. 107–51
Memorializing fallen firefighters by lowering the American flag to half-staff in honor of the National Fallen Firefighters Memorial Service in Emmitsburg, Maryland. (Oct. 16, 2001; 115 Stat. 267)

H.J. Res. 51/P.L. 107–52
Approving the extension of nondiscriminatory treatment with respect to the products of the Socialist Republic of Vietnam. (Oct. 16, 2001; 115 Stat. 268)

Last List October 16, 2001

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L
Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.