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Contents

Federal Register

Vol. 66, No. 236

Friday, December 7, 2001

Agriculture Department
See Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 63520

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Equines; commercial transportation to slaughter facilities, 63587–63617

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Commerce Department
See International Trade Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 63520–63521

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 63524–63525
Turkey, 63526

Customs Service
RULES
Merchandise, special classes:
Import restrictions—
Bolivia; archaeological and ethnological materials, 63490–63499

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 63526
Grants and cooperative agreements; availability, etc.:
Talent Search Program, 63526–63527

Employment Standards Administration
See Wage and Hour Division
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 63564–63565

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
Biological and Environmental Research Advisory Committee, 63527–63528
Grants and cooperative agreements; availability, etc.:
University Research for Geothermal Program, 63528

Environmental Protection Agency
RULES
Air pollution control:
State operating permits programs—
California, 63503–63512
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 63533–63534
Weekly receipts, 63532–63533
Pesticide, food, and food additive petitions:
Ecolab Inc., 63534–63537
Toxic and hazardous substances control:
New chemicals—
Receipt and status information, 63537–63544

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Class E airspace; correction, 63489
VOR Federal airways and jet routes, 63489–63490
PROPOSED RULES
Federal airways, 63517–63518
NOTICES
Meetings:
RTCA, Inc., 63582

Federal Communications Commission
RULES
Common carrier services:
Satellite communications—
18 GHz band redesignation, satellite earth stations blanket licensing in Ka-band, and additional spectrum allocation for broadcast satellite-service use, 63512–63516
NOTICES
Emergency Alert Systems:
Decoders for deaf and hard of hearing persons; use at low power FM broadcast stations and small cable television systems, 63544
Rulemaking proceedings; petitions filed, granted, denied, etc., 63545

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Rocky Mountain Power, Inc., et al., 63529–63531
Environmental statements; notice of intent:
Texas Eastern Transmission, LP, 63531–63532
Applications, hearings, determinations, etc.:
Michigan Gas Storage Co., 63528
Nevada Power Co. et al., 63528–63529

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Cross Harbor Freight Movement Project, NY and NJ, 63582–63583
Desha County et al., AR, 63583

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 63545

Federal Railroad Administration
NOTICES
Environmental statements; notice of intent:
Cross Harbor Freight Movement Project, NY and NJ, 63582–63583

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 63545
Formations, acquisitions, and mergers, 63545

Federal Trade Commission
NOTICES
Fair Credit Reporting Act:
Disclosure charges, 63545–63546

Fish and Wildlife Service
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Oil and gas industry activities; polar bears, 63548

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Monensin, 63500
Sponsor name and address changes—
Phibro Animal Health, Inc., 63499–63500
PROPOSED RULES
Animal drugs, feeds, and related products:
Imported food products of animal origin; drug residue tolerances, 63519
NOTICES
Reports and guidance documents; availability, etc.:
Medical devices—
Cardiac ablation catheters generic arrhythmia indications for use, 63546–63547

General Accounting Office
NOTICES
Financial management systems:
Joint Financial Management Improvement Program—
Acquisition/financial systems interface requirements; exposure draft; comment request, 63546

Health and Human Services Department
See Food and Drug Administration

Housing and Urban Development Department
NOTICES
Grant and cooperative agreement awards:
Indian Housing Drug Elimination Program; correction, 63547
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 63548

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 63560–63564
30317

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 63585–63586
Meetings:
Citizen Advocacy Panels—
New York Metro District, 63586

International Trade Administration
NOTICES
Antidumping:
Corrosion-resistant carbon steel flat products from—
Korea, 63521–63522
Silicomanganese from—
Kazakhstan and India, 63522–63523
Countervailing duties:
Cold-rolled carbon steel flat products from—
Various countries, 63523–63524

International Trade Commission
NOTICES
Import investigations:
Bar clamps, bar clamp pads, and related packaging, display, and other materials, 63558–63559
Semiconductor timing signal generator devices, components, and devices containing same, 63559–63560
Meetings; Sunshine Act, 63560

Justice Department
See Immigration and Naturalization Service

Labor Department
See Employment Standards Administration
See Wage and Hour Division

Land Management Bureau
NOTICES
Environmental statements; notice of intent:
Colorado Canyon National Conservation Area, CO and UT; management plan, 63548–63549

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
General Motors Corp., 63584–63585

National Park Service
NOTICES
Environmental statements; availability, etc.:
Lassen Volcanic National Park, CA, 63549–63550
Meetings:
Aniakchak National Monument Subsistence Resource Commission, 63550–63551
Gates of Arctic National Park Subsistence Resource Commission, 63551
Wrangell-St. Elias National Park Subsistence Resource Commission, 63551–63552
National Register of Historic Places:
Pending nominations, 63552–63554
Native American human remains and associated funerary objects:
Capitol Reef National Park, UT—
Buffalo-hide shields from Torrey, UT, 63554–63557

Chugach National Forest, AK—
Harpoon points, etc., from Esther and Campbell Bays, AK, 63557
Michael C. Carlos Museum, Emory University, GA—
Inventory from Bartow County, GA, 63557–63558

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Consumers Energy Co., 63567–63568
Applications, hearings, determinations, etc.:
Rochester Gas & Electric Corp., 63565–63566
Vermont Yankee Nuclear Power Corp., 63566–63567

Pension Benefit Guaranty Corporation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 63568

Presidential Documents
ADMINISTRATIVE ORDERS
Refugee admissions, fiscal year 2002 (Presidential Determination No. 02-04 of November 21, 2001), 63487–63488

Public Health Service
See Food and Drug Administration

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
Touchstone Variable Series Trust et al., 63572–63581
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 63581–63582
Applications, hearings, determinations, etc.:
Public utility holding company filings, 63569–63572

Small Business Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 63582

State Department
NOTICES
Terrorist organization designations under USA PATRIOT Act; list, 63619–63620

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

Thrift Supervision Office
PROPOSED RULES
Savings and loan holding companies:
Authority to engage in financial activities, 63517

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration

Treasury Department
See Customs Service
See Internal Revenue Service
See Thrift Supervision Office

Wage and Hour Division
RULES
Civil monetary penalties, inflation adjustment, 63501–63503

Separate Parts In This Issue

Part II
Agriculture Department, Animal and Plant Health Inspection Service, 63587–63617

Part III
State Department, 63619–63620

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.

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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 Orders:
Presidential Determinations:
No. 02–07 of November 21, 2001 63487

9 CFR
70.....63588
88.....63588

12 CFR
Proposed Rules:
584.....63517

14 CFR
71 (2 documents) 63489
Proposed Rules:
71.....63517

19 CFR
12.....63490

21 CFR
510.....63499
558 (2 documents) 63499, 63500
Proposed Rules:
500.....63519

29 CFR
578.....63501
579.....63501
580.....63501

40 CFR
70.....63503

47 CFR
25.....63512
101.....63512

Federal Register
Vol. 66, No. 236
Friday, December 7, 2001

Presidential Documents

Title 3—

The President

Presidential Determination No. 02–04 of November 21, 2001

Presidential Determination on FY 2002 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act, and Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act, as Amended

Memorandum for the Secretary of State

In accordance with section 207 of the Immigration and Nationality Act (the ''Act'') (8 U.S.C. 1157), as amended, and after appropriate consultations with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 70,000 refugees to the United States during FY 2002 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 2002 with Federal resettlement assistance under the Amerasian immigrant admissions program, as provided below.

The 70,000 admissions numbers shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia region shall include persons admitted to the United States during FY 2002 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members); provided further that the number allocated to the former Soviet Union shall include persons admitted who were nationals of the former Soviet Union, or in the case of persons having no nationality, who were habitual residents of the former Soviet Union, prior to September 2, 1991:

Africa	22,000
East Asia	4,000
Eastern Europe	9,000
Former Soviet Union	17,000
Latin America/Caribbean	3,000
Near East/South Asia	15,000

Unused admissions numbers allocated to a particular region may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and directed to consult with the Judiciary Committees of the Congress prior to reallocation of numbers from one region to another.

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

An additional 10,000 refugee admissions numbers shall be made available during FY 2002 for the adjustment to permanent resident status under section

290(b) of the Immigration and Nationality Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

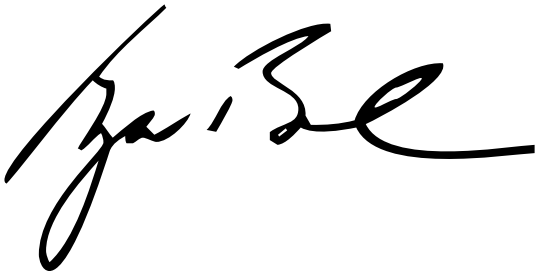
In accordance with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)) and after appropriate consultation with the Congress, I also specify that, for FY 2002, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

(a) Persons in Vietnam

(b) Persons in Cuba

(c) Persons in the former Soviet Union

You are authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, November 21, 2001.

[FR Doc. 01–30449
Filed 12–6–01; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register

Vol. 66, No. 236

Friday, December 7, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–13]

Amendment of Class E Airspace; Dayton, TN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction

SUMMARY: This action corrects an error in the geographic coordinates of a final rule amending the Class E airspace at Dayton, TN, that was published in the **Federal Register** on November 27, 2001, (66 FR 59136), 01–ASO–13.

EFFECTIVE DATE: 0901 UTC, February 21, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 01–29480, Airspace Docket No. 01–ASO–13, published on November 27, 2001 (66 FR 59136), amended Class E5 airspace at Dayton, TN. An error was discovered in the geographic coordinates for the Bradley Memorial Hospital point in space. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Class E5 airspace area at Dayton, TN, incorporated by reference at (14 CFR 71.1 and published in the **Federal Register** on November 27, 2001 (66 FR 59136), is corrected as follows:

§ 71.1 [Corrected]

ASO TN E5 Dayton, TN [CORRECTED]

1. On page 39136, column 3, under Bradley Memorial Hospital, Cleveland, TN, correct the geographic coordinates ''(Lat. 35°10′45″ N, long 84°52′56″ W)'' to read ''(Lat. 35°10′52″ N, long. 84°52′56″ W)''.

* * * * *

Issued in College Park, Georgia, on November 27, 2001.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–30173 Filed 12–06–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10877; Airspace Docket No. 01–ANM–13]

RIN 2120–AA66

Revision of Legal Descriptions of Multiple Federal Airways in the Vicinity of Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal descriptions of four Federal airways and eight jet routes that use the Salt Lake City, UT, very high frequency omnidirectional range/tactical air navigation (VORTAC) in their route structure. Currently, the Salt Lake City VORTAC and the Salt Lake City International Airport, UT, share the same location identifier. The fact that the VORTAC and the airport are not collocated has led to confusion among users. To eliminate this confusion, the Salt Lake City VORTAC will be renamed the ''Wasatch VORTAC.'' All airways with ''Salt Lake City VORTAC'' included in their legal descriptions will be amended, concurrent with the effective date of this final rule, to reflect the name change.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 CFR part 71 (part 71) by amending the legal descriptions of four Federal airways and eight jet routes that have ''Salt Lake City VORTAC'' included as part of their route structure. Currently, the Salt Lake City, UT, VORTAC and the Salt Lake City International Airport, UT, share the same location identifier. The fact that the VORTAC and the airport are not collocated has led to confusion among users. To eliminate this confusion, the Salt Lake City VORTAC will be renamed the ''Wasatch VORTAC.'' All airways with ''Salt Lake City VORTAC'' included in their legal descriptions will be amended to reflect the name change. The name change of the VORTAC will coincide with the effective date of this rulemaking action.

Since this action merely involves editorial changes in the legal description of three Federal airways, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet Routes and domestic VOR Federal airways are published in paragraphs 2004 and 6010(a), respectively, of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The jet routes and airways listed

in this document will be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854,24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–9 [Revised]

From Los Angeles, CA, via Daggett, CA; Las Vegas, NV; INT Las Vegas 046° and Milford, UT, 213° radials; Milford; Fairfield, UT; Wasatch, UT; Dubois, ID; Dillon, MT, to Great Falls, MT.

* * * * *

J–11 [Revised]

From Tucson, AZ, via INT Tucson 320° and Phoenix, AZ, 155° radials; Phoenix; Drake, AZ; Bryce Canyon, UT; Fairfield, UT; to Wasatch, UT.

* * * * *

J–12 [Revised]

From Seattle, WA, via Ephrata, WA; Donnelly, ID; Twin Falls, ID; Wasatch, UT; Fairfield, UT; to Grand Junction, CO.

* * * * *

J–15 [Revised]

From Humble, TX, via INT Humble 269° and Junction, TX, 112° radials; Junction; Wink, TX; Chisum, NM; Corona, NM; Albuquerque, NM; Farmington, NM; Grand Junction, CO; Wasatch, UT; Twin Falls, ID; Boise, ID; Kimberly, OR; INT Kimberly 288° and Battle Ground, WA, 136° radials; to Battle Ground.

* * * * *

J–56 [Revised]

From Mina, NV; Wasatch, UT; Hayden, CO; INT Hayden 090° and Falcon, CO, 317° radials; to Falcon.

* * * * *

J–116 [Revised]

From Wasatch, UT via Fairfield, UT; Meeker, CO; to Falcon, CO.

* * * * *

J–154 [Revised]

From Battle Mountain, NV; Bonneville, UT; Wasatch, UT; Rock Springs, WY; INT Rock Springs 106° and Mile High, CO, 322° radials; Mile High; INT Mile High 133° and Garden City, KS, 296° radials; to Garden City.

* * * * *

J–173 [Revised]

From Wasatch, UT, to Meeker, CO.

* * * * *

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–21 [Revised]

From Santa Catalina, CA, via Seal Beach, CA; Paradise, CA; 35 miles, 7 miles wide (3 miles SE and 4 miles NW of centerline), Hector, CA; Boulder City, NV; Morman Mesa, NV; Milford, UT; Delta, UT; Fairfield, UT; Wasatch, UT; Ogden, UT; Malad City, ID; Pocatello, ID; Idaho Falls, ID; INT of Idaho Falls, 030° and DuBois, ID, 157° radials; DuBois; Dillon, MT; Whitehall, MT; Helena, MT; Great Falls, MT; Cut Bank, MT; INT Cut Bank 348° radial and the United States/Canadian border.

* * * * *

V–32 [Revised]

From Mustang, NV; via Hazen, NV; Lovelock, NV; INT Lovelock 057° and Battle Mountain, NV, 264° radials; Battle Mountain; Bullion, NV; Bonneville, UT; Wasatch, UT; 17 miles, 45 miles, 105 MSL, Fort Bridger, WY.

* * * * *

V–101 [Revised]

From Gill, CO, via Hayden, CO; Vernal, UT; 25 miles, 25 miles 120 MSL, 22 miles 145 MSL, 20 miles 125 MSL, Wasatch, UT; Ogden, UT; 61 miles, 26 miles, 109 MSL, Burley, ID; INT Burley 344° and Pocatello, ID, 286° radials; Hailey, ID, NDB; to the INT Pocatello 286° and Twin Falls, ID, 355° radials.

* * * * *

V–484 [Revised]

From Hailey, ID, NDB; INT Twin Falls, ID, 007° and Burley, ID, 323° radials; Twin Falls, 49 miles, 34 miles 114 MSL, Wasatch, UT; 25 miles, 31 miles, 125 MSL, Myton, UT; 14 miles, 79 MSL, 33 miles, 100 MSL, Grand Junction, CO; Blue Mesa, CO; INT Blue Mesa 110° and Alamosa, CO, 339° radials; Alamosa.

Issued in Washington, DC, November 29, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–30359 Filed 12–6–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 12

[T.D. 01–86]

RIN 1515–AC95

Import Restrictions Imposed on Archaeological and Ethnological Materials From Bolivia

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the imposition of import restrictions on certain archaeological and ethnological materials originating in Bolivia. These restrictions are being imposed pursuant to an agreement between the United States and Bolivia that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document amends the Customs Regulations by adding Bolivia to the list of countries for which an agreement has been entered into for imposing import restrictions. The document also contains the ''Designated List of Archaeological and Ethnological Material From Bolivia'' that describes the types of articles to which the restrictions apply.

EFFECTIVE DATE: December 7, 2001.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Joseph Howard, Intellectual Property Rights Branch (202) 927–2336; (Operational Aspects) Al Morawski, Trade Operations (202) 927–0402.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other

countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the ''Convention on Cultural Property Implementation Act'' (Pub.L. 97–446, 19 U.S.C. 2601 *et seq.*) (''the Act''). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and to achieving greater international understanding of mankind's common heritage.

During the past several years, import restrictions have been imposed on archaeological and ethnological artifacts of a number of signatory nations. These restrictions have been imposed as a result of requests for protection received from those nations as well as pursuant to bilateral agreements between the United States and other countries. More information on import restrictions can be found on the International Cultural Property Protection Web site (*http://exchanges.state.gov/education/culprop)*.

Import restrictions are now being imposed on certain archaeological and ethnological materials originating in Bolivia as the result of a bilateral agreement entered into between the United States and Bolivia (the Agreement). The Agreement was entered into on December 4, 2001, pursuant to the provisions of 19 U.S.C. 2602. The archaeological materials subject to the Agreement represent pre-Columbian cultures of Bolivia and range in date from approximately 10,000 B.C. to A.D. 1532. The ethnological materials subject to the Agreement are from the Colonial and Republican periods and range in date from A.D. 1533 to 1900.

Accordingly, § 12.104g(a) of the Customs Regulations is being amended to indicate that restrictions have been imposed pursuant to the Agreement between the United States and Bolivia. This document amends the regulations by imposing import restrictions on certain archaeological and ethnological materials from Bolivia as described below.

It is noted that emergency import restrictions on antique ceremonial textiles from Coroma, Bolivia were previously imposed but are no longer in effect.(See T.D. 89–37, published in the **Federal Register** (54 FR 17529) on March 14, 1989, and T.D. 93–34 published in the **Federal Register** (58 FR 29348) on May 20, 1993.) The restrictions published in this document are separate and independent from these previously imposed emergency import restrictions. This document removes the reference in the Customs Regulations in § 12.104g(b) to these expired emergency import restrictions.

Material Encompassed in Import Restrictions

In reaching the decision to recommend protection for the cultural patrimony of Bolivia, the Acting Assistant Secretary for Educational and Cultural Affairs of the U. S. State Department determined, pursuant to the requirements of the Act, that the cultural patrimony of Bolivia is in jeopardy from the pillage of archaeological and ethnological materials and this pillage is widespread, on-going, and systematically destroying the non-renewable archaeological and ethnological record of Bolivia.

The archaeological materials which are the subject of the Acting Assistant Secretary's determination represent pre-Columbian cultures of Bolivia, range in date from approximately 10,000 B.C. to A.D. 1532, and include: (1) Objects comprised of textiles, featherwork, ceramics, metals, and lithics (stone); and (2) perishable remains, such as bone, human remains, wood, and basketry that represent cultures including but not limited to the Formative Cultures (such as Wankarani and Chiripa, Tiwanaku, and Inca), Tropical Lowland Cultures, and Aymara Kingdom. The ethnological materials which are the subject of the Acting Assistant Secretary's determination represent the Colonial and Republican periods, range in date from A.D. 1533 to 1900, and include: (1) Objects of indigenous manufacture and ritual, sumptuary, or funeral use related to the pre-Columbian past, which may include masks, wood, musical instruments, textiles, featherwork, and ceramics; and (2) objects used for rituals and religious ceremonies, including Colonial religious art, such as paintings and sculpture, reliquaries, altars, altar objects, and liturgical vestments.

The Acting Assistant Secretary also determined, pursuant to the requirements of the Act, that the archaeological materials covered by the Agreement are of cultural significance because they derive from numerous cultures that developed autonomously in the Andean region and attained a high degree of technological, agricultural, and artistic achievement, but whose underlying political, economic, and religious systems remain poorly understood. Also, the archaeological materials represent a legacy that serves as a source of identity and pride for the modern Bolivian nation. The Acting Assistant Secretary determined that the ethnological materials play an essential and irreplaceable role in indigenous Bolivian communities and are vested with symbolic and historic meaning. They are used in ceremonial and ritualistic practices and frequently serve as marks of identity within the society. Serving as testimony to the continuation of pre-Columbian cultural elements despite European political domination, they form an emblem of national pride in a society that is largely indigenous.

Also, pursuant to the requirements of the Act, the Acting Assistant Secretary determined that Bolivia has taken measures consistent with the Convention to protect its cultural patrimony, and that the application of import restrictions set forth in Section 307 of the Act is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.

Designated List

The bilateral agreement between Bolivia and the United States covers the categories of artifacts described in a ''Designated List of Archaeological and Ethnological Material from Bolivia,'' which is set forth below. Importation of articles on this list is restricted unless the articles are accompanied by an appropriate export certificate issued by the Government of Bolivia or documentation demonstrating that the articles left the country of origin prior to the effective date of the import restriction.

List of Archaeological and Ethnological Materials From Bolivia

Archaeological Materials

I. Pre-Columbian Ceramics

Ceremonial, sumptuary, and funerary ceramics representing the following principal cultures:

A. Formative Cultures (2000 B.C.–A.D. 400)

Decoration: Ceramics are monochrome in appearance from the use of red, tan, or pale orange slip against a fire-clouded surface; some forms are black and finely polished. Some show use of polychrome slip paints in red, orange, black, and yellow. The surface exterior is polished or burnished. There is some use of applique and incision.

Forms: Plates (*ch'illami*), open bowls, vases, double-cylinder vases with bridge handles, beakers with vertical handles, pitchers, incense burners, portrait jars, handled funerary jars, boot-shaped jars, tripod-base jars, canoe-shaped bowls, double-spout bottles, effigy jars in the shape of humans, animals and birds, and figurines.

Size: Varies according to form; miniatures average 2 cm. in height while over-sized *ch'illamis* can average 70 cm. in width/rim diameter.

Identifying features: Formative Period ceramics are plain in appearance but their shapes are distinct. Some are miniature or over-sized (bowls, or *ch'illami*); asymmetrical or lop-sided (boot-shaped jars); and unconventional (beakers with vertical handles, canoe-shaped vessels, ''genie lamp'' shape).

Styles: Formative Period style ceramics are distributed throughout Bolivia. These include: Chiripa, Fluke, Kaluyo/Qaluyu, Wankarani, Salar de Uyuni, Urus, Chipayas, Tupuraya, Mojocoya, Pocona, Mizque, Aiquile, Beni, Pando, Santa Cruz regions, and Mojeñas styles. Other terms used include: Quillacollo, Cliza, Llampara, Inquisivi, Navillera, Tapacarí, Capinota, Parotani, Chullpa Pampa, Sacaba, Tiraque, Chullpa Pata, Santa Lucia, Arani, Sierra Mokho, and Sauces.

B. Wankarani (1600 B.C.–A.D. 100)

Decoration: Typically monochrome, slipped vessels in red or black and well-polished. Black stripes against a red surface are also common. Incision, punctate, and applique are used for surface decoration on effigy vessels.

Forms: Plates (*ch'illami*), open bowls, vases, beakers with vertical handles, pitchers, incense burners, portrait jars, double-spout bottles, funerary urns, ladles, conical vases with circular bases, effigy jars in the shape of humans, animals and birds, and figurines.

Size: Varies according to form.

Identifying features: Plain forms and monochrome surface decoration that is well-polished. Most rim edges show a slight, rounded scallop that often gives the appearance of a misshapen vessel.

Styles: Wankarani ceramics are limited in distribution to northeast of Lake Titicaca and north of Lake Poopo. The term Wankarani is sometimes used broadly to refer to all Formative Period ceramics.

C. Chiripa (1500 B.C.–A.D. 200)

Decoration: Generally red or black slipped surfaces, with cream, yellow, or black painted geometric designs. Effigy vessels and fineware jars are often painted and incised. Yellow-painted, incised, and modeled flat-based jars are distinct.

Forms: Bowls, vases, pitchers, jars, effigy jars, and figurines. Flat-based restricted bowls with small, animal-shaped lug handles are common.

Size: Varies according to form.

Identifying features: Yellow-or cream-painted on red, incised, and modeled flat-based jars and bowls are distinct. The walls of the vessels are thick (5 cm. to 8 cm.) and the rims are thickened. The painted decoration is geometric, rendered in wide strokes.

Style: Linked to the Wankarani and Tiwanaku I styles of the Bolivian highlands.

D. Tiwanaku (A.D. 600–1200)

Decoration: Well-fired (hard), polychrome pottery in black on red or combined black, red, yellow, orange, gray, brown, and white. Design motifs include human and divine representations, pumas, jaguars, birds, and geometric elements. On many beakers, the design is complex. Plastic decoration includes modeling, incision, and applique.

Forms: Bowls, plates, urns, vases, *lebrillos*, flat-bottomed beakers, incense burners (*sahumerios*), lamps (*mechero*), effigy jars, portrait vessels, bottles, flat-bottomed bottles, challadores, and some tripod forms. The rim edges of some beakers are scalloped.

Size: Varies according to form; storage jars are known to be up to one meter in height.

Identifying features: Tiwanaku finewares are typically polychrome and often exhibit complex images of cats, llamas, or personages bearing a staff in each outstretched arm. Beakers and plates often bear an open-mouthed feline or llama adornment along the rim edge. Some decorated jars (*lebrillos*) are short-bodied with disproportionately large, outflaring rims.

Styles: Tiwanaku I-V, Qalasasaya, Qeya, Yampara, Mollo, Omereque, Uruquilla, Quillacasa, Yura, Tupuraya, Ciaco, Mojocoya, Lakatambo, Colla, and Presto-Puno. Linked to the Wari style of Ayacucho, Peru, and the earlier Chiripa style of Bolivia.

E. Aymara Kingdoms (A.D. 1200–1450)

Decoration: Monochrome and polychrome painted vessels utilizing red, grey, orange, white, black, and reddish-brown for intricate geometric designs.

Forms: Bowl, vase (*lebrillo*), pitcher, jar, figurine, cup, beaker (*kero*), portrait vessel, plate, oil lamp (*mechero*), incense burner (*sahumerio*), and challador.

Size: Varies according to form.

Identifying features: After the demise of the Tiwanaku empire, local ceramic traditions re-emerged. Design elements such as color and placement on the vessel are retained from Tiwanaku styles, but religious personages and deities are replaced by abstract, geometric designs.

Styles: Mollo, Pacajes, Uruquilla, Yuna, Chaqui, Lupaqa, Karanga, Charcas, Killaqa, Karanka, Kara Kara, Ciaco, Chuyes, Tomatas, Yampará, and Mizque Regional. Also referred to as ''Decadent Tiwanaku.''

F. Inca (A.D. 1450–1533)

Decoration: Monochrome and polychrome painted vessels utilizing red, grey, orange, white, black, and reddish-brown for intricate geometric designs arranged in bands.

Forms: Cook pot, bowl, vase (*lebrillo*), pitcher, jar (*aríbalo*), figurine, cup, kero (*beaker*), portrait vessel, plate, oil lamp (*mechero*), incense burner (*sahumerio*), funerary urn, bottle (*angara*), challador, storage vessel.

Size: Varies according to form; funerary urns and storage vessels can average one meter in height.

Identifying features: The most recognizable form of these ceramics is the flat-based beaker or *kero*. These average about 10 cm. in height and are painted with complex geometric and naturalistic designs in polychrome colors, often adorned at or near the rim by a modeled puma, llama, or jaguar head. *Keros* are often decorated in the style called Tocapu, an Inca design consisting of horizontally and vertically arranged squares with abstract and geometric motifs in each square.

Styles: Inca, Yampará, Lakatambo, Colla, Yura, and Pacajes.

G. Tropical Lowland Cultures (1400 B.C.–A.D. 1533):

Decoration: Often plain slipped in colors of red, tan, cream, orange, black, and yellow with bands of geometric designs.

Forms: Bowls, vases, pitchers, jars, funerary urn, plate, oil lamp, and challador.

Size: Varies according to form; some funerary urns are over one meter in height.

Identifying features: Soft pastes containing organic inclusions.

Styles: Casarabe, Mamoré, San Juán, Palmar, Vanegas, and Chané.

H. Ceramic Musical Instruments (Formative Cultures—Inca, including Tropical Lowland Cultures)

Decoration/Form: Ceramic musical instruments include whistles, flutes, rattles, and panpipes. Often plain slipped in colors of red, tan, cream, orange, black, and yellow or painted with intricate polychrome designs.

Size: Panpipes range between 20 cm. and 120 cm.; whistles and rattles are typically hand size; flutes range from 20 cm. to 120 cm.

Styles and distribution: Whistle/flute (*ocarina* or *silbato*); Rattle (*sonajera*); Flute/panpipe (zampoña). Distributed throughout all parts of Bolivia.

II. Pre-Columbian Textiles

Ceremonial, sumptuary, and funerary textiles representing the following principal cultures:

A. Tiwanaku

1. Shawl/mantle (*awayo, ahuayo, lliclla, llacota*): Square or rectangular garment composed of two pieces of cloth sewn together. Woven from cotton and/or camelid fibers and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. Fabric designs include: (1) Stripes arranged across the cloth in a vertical or horizontal pattern; (2) repetitive arrangements of llamas or other animal motifs; (3) patterns created from tie-dye, checkerboards, and repetitive squares or cloth patchwork. Average size is one square meter.

2. Tunic (*unku, ccahua*): Man's ceremonial vestment constructed from one piece of cloth which is folded in half and sewn up the sides, leaving openings for the arms at the top and an opening in the middle for the head. Woven from cotton and/or camelid fibers, often in tapestry weave, and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. Designs are typically found in the hip, sleeve, and neck areas but there are more elaborate examples where designs cover the entire garment: (1) Stripes arranged across the cloth in a vertical or horizontal pattern; (2) repetitive arrangements of llamas or other animal motifs; (3) patterns created from tie-dye, checkerboards, repetitive squares or cloth patchwork. Average size is 135 cm. x 92 cm.

3. Belts and bag belts (*chumpi, wak'a*): Worn by both men and women, woven from cotton or camelid fibers in a variety of widths, lengths, and colors. Found in either a solid color or simple polychrome geometricized design. Bag belts are long rectangular sashes comprised of one piece of cloth folded length-wise that contain an opening in the top and are secured to the waist by braided straps.

4. Hat, headband: Includes polychrome caps, four-cornered hats with tassels (gorro), headbands, and small cloths sometimes used as head-coverings by women (icuña) which were either woven or knotted and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. When present, designs are geometric or depict highly stylized animals, such as llamas and other camelids.

5. Bag/pouch (*ch'uspa, huallquepo*): Carried by both men and women; woven from cotton or camelid fibers in a variety of widths, lengths and colors. Found in either a solid color or simple polychrome stripe pattern arrangement with geometric motifs. These bags are usually square (20 cm.) or rectangular with a woven carrying strap. They often contain small pockets on the pouch exterior and are decorated with tassels.

6. Cloth: Square, rectangular, or fragmentary cloth woven from cotton or camelid fibers, or constructed from soft tree bark or other natural fiber, and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. Some examples are striped in a vertical or horizontal pattern. Tapestry wall-hangings often exhibit complex geometric or animal designs arranged in repetitive patterns. Average size ranges between six square centimeters and six square meters. Cloth may be fragmentary, folded flat, or bundled (q'epi) for use in ritual ceremonies. Women's ritual cloth, called icuña or tari, is also included in this category.

7. *Featherwork:* Colorful, tropical feathers attached to leather, cloth, wood, or other material, such as basketry, to create adornments worn on the wrists, ankles, neck, waist, back, and head, including the lips and ears. Most typically found are headdresses, which may consist of small crowns (30 cm. average) or large, towering bonnets of feathers (80 cm.). This category also includes feather-covered ritual belts and textiles (35–70 cm.), fans (250 cm. long), staves or batons (145–250 cm.), basketry supports, and healer's amulets or photadi (80–250 cm.).

B. Aymara Kingdom

1. Shawl/mantle (*awayo, ahuayo, lliclla, llacota, iscayo*): Square or rectangular garment composed of two pieces of cloth sewn together. Woven from cotton or camelid fibers and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. Designs are typically stripes arranged across the cloth in a vertical or horizontal pattern or along the margins of the garment. Average size is one square meter.

2. Tunic (*unku, ccahua*): Man's ceremonial vestment constructed from one piece of cloth which is folded in half and sewn up the sides, leaving openings for the arms at the top and an opening in the middle for the head. Woven from cotton or camelid fibers and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. Designs are typically found in the hip, sleeve, and neck areas, but there are examples of more elaborate designs which cover the entire garment; plain vertical stripe designs across the garment are also known. Average size is 135 cm. x 92 cm.

3. Dress (*aksu/urku*): Woman's ceremonial vestment woven from camelid fiber constructed from one piece of cloth that is wrapped around the body. These are dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. The vestments are plain or striped. Average length is 1.5 meters.

4. Belts and bag belts (*chumpi, wak'a*): Worn by both men and women; woven from cotton or camelid fibers in a variety of widths, lengths, and colors. Found in either a solid color or simple polychrome geometricized design. Bag belts are long rectangular sashes comprised of one piece of cloth folded length-wise that contain an opening in the top and are secured to the waist by braided straps.

5. Hat (*chucu*) or headband: The Aymara chucu is a conical shaped cap that is attached to the head with a headband. These were woven from camelid fibers and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. When present, designs are geometric or depict highly stylized animals, such as llamas and other camelids.

6. Bag/pouch (*ch'uspa, huallquepo, istalla*): Carried by both men and women, woven from cotton or camelid fibers in a variety of widths, lengths, and colors. Found in either a solid color or simple polychrome stripe pattern arrangement with geometric motifs. These bags are usually square (20 cm.) or rectangular with a woven carrying strap. They often contain small pockets

on the pouch exterior and are decorated with tassels.

7. *Cloth:* Square, rectangular, or fragmentary cloth woven from cotton or camelid fibers, or constructed from soft tree bark or other natural fiber, and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. Some examples are striped in a vertical or horizontal pattern. Average size ranges between six square centimeters and six square meters. Cloth may be fragmentary, folded flat, or bundled (*q'epi*) for use in ritual ceremonies. Woman's ritual cloth, called *icuña* or *tari*, is also included in this category.

8. *Featherwork:* Consists of colorful, tropical feathers attached to leather, cloth, wood, or other material, such as basketry, to create adornments worn on the wrists, ankles, neck, waist, back, and head, including the lips and ears. Most typically found are head dresses, which may consist of small crowns (30 cm. average) or large, towering bonnets of feathers (80 cm.). This category also includes feather-covered ritual belts and textiles (35–70 cm.), fans (250 cm. long), staves or batons (145–250 cm.), basketry supports, and healer's amulets or *photadi* (80–250 cm.).

C. Inca

1. Shawl/mantle (*awayo, ahuayo, lliclla, llacota, iscayo*): Square or rectangular garment composed of two pieces of cloth sewn together. Woven from cotton or camelid fibers and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. Designs are typically stripes arranged across the cloth in a vertical or horizontal pattern or along the margins of the garment. Average size is one square meter.

2. Tunic (unku, ccahua): Man's ceremonial vestment constructed from one piece of cloth which is folded in half and sewn up the sides, leaving openings for the arms at the top and an opening in the middle for the head. Woven from cotton and/or camelid fibers, often in tapestry weave, and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. Designs are typically found in the hip, sleeve, and neck areas, but there are more elaborate examples where designs cover the entire garment: (1) Stripes arranged across the cloth in a vertical or horizontal pattern; (2) repetitive arrangements of llamas or other animal motifs; (3) patterns created from tie-dye, checkerboards, and repetitive squares or cloth patchwork. Tunics are often decorated in the style called Tocapu, an Inca design consisting of horizontally and vertically arranged squares with abstract and geometric motifs in each square. Average size is 135 cm. x 92 cm.

3. Dress (aksu/urku): Woman's ceremonial dress woven from camelid fiber and constructed from a rectangular, two-piece cloth that is wrapped around the body and tied at the waist. These are dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. The vestments are normally plain or striped, but during the Inca Period, many were made from cumbi (see Inca cloth) and decorated in striped patterns (usually horizontal) of geometric motifs. Average length is 1.5 meters.

4. Belts and bag belts (*chumpi, wak'a*): Worn by both men and women, woven from cotton or camelid fibers in a variety of widths, lengths, and colors. Found in either a solid color or simple polychrome geometricized design. Bag belts are long rectangular sashes comprised of one piece of cloth folded length-wise that contain an opening in the top and are secured to the waist by braided straps.

5. Hat (*chuc, ñañaca*) or headband: The *chucu* is a conical shaped cap that is attached to the head with a headband. These were woven from camelid fibers and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. When present, designs are geometric or depict highly stylized animals, such as llamas and other camelids. Ñañacas are head coverings worn by women that range in size between 10 square cm. and one square meter.

6. Bag/pouch (*ch'uspa, huallquepo, istalla*): Carried by both men and women; woven from cotton or camelid fibers in a variety of widths, lengths, and colors. Found in either a solid color or simple polychrome stripe pattern arrangement with geometric motifs. These bags are usually square (20 cm.) or rectangular with a woven carrying strap. They often contain small pockets on the pouch exterior and are decorated with tassels.

7. Cloth and *cumbi:* Square, rectangular, or fragmentary cloth woven from fine cotton and/or camelid fibers, or constructed from soft tree bark or other natural fiber, and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. Some examples are striped in a vertical or horizontal pattern. Average size ranges between six square centimeters and six square meters. Cloth may be fragmentary, folded flat, or bundled (*q'epi*) for use in ritual ceremonies. Woman's ritual cloth, called *icuña, tari,* or *ñañaca,* is also included in this category. *Cumbi,* or ''royal Inca cloth,'' refers to a finely woven, soft cloth produced for Inca dignitaries and is analogous to gold in value. Often baby alpaca wool was utilized.

8. Knotted Strings or *quipu* (*k'ipu, khipu*): *Quipus* are knotted string devices used to count and record. They were created from woven cotton and/or camelid fiber twine. They appear as sets of knotted strings in colors, such as tan, cream, brown, or coffee. *Quipus* range in size from hand-size to 2.5 meters in length.

9. *Featherwork:* Colorful, tropical feathers attached to leather, cloth, wood, or other material to create adornments worn on the wrists, ankles, neck, waist, back, and head, including the lips and ears. Most typically found are headdresses, which may consist of small crowns (30 cm. average) or large, towering bonnets of feathers (80 cm.). This category also includes feather-covered ritual belts and textiles (35–70 cm.), fans (250 cm. long), staves or batons (145–250 cm.), basketry supports, and healer's amulets or *photadi* (80–250 cm.).

D. Tropical Lowland Cultures

1. *Cloth:* Square, rectangular, or fragmentary cloth woven from cotton, or constructed from soft tree bark or other natural fiber, and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. Some examples are striped in a vertical or horizontal pattern. Average size ranges between six square centimeters and six square meters. Cloth may be fragmentary, folded flat, or bundled (*q'epi*) for use in ritual ceremonies.

2. *Featherwork:* Colorful, tropical feathers attached to leather, cloth, wood, or other material to create adornments worn on the wrists, ankles, neck, waist, back, and head, including the lips and ears. Most typically found are headdresses, which may consist of small, modest crowns (30 cm. average) or large, towering bonnets of feathers (80 cm.). This category also includes feather-covered ritual belts and textiles (35–70 cm.), fans (250 cm. long), staves or batons (145–250 cm.), and healer's amulets or *photadi* (80–250 cm.).

III. Pre-Columbian Metals

Ceremonial, sumptuary, and funerary metal objects produced and used by indigenous cultures from the Formative Period to A.D. 1533:

A. Axe: Made of copper, bronze, or gold. Generally flat with rounded head

and attached to a handle. Average size is 15 cm. long x 10 cm. wide. Formative Cultures—Inca.

B. Chisel: Made of copper, bronze, silver, gold, or tumbaga. Long stem(50 cm.) terminates at short bulbous head (10 cm.). Formative Cultures—Inca.

C. Clamps/tweezers: Made of copper, bronze, silver, gold, or tumbaga. Short stem (5 cm.) attaches to thin, flat heads, sometimes decorated (10 cm.). Formative Cultures—Inca.

D. Knife (*tumi*): Made of copper, bronze, silver, gold, or tumbaga. Flat surface with trapezoidal or squared handle and ovaloid or half-moon blade. Often incised, embossed, or applique decoration at base. Average size is 50 cm. in height. Formative Cultures—Inca.

E. Crown: Made of gold or silver. Generally flat metal with animal, bird, or geometric designs. Average size is 14 cm. in diameter. Formative Cultures—Inca.

F. Diadem: Made of gold or silver. Generally flat with animal, bird, or geometric designs. Average size is 35 cm. long × 45 cm. wide. Formative Cultures—Inca.

G. Bracelet: Made of copper, bronze, silver, gold, or tumbaga. Usually tubular form. Average size is 11 cm. in diameter. Formative Cultures—Inca.

H. Collar: Made of copper, bronze, silver, gold, or tumbaga. Normally a thin (4 cm.) band without clasps. Sometimes contains beads, disks, or pendants. Formative Cultures—Inca.

I. Earring or ear plug: Made of copper, bronze, silver, gold, or tumbaga. Generally discoid, ring shape, or pendant. Often inlaid with semi-precious stones or shell. Average size is 4 cm. in diameter. Tiwanaku—Inca.

J. Necklace: Made of copper, silver, gold, or tumbaga. Normally a thin(4 cm.) band without clasps. Sometimes contains beads, disks, or pendants. Formative Cultures—Inca.

K. Nose plug (*nariguera*): Made of copper, silver, gold, or tumbaga. Either ring shaped (plain, thin band) or a circular band with applique. Average size is 3 cm. in diameter. Formative Cultures—Inca.

L. Belt: Made of copper, bronze, silver, gold, or tumbaga. Usually consists of joined disks or chain links. Average size is one meter in length. Formative Cultures—Inca.

M. Figurine: Made of copper, bronze, silver, gold, or tumbaga. Usually human or animal (camelid) shape. Often found in pairs. Range in size from miniatures (2 cm. in height) to small statuettes (50 cm. in height). Lauraques are small (3 cm. to 7 cm.) amulet-like figurines of brass shaped like humans. Formative Cultures—Inca.

N. Mask: Made of copper, bronze, silver, gold, or tumbaga. Usually hammered, unadorned metal plaque that is sometimes inlaid with semi-precious stone or shell. Motifs include felines and humans or combinations of the two. Average size is 30 square cm.

O. Pectoral: Made of copper, silver, gold, or tumbaga. Flat surface with squared base and curved edge. Often decorated with fine incised lines. Average size is 70 cm. in height. Formative Cultures—Inca.

P. Sheet/plaque: Thin, hammered sheets of copper, silver, gold, or tumbaga. Often incised or embossed. Size varies. Formative Cultures—Inca.

Q. Garment pin (*tupu*): Made of copper, bronze, silver, gold, or tumbaga. A large pin with a long shaft (15 cm.) that usually terminates with flat, discoid head (4 cm.) often embossed with design. Tiwanaku—Inca.

IV. Pre-Columbian Stone

Ceremonial, sumptuary, and funerary stone objects produced and used by indigenous cultures from the Archaic period to A.D. 1533:

A. Projectile point: Made of red, black, brown, or transparent obsidian, chert, basalt, or other semi-precious stone. Leaf-shape, with or without stem. Average size is 7 cm. long x 3 cm. wide. Formative Cultures-Inca, including Tropical Lowland Cultures. Locally known as Vizcachani style.

B. Axe: Made of red, black, brown or transparent obsidian, chert, basalt, or other semi-precious stone. Leaf-shape, or rectangular shaped head, with or without notches where handle is attached. Average size is 12 cm. long x 6 cm. wide. Formative Cultures—Inca, including Tropical Lowland Cultures.

C. Sword: Made of red, black, brown or transparent obsidian, chert, basalt, or other semi-precious stone. Oblong, leaf-shaped, with or without notches where handle is attached. Formative Cultures—Inca, including Tropical Lowland Cultures.

D. Bead: Made of lapis lazuli, sodalite, obsidian, quartz, malachite, green stone, or other semi-precious stone. Usually are globular with fine aperture; pendants are also known. Average size is 1 cm., although much larger (4 cm.) and much smaller (2 mm.) sizes are recognized. Formative Cultures—Inca.

E. Lip plug: Made of lapis lazuli, sodalite, obsidian, quartz, malachite, green stone, or other semi-precious stone. Normally of discoidal shape. Average size is 2.5 cm. Formative Cultures—Inca, including Tropical Lowland Cultures.

F. Idol/*conopa*/figurine: Small human or animal shaped statuettes of turquoise, alabaster, lapis lazuli, sodalite, obsidian, quartz, malachite, green stone, or other semi-precious stone. Exterior is finely polished. Often found in matching pairs. Animals are usually camelids. Average size is 5 cm. in height. Formative Cultures—Inca, including Tropical Lowland Cultures.

G. Drinking vessel (*kero*): These are vase-shaped beakers, about 15 cm. in height, made from grey andesite or basalt. They often exhibit a puma or jaguar face on the vessel exterior or other stylized geometric design. Tiwanaku—Inca.

H. Snuff tablet: These are shallow, rectangular trays approximately 20 cm. long x 5 cm. wide x 1 cm. in height. May be constructed of andesite, basalt, alabaster, or other semi-precious stone, or of wood. These small trays are often carved with intricate designs and inlaid with semi-precious stone and/or shell. Formative Cultures—Inca, including Tropical Lowland Cultures.

I. Sculpture

1. Tenon head: Made of sandstone, basalt, granite, volcanic tuff, or other stone. These are carved ashlar stone heads, normally in the shapes of masked humans, jaguars, and pumas that either serve as architectural wall embellishments at temples and religious shrines or are portions of free-standing monoliths (*see also* stelae, monolith). Small round heads average 50 square cm., while the heads of columnar stelae average one square meter. Formative Cultures—Inca.

2. Animal-shaped: Made of sandstone, basalt, granite, volcanic tuff, or other stone. These are carved statues of the head and neck portions of llamas and other animals. Because they are not supported by a base or pedestal, they are unable to free-stand. Average size is 2 meters in height. Mostly Formative Cultures.

3. Plaques (*lapida*): Made of sandstone, basalt, granite, limestone, volcanic tuff, or other stone. These are rectangular ashlar slabs, 52 cm. long x 39 cm. wide x 3.5 cm. thick that are sculpted on both faces with elaborate human, animal, and geometric designs. Mostly Wankarani, Chiripa, and Formative Cultures.

4. Stelae: Made of sandstone, granite, andesite, or other stone. Includes free-standing columnar figures, inscribed columns, and door jambs. These are typically engraved with masked figures and other personages. Between one and three meters in height. Formative Cultures—Inca.

5. Monolith: Free-standing columnar sandstone, granite, andesite, or other

stone. Between one and three meters in height. Formative Cultures—Inca.

J. Rock art: Made of sandstone, basalt, granite, limestone, volcanic tuff or, other stone. These are portions of larger boulders or cave faces that have been chiseled off. They contain simple images, either painted, carved, or incised, of animals, humans, geometric, and abstract designs. Sizes range between hand-size and several square meters. Formative Cultures—Inca.

V. Pre-Columbian Shell Figurines

Ceremonial, sumptuary, and funerary shell figurines produced and used by indigenous cultures from the Formative period to A.D. 1533. Small human or animal shaped statuettes of *spondylus,* mother-of-pearl, and/or other shell. Exterior is finely polished. Often found in matching pairs. Animals are usually camelids. Average size is 5 cm. in height. Formative Cultures—Inca, including Tropical Lowland Cultures.

VI. Pre-Columbian Mummified Human Remains

Whole or partial mummified human remains, including modified skulls. May be wrapped in textiles. Individual limbs often contain bracelets and other precious metal and shell objects.

VII. Pre-Columbian Bone Objects

Ceremonial, sumptuary, and funerary bone objects produced and used by indigenous cultures from the Formative period to A.D. 1533:

A. Punch: Spike-like implement approximately 14 cm. long and 1 cm. wide that tapers to a pointed, sharp head. Formative Cultures—Inca, including Tropical Lowland Cultures.

B. Needle: Vary in size from 5 cm. to 15 cm. in length. Formative Cultures—Inca, including Tropical Lowland Cultures.

C. Hook: Semicircular implement of polished bone that often contains barb. Approximately 2 cm. in height. Formative Cultures—Inca, including Tropical Lowland Cultures.

D. Figurine: Usually human or animal (camelid) shape. Often found in matching pairs. Range in size from miniatures (2 cm. in height) to small statuettes (50 cm. in height). Formative Cultures—Inca.

E. Spindle: Long, spine-like object used in weaving to wind thread in conjunction with a spindle whorl. Appear as elongated needles with dull edges. Average size is 17 cm. long x 5 mm. wide. Formative Cultures—Inca.

F. Spindle whorl: Small globular, bead-shaped, or flat circular object that adds weight and balance to spindles used to wind thread. The whorl attaches to the spindle via an aperture in the whorl. Often engraved on the exterior with intricate designs. Bead size averages 2 square centimeters. Flat disks range from 3 cm. to 7 cm. in diameter. Formative Cultures—Inca.

G. Snuff tablet: These are shallow, rectangular trays approximately 20 cm. long x 5 cm. wide x 1 cm. in height. May be constructed of bone, stone, or wood. These small trays are often carved with intricate designs and inlaid with semi-precious stone and/or shell. Formative Cultures—Inca, including Tropical Lowland Cultures.

H. Inhaler tube: Small bones that have been hollowed, polished, and decorated on the exterior with engraved and polychrome painted designs. Average size is 8 cm. long x 3 cm. in diameter. Formative Cultures—Inca, including Tropical Lowland Cultures.

I. Amulet/talisman (*tembeta*): Can consist of a single bone engraved on the exterior with a design or a bead, amulet, or charm made from bone that has been polished, carved, and/or painted. Size ranges from 2 cm. to 40 cm. Formative Cultures—Inca, including Tropical Lowland Cultures.

J. Lip plug: Either ring shaped (plain, thin band) or disk shaped. Average size is 3 cm. in diameter. Formative Cultures—Inca, including Tropical Lowland Cultures.

K. Flute or panpipe (*zampoña*): Panpipes range between 20 cm. and 120 cm.; flutes range from 20 cm. to 120 cm. Formative Cultures—Inca, including Tropical Lowland Cultures.

VIII. Pre-Columbian Wood Objects

Ceremonial, sumptuary, and funerary wood objects produced and used by indigenous cultures from the Formative period to A.D. 1533:

A. Drinking vessel (*kero*): These are vase-shaped beakers, about 15 cm. in height. A puma or jaguar face is often modeled onto the vessel exterior and/or the wood is carved or engraved with a stylized geometric design. Tiwanaku—Inca.

B. Snuff tablet: Shallow, rectangular trays approximately 20 cm. long x 5 cm. wide x 1 cm. in height. May be constructed of wood, bone, or stone. These small trays are often carved with intricate designs and inlaid with semi-precious stone and/or shell. Formative Cultures—Inca, including Tropical Lowland Cultures.

C. Bowl or *challador:* Compartmented bowl carved from a single slab of wood, with or without handles. Carved or engraved decoration on the surface exterior. Size ranges from 9 cm. to 17 cm. in height.

D. Arrow shaft: Created from a solid piece of wood. Often tipped with gold spear. Size varies from 30 cm. to 3 meters long.

E. Necklace: A thin strip (4 cm.) without clasps. Sometimes contain beads, disks, seeds, or pendants. Formative Cultures—Inca.

F. Mask: These are created from a single slab of wood. Often carved in the shape of feline or human face, with slits for the eyes and mouth. Average size is 30 square cm. and 3 cm. thick. Formative Cultures—Inca, including Tropical Lowland Cultures.

G. Digging stick: These implements most often take the form of a central staff (one meter in height) to which an appendage is added. The central staff is often carved. The appendage may be secured to the staff with bands of precious metals such as gold. Inca Culture.

H. Spindle whorl: Small globular, bead-shaped, or flat circular object that adds weight and balance to spindles used to wind thread. The whorl attaches to the spindle via an aperture in the whorl. Often engraved on the exterior with intricate designs. Bead size averages 2 square centimeters. Flat disks range from 3 cm. to 7 cm. in diameter. Formative Cultures—Inca.

IX. Pre-Columbian Basketry

Ceremonial, sumptuary, and funerary basketry produced and used by indigenous cultures from the Formative Period to A.D. 1533:

A. Basket: Round, square, or rectangular containers with or without handles. May be constructed of reeds, vines, grasses, or other vegetal fibers. Sometimes construction is combined with cloth, animal skin, or wood. Size varies from 4 cm. to 1 meter in height. Formative Cultures—Inca, including Tropical Lowland Cultures.

B. Casket: Square or rectangular containers with lids and handles. May be constructed of reeds, vines, grasses, or other vegetal fibers. Sometimes construction is combined with cloth, animal skin, or wood. Size varies from 50 cm. to 1 meter in height. Formative Cultures—Inca, including Tropical Lowland Cultures.

C. Headdress: These are supports for featherwork worn on the head. Can be up to 60 cm. in length/height. Formative Cultures—Inca, including Tropical Lowland Cultures.

Ethnological Materials

Ethnological materials date from A.D. 1533 to 1900. Two broad categories are encompassed in the sections below. Sections I to VI describe artifacts that reflect Pre-Columbian traditions and are

considered religious in nature or are critically linked to indigenous identity and ancestral use and/or manufacture. Section VII encompasses artifacts produced for use in Catholic religious observance. Some of these items may occur in archaeological contexts.

I. Colonial and Republican Masks (A.D. 1533–1900)

These masks are constructed of wood, leather or skins, silver, tin, cloth, glass beads, oil painted plaster, fur, feathers, or some combination of these materials, with the intent of exaggerating the facial features, particularly the eyes and mouth, of the personage or animal in the dance. Common themes include the devil with horns, old men (*Awki*), African faces (*Moreno*), blonde haired/blue eyed men with bullet holes in their foreheads (*Chunchus*), angels, heroines (*China Supay*), and animals. Size varies according to the mask. Some are as small as 40 cm. or as large as 170 cm.

All masks produced until 1900 that are associated with the Christian or indigenous dance rituals of the Colonial and Republican Periods are included. These include but are not limited to masks of the following dances: Dance of La Diablada; Dance of La Morenada; Dance of Kullawada; Dance of La Llamerada; Dance of the Chunchus; Chutas Dance; Kusillos Dance; Chiriguano Dance; Dance of the Inca; Dance of the Chunchos; Dance of the Achus; Dance of St. Ignatius of Moxos; Dance of the Little Angels; Moors and Christians Dance; Dance of the Sun and the Moon; Dance of the Little Bull; Dance of the Jucumari; Chiriguano Ritual; Dance of the Auqui Auqui; Dancer Ritual; Dance of the Misti'l Siku; Dance of the Little Bull; Dance of the Tundiquis; Dance of the Paqochis.

II. Colonial and Republican Wood Objects (A.D. 1533–1900)

Objects in wood that relate to indigenous ceremonial activities. These include:

A. Drinking vessels (*kero, keru, q'ero*): These are vase-shaped beakers, about 15 cm. in height. During the Colonial Period, these wooden cups were polychrome painted with elaborate scenes and designs.

B. Scepter (*Bastón de mando*): Wooden staff made of palm wood and encased in silver with semi-precious stones. Size varies from 45–120 cm.

C. Ceremonial vessels (*challador cups/vases*): The interiors of these vessels are segmented into compartments. Size ranges between 10–35 cm.

D. Bow: Constructed with wood, feathers, and other animal and vegetal fibers. Used for ritual purposes by the Araona Culture of the Tropical Lowlands. Size ranges from 120 cm. to 210 cm.

E. Tobacco pipe: Straight tubular shape, without a bowl, used by Tropical Lowland Cultures in religious ceremonies. Often, an X is painted as a clan symbol on one end of the tube. Size ranges from 10 cm. to 15 cm.

III. Colonial and Republican Musical Instruments (A.D. 1533–1900)

Musical instruments created for and used in indigenous ceremonies. These include:

A. *Charango:* Stringed instrument, similar to a mandolin or ukelele, manufactured of wood. The bowl of the instrument is sometimes decorated with animal pelts. About 50 cm. in length.

B. Drum (*Sancuti bombo, Wankara bombo, muyu muyu, q'aras*): Vary in size and shape. Generally the box is cylindrical and made of wood or tree bark with skins stretched over the frame to form the heads. Size ranges from 30 cm. to 60 cm.

C. Flutes

1. Flute (*rollano, chaxes, lawatos*): Made of hollowed wood with leather strips. These flutes are characterized by six holes. Size ranges from 40 cm. to 100 cm.

2. Flute (*chutu pinquillo*): Made of uncut flamingo bone with six holes. Size ranges from 25 cm. to 35 cm.

3. Flute (*pifano*): Made of bato bone. Size varies.

4. Flute (*jantarco, sicus*): Made of wood with flower designs engraved on the surface. Diamond shaped in cross-section. Size varies from 10 cm. to 35 cm.

D. Harp: Stringed instrument made of wood and animal skin. It contains 30 strings. Size ranges from 80 cm. to 150 cm.

E. Mandolin: Constructed of wood and often inlaid with shell. Size varies.

F. Whistle (*ocarina, willusco*): Small, hand-held whistle made of wood, 7 cm. Willusco is small, disk shaped whistle with design engraved on surface, 3 cm. to 7 cm.

G. Panpipe (*bajón*): Made of leaves formed into tubes, attached to each other with cotton thread. Characterized by 10 tubes. Size ranges from 120 cm. to 180 cm.

H. Violin (*tacuara*): Made of wood. Size ranges from 40 cm. to 50 cm.

IV. Colonial and Republican Textiles (A.D. 1533–1900)

Textiles woven by indigenous peoples for ceremonial or ritual use:

A. Indigenous Highland Traditions:

1. Poncho (*balandran, ponchito, choni, khawa, challapata*): Square or rectangular overgarment worn by men usually consisting of two pieces of hand-woven cloth sewn together, with a slit in the center for the head. May be dyed with natural or synthetic dyes in all colors. Plain or striped. Often woven from alpaca or other camelid fibers. Some with tassels. Average size is 80 cm. × 100 cm.

2. Dress (*almilla/urku/aksu*): The *almilla* is the dress adopted by indigenous women in the sixteenth century tailored from hand-woven wool cloth (*bayeta*). It consists of a gathered skirt attached to a fitted bodice. The *urku* is a pleated or gathered skirt characterized by a bold stripe pattern arranged horizontally. The *aksu* is a women's ceremonial dress woven from camelid fiber and constructed from a rectangular, two-piece cloth that is wrapped around the body and tied at the waist. May be dyed with natural or synthetic dyes in all colors. Average size is one square meter.

3. Mantle/shawl (*axsu, tsoc urjcu, tscoc irs, medio axsu, llacota, isallo, awayo, llixlla, iscayo, phullu, talo unkhuña, ñañaqa*): Square or rectangular garment composed of two pieces of cloth sewn together. May be dyed with natural or synthetic dyes in all colors. Plain or striped. Often woven from alpaca or other camelid fibers. Designs are typically stripes arranged across the cloth in a vertical or horizontal pattern or confined to the margins of one side of the garment. Average size is one square meter.

4. Tunic (*unku, ira, ccahua*): Man's ceremonial vestment constructed from one piece of cloth which is folded in half and sewn up the sides, leaving openings for the arms at the top and an opening in the middle for the head. Designs are typically found in the hip, sleeve, and neck areas, but there are more elaborate examples where stripes cover the entire garment, some with silver thread. May be dyed with natural or synthetic dyes in all colors. Usually made from camelid wool, especially alpaca. Average size is 135 cm. × 92 cm.

5. Bag (*chuspa, alforja, kapachos, huayacas*): Carried by both men and women; woven from cotton or camelid fibers in a variety of widths, lengths, and colors. Found in either a solid color or simple polychrome stripe pattern arrangement with geometric motifs. These bags are usually square (20 cm.) or rectangular with a woven carrying strap. They often contain small pockets on the pouch exterior and are decorated with tassels.

6. Belt (*w'aka, tsayi, chumpi, wincha, t'isnu*): Worn by both men and women; woven from cotton or camelid fibers in a variety of widths, lengths, and colors. Found in either a solid color or simple polychrome geometric design.

7. Scarf/muffler: Worn by both men and women; woven from camelid fibers or sheep's wool with natural dyes in a variety of widths, lengths, and colors. Consists of one rectangular piece. Approximately 50 cm. in length.

8. Hat: Caps (10 square cm.) worn by men and *nañacas* worn by women that range in size between 10 square cm. and one square meter. Both are woven from camelid fibers and silk, and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or a combination of colors. When present, designs are geometric or depict highly stylized animals such as llama and other camelids.

9. Sling (*wichi wichis, qorawas*): Rectangular band of cloth (25 cm. × 10 cm.); long ends taper to a loop where ropes are attached to either side.

10. Cloth: Square, rectangular, or fragmentary cloth woven from fine camelid fibers, silk, and/or silver and gold threads, or constructed from soft tree bark or other natural fiber, and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or combination of colors. Some examples are striped in a vertical or horizontal pattern. Average size ranges between six square centimeters and six square meters. Cloth may be fragmentary, folded flat, or bundled (*q'epi*) for use in ritual ceremonies. Woman's ritual cloth, called *icuña, tari,* or *ñañaca,* is also included in this category.

B. Indigenous Lowland Traditions (A.D. 1533–1900):

1. Long shirt (*camijeta/ tipois*): Tunic-like vestment made of cotton or vegetal material such as bark. Tassels often attached to lower edge. Size is 133 cm. long x 71 cm. wide.

2. Woman's Two Piece Vestment (*tsotomo and noca*): Long, straight skirt (*noca*) and separate bodice (*tsotomo*) made of cotton or vegetal material such as bark. Noca size is 50 cm. long × 40 cm. wide; *Tsotomo* size is 11.5 cm. deep x 35 cm. long.

3. Cloth: Square, rectangular, or fragmentary cloth woven from cotton, or constructed from soft tree bark or other natural fiber, and dyed with natural pigments in red, blue, green, orange, yellow, tan, brown, black, purple, or combination of colors. Some examples are striped in a vertical or horizontal pattern. Average size ranges between six square centimeters and six square meters. Cloth may be fragmentary, folded flat, or bundled (*q'epi*) for use in ritual ceremonies.

V. Colonial and Republican Featherwork (A.D. 1533–1900)

Featherwork produced for ceremonial use consists of colorful, tropical feathers attached to leather, cloth, wood, or other material, such as basketry, to create adornments worn on the wrists, ankles, neck, waist, back, and head, including the lips and ears. Most typically found are headdresses, which may consist of small, modest crowns (30 cm. average) or large, towering bonnets of Suri feathers (80 cm.). This category also includes feather-covered ritual belts and textiles (35–70 cm.), fans (250 cm. long), staves or batons (145–250 cm.), basketry supports, and healer's amulets or *photadi* (80–250 cm.).

VI. Colonial and Republican Ceramics (A.D. 1533–1900)

A. Ceremonial drinking vessels (*recipiente, andavete, trampavaso*): Containers and serving vessels used in the ceremonial context of chicha drinking. In post-Columbian times, these are hard ceramics with glassy surfaces resulting from the application of a mineral glaze. May be brown, green, blue, red, or any combination of colors. Vary in size and shape from handled jars, pitchers, cups, and vases, to animal-shapes (bull, tiger, llama, hoof).

B. Ritual smoking pipes: Tubular shape without tobacco bowl. The average size is from 10 cm. to 15 cm.

VII. Colonial and Republican Religious Art (A.D. 1533–1900)

A. Statues: Made of wood, maguey, gesso, silver, gold, bronze, alabaster, or other stone and often decorated with gilt paint. Typical statuary for this period includes depictions of patron saints (*santos/santas*), angels, Christ, the Virgin Mary, the apostles, and the Holy Family. Gold and silver crowns and other adornments in precious metals and precious stone are often found on these statues. Some are dressed with brocade and tapestry cloth made from gold and silver threads. Some are holding objects such as swords. Size varies from 30 cm. to two meters.

B. Crucifixes: Made of wood, maguey, alabaster, silver, gold, bronze, brass. Size varies from 5 cm. to 200 cm.

C. Oil paintings: Include depictions of patron saints (*santos/santas*), angels, Christ, the Virgin Mary, the apostles, and the Holy Family on wood, metal, canvas (*lienzo*), and other cloth. With or without frame. The archangel is a central theme. Oil painting is found on objects as small as reliquaries (3 cm.), mid-sized canvas (one square meter), or wall-sized renditions.

D. Reliquaries: Include painted and engraved depictions of patron saints (*santos/santas*), angels, Christ, the Virgin Mary, the apostles, and the Holy Family primarily on wood, ceramic, and metal such as silver. Bolivian reliquaries are essentially small lockets and do not always contain relics. Size ranges from 3 cm. to 25 cm.

E. Trunks/coffers (*petaca*): Made of leather and gilded wood or of silver. These small boxes (30 cm. length) or large trunks (1.5 meters in length) held altar objects, such as chalices and holy oil, during transport.

F. *Retablo:* Made of wood and precious metals such as gold or silver. These are altars or architectural wall facades behind existing altars that contain niches and a tabernacle. Often disassembled in pieces. May be as large as 20 meters high x 7 meters wide; portions vary—a niche may be one square meter. Small, self-contained units that appear as boxes with hinged doors are as small as 40 cm. in height. Miniatures average 5 cm. in height.

G. Altar pieces: Altars and their components (for example, frontal, grates, sacristy) made of gilded wood, gold, or silver. Often decorated in repousse. Average size is 1.6 meters x 1.2 meters.

H. Altar objects: These include chalices, monstrances/ostensoria, cruets, candelabras, lecterns, incense burners, hand bells typically made of gold and silver and decorated with precious stones, shell such as pearl, or other adornments. Size varies according to object. This category also includes ceramic, metal, and wooden *challadores* and ceremonial drinking cups.

I. Church furniture: Made of wood, silver gold, stone, brass, or bronze. Includes carved picture frames, confessionals, pulpits, pedestals, litters, choir stalls, chancels, banisters, lectern, saint's flags, and church bells and chimes. Size varies according to object.

J. Crowns and radiations: Made of silver and gold, these objects are found alone or in conjunction with religious statuary depicting the Virgin and Jesus. Size varies from 10 cm. to 30 cm.

K. Garment pin (*tupu/prendedor*): Made of copper, bronze, brass, silver, gold, or tumbaga. A large pin with a long shaft (15 cm.) that usually terminates with flat, discoid head (4 cm.), often embossed with design. Some heads are inlaid with semi-precious stone.

L. Liturgical vestments: Garments worn by the priest and/or other religious dignitaries made of fine cotton, silk, and gold and silver thread. This category

includes the chasuble, dalmatic, alb, stole, girdle, maniple, rochet, musette, mitre, and bonnet. Size varies according to garment.

Inapplicability of Notice and Delayed Effective Date

Because the amendments to the Customs Regulations contained in this document merely remove reference to expired import restrictions and impose import restrictions on the above-listed cultural property of Bolivia in response to a bilateral agreement entered into in furtherance of a foreign affairs function of the United States, pursuant to the Administrative Procedure Act (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary and a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a ''significant regulatory action'' as described in E.O. 12866.

Drafting Information

The principal author of this document was Bill Conrad, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general authority and specific authority citations for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

2. In § 12.104g, paragraph (a), the list of agreements imposing import restrictions on described articles of cultural property of State Parties, is amended by adding Bolivia in appropriate alphabetical order, as follows, and paragraph (b), the list of emergency actions imposing import restrictions, is amended by removing the entry for ''Bolivia'':

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(2) * * *

State party	Cultural property	T.D. No.
Bolivia	Archaeological and Ethnological Material from Bolivia.	T.D. 01–86
* * * *	* *	*

* * * * *

Dated: December 4, 2001.

Robert C. Bonner,

Commissioner of Customs.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–30417 Filed 12–5–01; 10:36 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for six approved new animal drug applications (NADAs) from Koffolk, Inc., to Phibro Animal Health.

DATES: This rule is effective December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Koffolk, Inc., P.O. Box 675935, 14735 Las Quintas, Rancho Santa Fe, CA 92067, has informed FDA that it has transferred ownership of, and all rights and interest in, the following NADAs to Phibro Animal Health, 710 Rte. 46 East, suite 401, Fairfield, NJ 07004.

NADA Number	Established Names of Ingredients
9–476	Nicarbazin
98–378	Nicarbazin/Bacitracin Methylene Disalicylate
107–997	Nicarbazin/Lincomycin/Roxarsone
108–115	Nicarbazin/Roxarsone
108–116	Nicarbazin/Lincomycin
141–146	Nicarbazin/Bacitracin Zinc

Accordingly, the agency is amending the regulations in 21 CFR 558.366 to reflect the transfer of ownership.

Following the change of sponsor of these NADAs, Koffolk, Inc., is no longer the sponsor of any approved applications. Therefore, 21 CFR 510.600(c) is amended to remove the entries for this sponsor.

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

List of Subjects

21 CFR Part 510

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

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry ''Koffolk, Inc.,'' and in the table in paragraph (c)(2) by removing the entry ''063271''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

4. Section 558.366 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by revising paragraph (a); by adding a new paragraph (b); and in the newly redesignated paragraph (d), in the table, under the headings ''Limitations'' and ''Sponsor'' by removing ''063271'' wherever it appears and by adding in its place ''066104'' to read as follows:

§ 558.366 Nicarbazin.

(a) *Specifications.* Type A medicated articles containing 25 percent nicarbazin.

(b) *Approvals.* See Nos. 000986, 060728, and 066104 in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

* * * * *

Dated: November 15, 2001.

Claire M. Lathers,

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

[FR Doc. 01–30299 Filed 12–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by MoorMan's, Inc. The supplemental NADA provides for use of approved monensin Type A medicated articles to make free-choice, medicated feed blocks used for prevention and control of coccidiosis caused by *Eimeria bovis* and *E. zuernii* in pasture cattle.

DATES: This rule is effective December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel A. Benz, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0223.

SUPPLEMENTARY INFORMATION: MoorMan's, Inc., 1000 North 30th St., Quincy, IL 62305–3115, filed a supplement to NADA 115–581 that provides for use of monensin Type A medicated articles to make free-choice, medicated protein/mineral blocks (MoorMan's Mintrate Blonde Block RU and MoorMan's Mintrate Red Block RU) used for increased rate of weight gain in cattle on pasture (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers) which may require supplemental feed. The supplemental NADA provides for use of these medicated feed blocks for the prevention and control of coccidiosis caused by *Eimeria bovis* and *E. zuernii* in pasture cattle. The supplemental NADA is approved as of September 27, 2001, and the regulations are amended in 21 CFR 558.355 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.355 is amended by revising paragraph (f)(3)(v)(*a*) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(v) * * *

(a) Indications for use. For increased rate of weight gain and for prevention and control of coccidiosis caused by *Eimeria bovis* and *E. zuernii*.

* * * * *

Dated: November 8, 2001.

Claire M. Lathers,

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

[FR Doc. 01–30298 Filed 12–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 578, 579, and 580

RIN 1215–AB20

Adjustment of Civil Money Penalties for Inflation

AGENCY: Wage and Hour Division, Employment Standards Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document adjusts the amount of civil money penalties that may be assessed under the Fair Labor Standards Act (FLSA) for repeated or willful violations of the minimum wage or overtime provisions of the FLSA, and for violations of the child labor provisions of the FLSA. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. Under the amended Federal Civil Penalties Inflation Adjustment Act, Federal agencies must adjust their civil money penalties for inflation pursuant to a specified formula, and make periodic adjustments thereafter to account for inflation.

EFFECTIVE DATE: The rule is effective on January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Deputy Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–0745 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023. TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of final regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division District Office. To locate the nearest office, telephone our toll-free information and helpline at 1–866–4USWAGE (1–866–487–9243) between 8 am and 5 pm in your local time zone, or log onto the Wage and Hour Division's website for a nationwide listing of Wage and Hour District and Area Offices at: *http://www.dol.gov/dol/esa/public/contacts/whd/america2.htm.*

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule contains no new information collection requirements which are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

II. Background

The Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890) to require Federal agencies to regularly adjust certain civil money penalties (CMPs) for inflation. As amended, the law requires each agency to initially adjust for inflation all covered civil money penalties, and to make further inflationary adjustments every four years thereafter. The adjustment prescribed in the amended Act is based on a cost-of living formula according to the amount that the Department of Labor's Consumer Price Index (CPI) for all urban consumers for June of the calendar year before the adjustment exceeds the June CPI for the calendar year that the CMP amount was last set or adjusted. The statute provides for rounding the penalty increases. Once the percentage change in the CPI is calculated, the amount of the adjustment is rounded according to a table in the Federal Civil Penalties Inflation Adjustment Act, which is scaled based on the dollar amount of the current penalty. The statute applies a cap that limits the amount of the first increase in penalty to 10 percent of the current penalty amount (for the *initial* adjustment only). Any increase under the Act applies prospectively to violations that occur after the date the increase takes effect.

Section 16(e) of the FLSA authorizes CMP assessments for the following violations: (1) Any person who violates the child labor provisions (section 12 or section 13(c)(5)) of the FLSA or any regulation thereunder may be subject to a CMP not to exceed $10,000 for each employee who was the subject of such a violation; and (2) any person who repeatedly or willfully violates the minimum wage (section 6) or overtime provisions (section 7) of the FLSA may be subject to a CMP not to exceed $1,000 for each such violation. In determining the amount of any such penalty in a particular case for either type of violation, the size of the business of the person charged and the gravity of the violation must be taken into consideration, among other appropriate factors.

The child labor CMP amount was last adjusted by the Congress in 1990 pursuant to the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 (November 5, 1990), which raised the former $1,000 maximum child labor CMP amount to $10,000 and directed that the amounts be deposited into the general fund of the U.S. Treasury. The $1,000 CMP amount for repeated and willful violations of the minimum wage and overtime provisions was established by the Congress under the 1989 FLSA Amendments, Public Law 101–157 (November 17, 1989). Due to inflation since these CMP amounts were last set in law or adjusted by the Congress, the first increase is limited to the maximum 10 percent cap initially permitted under the Debt Collection Improvement Act amendments to the Federal Civil Penalties Inflation Adjustment Act. The adjusted CMP amounts will apply only to violations occurring after the revised regulations become effective.

On December 28, 1998, the Department of Labor published a proposal in the **Federal Register** (63 FR 71405) to amend affected sections of parts 578 and 579 of Title 29 of the Code of Federal Regulations to increase the specified CMP amounts as described above. No comments were received on the proposal. Accordingly, the proposal is being adopted as a final rule.

III. Summary of Rule

The $1,000 maximum penalty amount in Section 578.3 for repeated or willful violations of the minimum wage or overtime requirements of the FLSA is increased to $1,100. The $10,000 maximum penalty amount in Section 579.5 for violations of the child labor provisions of the FLSA is increased to $11,000. Conforming changes are also made in other affected sections of the regulations to discuss the inflationary adjustment provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

In addition, the following technical amendments are made to correct two typographical errors in parts 579 and 580. In Section 579.5(e) of part 579, the reference to ''§ 579.6'' is corrected to read ''§ 580.6''. In Section 580.5 of part 580, the reference to ''§ 580.19'' is corrected to read ''§ 580.18'.

Executive Order 12866 and Significant Regulatory Actions

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866. The rule will adjust for inflation the maximum civil money penalties under Section 16(e) of

the Fair Labor Standards Act. The adjustments and the formula for determining the amount of the adjustment were mandated by the Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. Thus, the Congress has required that the Department promulgate the amendments to this rule, and provided no discretion to the Department regarding the substance of the amendments. Moreover, for the three-year period prior to the proposed rule, the Department collected a total of $6,169,771 in CMPs for repeated or willful minimum wage or overtime violations that were assessed in 1,157 cases, for an average of $2,056,590 collected per year (less than $5,333 per case, on average). Over the same three-year period, the Department collected a total of $12,496,180 in CMPs for child labor violations that were assessed in 3,772 cases, for an average of $4,165,393 collected per year (approximately $3,314 per case, on average). With the initial increase in the maximum CMP limited to the statutory 10 percent cap, the total economic impact of the proposal was estimated at less than $623,000 per year. CMPs for the three most recent years are comparable in amounts. Thus, this action will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis was required or prepared.

Section 202 of the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, ''* * * (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' For purposes of the Unfunded Mandates Reform Act, this rule includes only requirements that are specifically set forth in law pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. In addition, the rule will not result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector.

Executive Order 13132

This rule 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'' under the terms of Executive Order 13132 regarding federalism. Therefore, under section 6 of that Order, we have determined that the rule does not have sufficient federalism implications to require consultations or a federalism summary impact statement.

Regulatory Flexibility Analysis

This rule will not have a significant economic impact on a substantial number of small entities. The rule does no more than ministerially increase certain statutory CMPs to account for inflation, pursuant to specific directions of the Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. Provisions of law specify the procedures for calculating the inflation adjustments and do not allow variations in the calculations to minimize the effects on small entities. Nevertheless, in each case the amount of the penalty assessed under Section 16(e) of the FLSA must take into consideration the size of the business of the person charged with the violations, which will further mitigate the ultimate effects of the rule on small businesses. Moreover, only persons who have willfully or repeatedly violated the minimum wage or overtime provisions of the FLSA, or violated the child labor requirements of the FLSA, will be affected by this rule. Based on the average CMP amounts collected for these types of violations over a three-year period as discussed above, we estimate that the effect of the rule will be to increase the average CMP collected for repeated or willful minimum wage or overtime violations by $533 per case, and increase the average CMP collected for child labor violations by $331 per case. Accordingly, the Department determined that this rule will not have a significant economic impact on a substantial number of small entities. The Department certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration when the proposed rule was published. Therefore, no Regulatory Flexibility Analysis was required. No comments were received on any aspect of the rule or these conclusions as set forth in the proposed rule.

Small Business Regulatory Enforcement Fairness Act

This rule is not a ''major rule'' under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effects on Families

This rule has been assessed under section 654 of the Treasury and General Government Appropriations Act, 1999, for its effect on family well-being and we hereby certify that the rule will not adversely affect the well-being of families.

List of Subjects

29 CFR Part 578

Employment, Labor, Law enforcement, Penalties.

29 CFR Part 579

Child labor, Law enforcement, Penalties.

29 CFR Part 580

Administrative practice and procedure, Child labor, Employment, Labor, Law enforcement, Penalties.

Signed at Washington, DC, on this 30th day of November, 2001.

Annabelle T. Lockhart,

Acting Administrator, Wage and Hour Division.

For the reasons set forth above, 29 CFR parts 578, 579, and 580 are amended as set forth below.

PART 578—MINIMUM WAGE AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

1. The authority citation for part 578 is revised to read as follows:

Authority: Sec. 9, Pub. L. 101–157, 103 Stat. 938, sec. 3103, Pub. L. 101–508, 104 Stat. 1388–29 (29 U.S.C. 216(e)), Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as

amended by Pub. L. 104–134, section 31001(s), 110 Stat. 1321–358, 1321–373.

2. Section 578.1 is revised to read as follows:

§ 578.1 What does this part cover?

Section 9 of the Fair Labor Standards Amendments of 1989 amended section 16(e) of the Act to provide that any person who repeatedly or willfully violates the minimum wage (section 6) or overtime provisions (section 7) of the Act shall be subject to a civil money penalty not to exceed $1,000 for each such violation. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001(s)), requires that inflationary adjustments be periodically made in these civil money penalties according to a specified cost-of-living formula. This part defines terms necessary for administration of the civil money penalty provisions, describes the violations for which a penalty may be imposed, and describes criteria for determining the amount of penalty to be assessed. The procedural requirements for assessing and contesting such penalties are contained in 29 CFR part 580.

3. The section heading and paragraph (a) of § 578.3 are revised to read as follows:

§ 578.3 What types of violations may result in a penalty being assessed?

(a) A penalty of up to $1,000 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act; Provided, however, that for any violation occurring on or after January 7, 2002 the civil money penalty amount will increase to up to $1,100. The amount of the penalty will be determined by applying the criteria in § 578.4.

* * * * *

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

4. The authority citation for part 579 is revised to read as follows:

Authority: 29 U.S.C. 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 4–2001, 66 FR 29656; Sec. 3103, Pub. L. 101–508; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by Pub. L. 104–134, section 31001(s), 110 Stat. 1321–358, 1321–373.

5. The section heading of Section 579.1 is revised, paragraph (b) of § 579.1 is redesignated as paragraph (c) of that section, and a new paragraph (b) is added, to read as follows:

§ 579.1 What does this part cover?

* * * * *

(b) The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001(s)), requires that Federal agencies periodically adjust their civil money penalties for inflation according to a specified cost-of-living formula. This law requires each agency to make an initial inflationary adjustment for all covered civil money penalties, and to make further inflationary adjustments at least once every four years thereafter. Any increase in the civil money penalty amount will apply only to violations that occur after the date the increase takes effect.

* * * * *

6. In § 579.5:

a. The section heading and paragraph (a) are revised; and

b. In paragraph (e), the reference to ''§ 579.6'' is revised to read ''§ 580.6''.

The revisions read as follows:

§ 579.5 How is the amount of the penalty determined?

(a) The administrative determination of the amount of the civil penalty, of not to exceed $10,000 for each employee who was the subject of a violation of section 12 or section 13(c)(5) of the Act relating to child labor or of any regulation issued under that section, will be based on the available evidence of the violation or violations and will take into consideration the size of the business of the person charged and the gravity of the violation as provided in paragraphs (b) through (d) of this section; Provided, however, that for any violation occurring on or after January 7, 2002 the civil money penalty amount will increase to not to exceed $11,000 for each employee who was the subject of a violation.

* * * * *

§ 579.9 [Removed]

7. Section 579.9 is removed.

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

8. The Authority citation for part 580 is revised to read as follows:

Authority: 29 U.S.C. 9a, 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 4–2001, 66 FR 29656; 5 U.S.C. 500, 503, 551, 559; sec. 9, Pub. L. 101–157, 103 Stat. 938; sec. 3103, Pub. L. 101–508.

§ 580.5 [Amended]

9. In § 580.5, the reference to ''§ 580.19'' is revised to read ''§ 580.18''.

[FR Doc. 01–30364 Filed 12–6–01; 8:45 am]

BILLING CODE 4510–27–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA065–Pt 70; FRL–7113–5]

Clean Air Act Full Approval of 34 Operating Permits Programs in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to fully approve the operating permits programs submitted by the California Air Resources Board (CARB) on behalf of the following 34 air districts: Amador County Air Pollution Control District (APCD), Bay Area Air Quality Management District (AQMD), Butte County AQMD, Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, Mojave Desert AQMD, Monterey Bay Unified APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Sacramento Metro AQMD, San Diego County APCD, San Joaquin Valley Unified APCD, San Luis Obispo County APCD, Santa Barbara County APCD, Shasta County APCD, Siskiyou County APCD, South Coast AQMD, Tehama County APCD, Tuolumne County APCD, Ventura County APCD, and Yolo-Solano AQMD. These programs were submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. On the dates listed in Table 1 below, EPA granted interim approval to the 34 operating permits programs. All 34 air districts revised their programs to satisfy the conditions of the interim approval, and EPA proposed full approval in the **Federal Register** on

the dates listed in Table 1. EPA received comments from several commenters on our proposed actions. After carefully reviewing and considering the issues raised by the commenters, EPA is taking final action to fully approve all 34 operating permits programs. EPA published 11 separate proposals to approve the 34 districts' title V operating permits programs. Today we are consolidating our final actions on those proposals into one final rule.

EFFECTIVE DATE: This rule is effective on November 30, 2001.

ADDRESSES: Copies of the 34 submittals and other supporting information used in developing these final full approvals are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region 9, at 415–972–3974 or *rios.gerardo@epa.gov.*

SUPPLEMENTARY INFORMATION: This section contains additional information about our final rulemaking, organized as follows:

I. Background on the 34 operating permits programs.
II. Comments received by EPA on our proposed rulemakings and EPA's responses.
A. Comments received by EPA that apply to some or all of the 34 districts.
B. Comments received by EPA that are specific to Bay Area Air Quality Management District.
1. Comments from Communities for a Better Environment.
2. Comments from Our Children's Earth
3. Comments from Commonweal
III. EPA's final action.
IV. Effective date of EPA's full approval of the 34 operating permits programs.
V. What is the scope of EPA's full approval?
VI. Citizen comments on operating permits programs

I. Background on the 34 Operating Permits Programs

The Clean Air Act (CAA) Amendments of 1990 required all state and local permitting authorities to develop operating permits programs that meet certain federal criteria. The 34 California operating permits programs were submitted in response to this directive. Because the programs substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the programs. The interim approval notices described the conditions that had to be met in order for the 34 programs to receive full approval. After the 34 air districts revised their programs to address the conditions of the interim approval, EPA promulgated proposals to fully approve these title V operating permits programs. Table 1 lists the dates and **Federal Register** citations for EPA's actions finalizing interim approval and proposing full approval of the 34 operating permits programs.

TABLE 1.—FEDERAL REGISTER CITATIONS AND PROGRAM SUBMITTAL DATES FOR THE 34 OPERATING PERMITS PROGRAMS

District	Interim Approval Federal Register Citation	Date of Revised Program Submittals	Proposed Full Approval Federal Register Citation
Amador County APCD	60 FR 21720; 5/3/95	4/10/01	66 FR 53354; 10/22/01
Bay Area AQMD	60 FR 32606; 6/23/95	5/30/01	66 FR 53104; 10/19/01
Butte County AQMD	60 FR 21720; 5/3/95	5/17/01	66 FR 53354; 10/22/01
Calaveras County APCD	60 FR 21720; 5/3/95	7/27/01	66 FR 53354; 10/22/01
Colusa County APCD	60 FR 21720; 5/3/95	8/22/01 and 10/10/01	66 FR 53354; 10/22/01
El Dorado County APCD	60 FR 21720; 5/3/95	8/16/01	66 FR 53354; 10/22/01
Feather River AQMD	60 FR 21720; 5/3/95	5/22/01	66 FR 53354; 10/22/01
Glenn County APCD	60 FR 36065; 7/13/95	9/13/01	66 FR 53354; 10/22/01
Great Basin Unified APCD	60 FR 21720; 5/3/95	5/18/01	66 FR 53354; 10/22/01
Imperial County APCD	60 FR 21720; 5/3/95	8/2/01	66 FR 53354; 10/22/01
Kern County APCD	60 FR 21720; 5/3/95	5/24/01	66 FR 53354; 10/22/01
Lake County AQMD	60 FR 36065; 7/13/95	6/1/01	66 FR 53354; 10/22/01
Lassen County APCD	60 FR 21720; 5/3/95	8/2/01	66 FR 53354; 10/22/01
Mariposa County APCD	60 FR 62758; 12/7/95	9/20/01	66 FR 53354; 10/22/01
Mendocino County APCD	60 FR 21720; 5/3/95	4/13/01	66 FR 53354; 10/22/01
Modoc County APCD	60 FR 21720; 5/3/95	9/12/01	66 FR 53354; 10/22/01
Mojave Desert AQMD	61 FR 4217; 2/5/96	7/11/01 and 6/4/01	66 FR 53163 10/19/01
Monterey Bay Unified APCD	60 FR 52332; 10/6/95	5/9/01	66 FR 53178; 10/19/01
North Coast Unified AQMD	60 FR 21720; 5/3/95	5/24/01	66 FR 53354; 10/22/01
Northern Sierra AQMD	60 FR 21720; 5/3/95	5/24/01	66 FR 53354; 10/22/01
Northern Sonoma County APCD.	60 FR 21720; 5/3/95	5/21/01	66 FR 53354; 10/22/01
Placer County APCD	60 FR 21720; 5/3/95	5/4/01	66 FR 53354; 10/22/01
Sacramento Metro AQMD	60 FR 39862; 8/4/95	6/1/01	66 FR 53167; 10/19/01
San Diego County APCD	60 FR 62753; 12/7/95	6/4/01	66 FR 53148; 10/19/01
San Joaquin Valley Unified APCD.	61 FR 18083; 4/24/96	6/29/01	66 FR 53151; 10/19/01
San Luis Obispo County APCD	60 FR 21720; 5/3/95	5/18/01	66 FR 53159; 10/19/01
Santa Barbara County APCD	60 FR 55460; 11/1/95	4/5/01	66 FR 53155; 10/19/01
Shasta County APCD	60 FR 36065; 7/13/95	5/18/01	66 FR 53354; 10/22/01
Siskiyou County APCD	60 FR 21720; 5/3/95	9/28/01	66 FR 53354; 10/22/01
South Coast AQMD	61 FR 45330; 8/29/96	8/2/01	66 FR 53170; 10/19/01
Tehama County APCD	60 FR 36065; 7/13/95	6/4/01	66 FR 53354; 10/22/01
Tuolumne County APCD	60 FR 21720; 5/3/95	7/18/01	66 FR 53354; 10/22/01
Ventura County APCD	60 FR 55460; 11/1/95	5/21/01	66 FR 53174; 10/19/01

TABLE 1.—FEDERAL REGISTER CITATIONS AND PROGRAM SUBMITTAL DATES FOR THE 34 OPERATING PERMITS PROGRAMS—Continued

District	Interim Approval Federal Register Citation	Date of Revised Program Submittals	Proposed Full Approval Federal Register Citation
Yolo-Solano AQMD	60 FR 21720; 5/3/95	5/9/01	66 FR 53354; 10/22/01

II. Comments Received by EPA on Our Proposed Rulemakings and EPA's Responses

We received several comment letters on EPA's proposed approval of the title V operating permits programs in California. Four comment letters applied to some or all of the 34 districts in California; a summary of these comments and our response are included in section II.A, below. Three other comment letters were directed specifically at our proposed approval of the Bay Area AQMD's operating permits program; a summary of the comments specific to Bay Area AQMD and our responses are included in section II.B below.

A. Comments Received by EPA That Apply to Some or All of the 34 Districts

We received four comment letters that specifically address the EPA's proposed approach of granting full program approval to the California districts' title V operating permits programs while deferring the permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a brief period, not to exceed three years. We received comments objecting to our proposed approach on this issue from two coalitions of environmental groups and comments supporting our approach from a coalition of agricultural industry representatives and from the California Air Resources Board (CARB).[1]

The adverse comments we received from the environmental groups oppose EPA's proposed approach on both legal and technical grounds. The groups' comments assert that since the repeal of the statewide agricultural permitting exemption was a condition established by EPA for full title V program approval and the exemption is still in place, EPA cannot grant full approval to the California districts' operating permits programs. Moreover, they argue that the three-year deferral represents an inappropriate continuation of interim approval. In addition, they comment that EPA cannot exempt any major sources from title V permitting under the Act.

Their comments also question EPA's assertion that there is not a complete inventory of emissions associated with agricultural operations in California and maintain that there are reliable methodologies to determine emissions from certain animal feeding operations (e.g., dairies). The groups' comments also dispute the need for additional research on emissions from agricultural sources prior to implementing title V permitting of these sources and cite the results of San Joaquin Air District and CARB reports regarding the impact of agricultural pollution sources on air quality in the San Joaquin Valley. Finally, the groups request that EPA disapprove the California districts' title V operating permits programs, although they express support for EPA delegating part 71 to the local permitting authorities for all sources not subject to the agricultural exemption, if the Agency were to disapprove the districts' part 70 programs.

Comments received from the coalition of agricultural industry associations support EPA's proposed approval of the San Joaquin Valley Unified APCD's title V program as well as EPA's proposal to defer title V permitting of in-field agricultural operations for three years for all California air districts. The groups' comments confirm that reliable data and a complete inventory of emissions associated with production agricultural operations are not currently available and commit the California agricultural industry to participating in research efforts to better determine emission levels associated with in-field activities. CARB's comments also support EPA's proposal to grant full approval to all of the local title V programs in the State and to defer the permitting of State-exempted agricultural sources for a three-year period. CARB maintains that local districts have corrected all of the interim title V program deficiencies within their authority. CARB also reiterates the position conveyed in their September 19, 2001 letter to Jack Broadbent, Region 9 Air Director, that emissions from much of the equipment used in the pre-harvest activities exempted by State law cannot be included in title V applicability determinations, and that the potential to emit of California's exempt agricultural equipment is likely to be below title V major source thresholds.

EPA considered the comments raised in response to our proposed approval, and has decided to grant full approval to the title V operating permits programs in the State and to defer permitting of the limited category of State-exempt agricultural sources for a period of no more than three years. This approach will allow EPA and the State to evaluate the existing science, improve on assessment tools, collect and analyze additional data, remove any remaining legal obstacles, and issue any necessary guidance on implementation of the title V operating permits program for major agricultural stationary sources. At the same time, this approach will not impede local permitting authorities from issuing all of their initial round of title V permits as expeditiously as possible.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, emission reduction strategies. At the end of this period, EPA will, taking into consideration the additional data gathered during the deferral, make a determination as to how the title V operating permits program will be implemented for any major agricultural stationary sources in the State.

B. Comments received by EPA That Are Specific to Bay Area Air Quality Management District

In addition to the comments discussed in II.A above that apply to all programs in California, EPA received several comment letters specific to our proposed full approval of the operating permits program for the Bay Area Air Quality Management District (''Bay Area,'' ''District'' or ''BAAQMD''). These comments were received by EPA on November 19, 2001 from three organizations: Communities for a Better Environment (''CBE''); the Golden Gate University Environmental Law and Justice Clinic, acting on behalf of Our

[1] We also received a comment objecting to our proposal on this matter as it relates to the Bay Area AQMD operating permits program. See section II.B, below.

Children's Earth (''OCE''); and a Bay Area environmental organization called Commonweal. The following is a summary of the comments—and our responses—related to our proposed full approval of the Bay Area Air Quality Management District operating permits program.

1. Comments from Communities for a Better Environment

The CBE comments addressed our proposed approval of the District's revision of its definition of potential to emit (''PTE'') at 2–6–218. We had proposed to approve this revised definition which allows a permit limitation, or the effect it would have on emissions, to be ''enforceable by the District or EPA.'' The phrase, ''enforceable by the District or EPA'' replaced the term, ''federally enforceable.''

CBE stated that EPA should reject BAAQMD's revision to the definition of potential to emit at 2–6–218, or in the alternative, find the revision deficient and order BAAQMD to revise the definition. CBE stated that the proposed change to 2–6–218 is illegal because the rule change expands the definition of potential to emit beyond the bounds of the federal case law and EPA guidance on the subject. They assert that our position—that the new District definition of potential to emit is consistent with the new meaning under federal law as defined by the courts—is simply wrong. They claim that the phrase, ''enforceable by the District or EPA'' is vague, much broader than the current case law, and not defined anywhere in the District rule. CBE stated that it makes no sense to define ''federally enforceable'' in Rule 2–6–207 and then use a different phrase in the definition of potential to emit. CBE also discussed how the Manual of Procedures (''MOP''), without expressly saying so, appears to define the phrase, ''enforceable by the district'' as ''a district or state requirement that has not been approved for inclusion in the SIP by EPA is not federally enforceable but can limit potential to emit for the purposes of major facility review.'' (MOP at page 3–2). CBE stated that if this is how the District intends to define the phrase, then it is much broader than what the courts allowed (see *Clean Air Implementation Project* v. *EPA No.* 96–1224 (D.C. Cir. June 28, 1996)). CBE also was opposed to our proposed action on this matter in which we rely on the District to implement its new definition of PTE to be consistent with federal case law. They said it is improper for us to approve the ''vague and overly broad rule'' and rely on our enforcement discretion as a means to correct any misapplication of the definition.

Finally, CBE stated that the definition of federally enforceable in the NSR rule is not consistent with the definition in the part 70 program and this would cause confusion, misinterpretation, and ambiguity surrounding enforcement actions. In particular, CBE is concerned that previous NSR actions where federally enforceable limits on the source's PTE were created under the NSR definition of PTE, could be altered under title V using ''the expanded definition'' to allow sources to no longer have limits on potential to emit that are federally enforceable.

EPA Response to CBE Comments: The comments made by CBE do not alter our position and today's final action approves the definition of potential to emit at District rule 2–6–218 (amended by BAAQMD on May 17, 2001). We hold to our proposed position in today's final action because the District's definition is consistent with federal case law and EPA policies. CBE is concerned that the phrase, ''enforceable by the District or EPA,'' which replaced, ''federally enforceable,'' is not consistent with the federal case law and EPA policies. Although the definition does not include the clarifying phrase that the state and local limits shall be, ''legally and practicably enforceable'' (See *Clean Air Act Implementation* v. *EPA* No. 96–1224 (D.C. Cir. June 28, 1996)), EPA does not believe that this phrase must be included before we can approve the definition in a part 70 rule. In our proposed rulemaking for Bay Area, we notified the BAAQMD of the practicable enforceability criteria and of our expectations as they implement the definition. Furthermore, the requirement that a limitation be ''effective'' or ''practically enforceable'' is inherent in any PTE limit.

In general, we agree with CBE that there could be ambiguity about the interpretation of the definition of potential to emit if it is defined differently under NSR compared to Part 70. While these differences may exist, the NSR rule is independent from the part 70 program and, therefore, a different definition of PTE in the NSR rule does not necessarily affect our ability to approve the District's definition of PTE for part 70 purposes. In response to CBE's concerns that sources would argue that certain limits on their PTE obtained during an earlier NSR action would no longer need to be federally enforceable under part 70, such arguments would not be valid because the District's NSR rules are SIP-approved and all terms and conditions of permits issued pursuant to the SIP-approved rules are federally enforceable applicable requirements for part 70 purposes.

2. Comments From Our Children's Earth

OCE provided comments on four interim approval issues, five program implementation issues, and several other changes the Bay Area had made to its rules which were not required to correct interim approval issues. We find that the five comments made by OCE on possible program implementation issues, are not related to Bay Area rule changes and are, therefore, outside the scope of today's rulemaking. (See OCE comments B.2, B.3, B.4, B.5, and B.6). Our proposal was limited to specific rule changes the district has made to its operating permits rule or program since interim approval was granted. The changes that we had identified in our proposal were made by Bay Area to either correct interim approval issues that we had earlier identified or to clarify the rule. The following are the comments that are within the scope of the rulemaking; our response follows each comment.

Issue #1—Insignificant Activities: OCE objected to our proposed approval because Bay Area did not provide a basis for defining significant source as those emission units with Hazardous Air Pollutant (HAP) emissions above 400 pounds.

EPA Response: The Bay Area established as ''significant source'' any emission unit that has a potential to emit of more than 2 tons per year of any regulated air pollutant or more than 400 pounds per year of any HAP. (See BAAQMD rule 2–6–238). Although the District has not provided a detailed determination of how they established this level, the emission levels for HAPs are well within the guidance EPA provided to California agencies on this matter. (See letter to Mike Tollstrup, CARB, from Gerardo Rios, EPA Region IX, dated February 22, 2001). This guidance originated from EPA's own title V permitting regulations at 40 CFR 71.5(c)(11)(ii)(B) in which we state that, ''potential to emit of any HAP from any single emission unit shall not exceed 1,000 pounds per year * * *'' Therefore, for this reason and the reasons described in our proposed approval action, EPA finds that the District has corrected the interim approval issue #1 and approves the District's definition of significant source.

Issue 11—Emissions Trading: OCE asserted that the District does not appear to have an emissions trading scheme in place to allow for emissions trading for Title V facilities. They said

that the inclusion of emissions trading procedures into the Title V program is inappropriate unless there are rules in place to implement emissions trading. Until this deficiency is remedied, they asked that full approval of the District's title V program be denied.

EPA Response: While we agree with the commenter that the District does not appear to have a SIP-approved rule to allow for emissions trading at title V sources, EPA does not agree that such provisions be in place before the District can adopt, and EPA can approve, part 70 program changes that would allow such trading consistent with 40 CFR 70.6(a)(10) once the applicable requirement allows for it. 40 CFR 70.6(a)(10) requires the part 70 permit contain ''terms and conditions, if the permit applicant requests them, for the trading of emissions * * * to the extent that the applicable requirements provide for trading such increases and decreases * * *'' [emphasis added]. Even if a permitting authority does not have applicable requirements (e.g., a SIP) that provide for such trading, it can still have provisions in its part 70 program to allow for such trading.

Issue #16—Regulated Air Pollutant: OCE was concerned about our approval of the definition of Regulated Air Pollutant at section 2–6–222.3 which includes, ''[a]ny Class I or Class II ozone depleting substance subject to a standard promulgated under Title VI of the Clean Air Act.'' OCE felt that this definition is inconsistent with 40 CFR 70.2(4) which only states that ''[a]ny Class I or Class II subject to a standard promulgated under or established by title VI of the Act.'' OCE felt that by specifying ''ozone depleting substance'' in its regulations, the District may unnecessarily be narrowing the definition of a Class I or Class II substance. Therefore, they stated, the phrase 'ozone depleting substance' should be deleted from Regulation 2–6–222.3 to parallel the definition in 40 CFR 70.2(4). Further, OCE requested that Regulation 2–6–222.5 be amended to include the expanded language in 40 CFR 70.2(5) since the federal regulations set out a more specific explanation of regulated air pollutants. In the very least, they requested that EPA require the District to reference 40 CFR 70.2(5) in Regulation 2–6–222.5 before granting full program approval.

EPA Response: EPA disagrees with the commenter. We do not believe that the District's definition conflicts with Part 70's definition of regulated air pollutant; rather, we find it is redundant with the definition since Class I or Class II substances can reasonably be called, ''ozone depleting substances.'' A Class I substance is a substance that, ''the Administrator finds causes or contributes significantly to harmful effects on the stratospheric ozone layer.'' A Class II substance is, ''any other substances that the Administrator finds is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.'' (See CAA section 602(a) and (b), respectively). Further, we disagree with OCE's comment that we should require the District to include a more complete reference of regulated pollutant at 40 CFR 70.2(5). In our interim approval notice we required that the District add the references to section 112 provisions because this was the only aspect of the definition that we found to be deficient. The District has made the required correction.

Issue #17—Agricultural Exemption: OCE commented that the District's Title V program is inadequate and should be denied because the California Legislature has failed to amend the Health and Safety Code to remove the agricultural exemption. OCE was concerned with EPA's proposal to grant the District full approval while agricultural sources remain exempt from the Title V program and stated that EPA cannot grant full approval to the District while allowing the deferral of Title V permitting of agricultural operations.

EPA Response to OCE Comment #4: Although this comment is specific to Bay Area, it is a statewide issue. Our response to this comment is provided in section II.A, above.

Comments received from OCE on non-interim approval rule changes: The following comments were made by OCE on our proposal to approve other rule changes made by Bay Area that were not required to correct interim approval deficiencies. We find that these comments are within the scope of the rulemaking and our response to these comments follow.

OCE Comment #5: Rule 2–6–113 (Exemption, Registered Portable Engines)—OCE expressed concern that the District exempts registered portable engines from its Title V program purportedly because the District does not regulate them.

EPA Response to OCE Comment #5: Rule 2–6–113 is not a provision that we proposed to approve (see table 2 in our proposed full approval dated October 19, 2001, 66 FR 53140), and therefore the comment is outside the scope of today's final rulemaking. Since the provision at 2–6–113 is not included in our final action, the provision does not exist in the federally approved part 70 program for Bay Area. Thus, the exemption for portable equipment at 2–6–113 is not available to sources in the Bay Area under the federally approved part 70 program.

OCE Comment #6: Rule 2–6–201 (Administrative Permit Amendment)—This provision defines ''administrative permit amendment'' and lists the changes at a title V source that can be considered for administrative permit amendment procedures. To correct an interim approval issue (see issue #6 in the proposed rulemaking) with this definition, Bay Area eliminated the phrase, ''but not necessarily limited to'' from the sentence introducing the list of what can be considered an administrative permit amendment. OCE commented that the definition still suffers from lack of clarity because it still uses the word ''include'' to introduce the list of what can be an administrative permit amendment. Further, they asked that the phrase ''or new'' be eliminated because new monitoring requirements are significant permit modifications to which the public ought to be able to comment.

EPA Response to OCE Comment #6: EPA disagrees with OCE's comment that the definition of Administrative Permit Amendment is still unclear. The District's deletion of the language, ''not necessarily limited to'' in the current rule must be considered to mean that the District considers this list to be exhaustive. Therefore, EPA considers the list to be all that is allowed. Regarding the request that the term, ''new or'' be eliminated, EPA does not believe it is necessary because we view ''new'' monitoring at an existing source to mean increasing the frequency of the existing monitoring. Furthermore, any significant change in monitoring is required to undergo a significant permit revision as defined at 2–6–226.

OCE Comment #7: Definition of Potential to Emit—OCE objected to the District replacing the phrase, ''federally enforceable'' with the phrase, ''enforceable by the District.'' They stated that EPA has not yet made final decisions based on the recent court decisions, and they believed that EPA should await completion of its decision making process to review any proposed rules on potential to emit. In the alternative, they said that the phrase, ''enforceable by the District or EPA'' should be substituted with ''federally enforceable or legally and practically enforceable by the District'' consistent with EPA's guidance and comments in the proposed approval.

EPA Response to OCE Comment #7: EPA disagrees with the comment that the definition cannot be approved with the phrase, ''enforceable by the District.'' Further, we can approve the

provision because the requirement that a limitation be ''effective'' or ''practically enforceable'' is inherent in any PTE limit. See also our response to the CBE comment above.

OCE Comment #8: Rule 2–6–231 (Synthetic Minor Operating Permit) means ''a District operating permit that has been modified to include conditions imposing enforceable condition on a facility or source.'' OCE stated that the rule should reference Rule 2–6–218 ''potential to emit.'' They felt that the title V program should not be approved without the clarification in this rule that exceedance of the synthetic minor limit voids the minor permit.

EPA's Response to OCE Comment #8: In light of the comments, we have reconsidered our proposed action and find that EPA should defer final action on this provision. We are choosing to not take final action on this provision at this time and will complete our analysis and take appropriate action in the near future. For the time being, however, it is not part of the approved part 70 program for Bay Area.

OCE Comment #9: Rule 2–6–314 (Revocation): OCE stated that Part 70 requires a provision stating that the permittee must comply with all conditions of the Title V permit and that any noncompliance constitutes a violation of the Act and is grounds for enforcement action, and for permit termination and revocation, among other things. They stated that the Manual of Procedures makes clear that such a provision is part of a title V permit. However, OCE objected to EPA's proposed program approval to the extent that Rule 2–6–314 may be read to restrict any resources the citizen may have to enforce permit terms. In addition, they stated that the discretion to request the Hearing Board to hold a hearing should not reside solely with the Air Pollution Control Officer. They commented that any interested public member should be allowed to request the Hearing Board to hold a hearing to determine whether a major facility permit should be revoked.

EPA Response to OCE Comment #9: As the commenter acknowledges, BAAQMD's program is consistent with 70.6(a)(6)(i)'s requirements for permit content regarding non-compliance. The revocation procedures at 2–6–314 are a requirement of State law (see Health and Safety Code § 42307) and are not inconsistent with part 70 procedures, thus it is an approvable provision. In fact, part 70 does not require specific hearing board procedures for permitting agencies; therefore, the District can proceed in this way. Members of the public may avail themselves of federal remedies, including requesting revocation, under section 304 of the Clean Air Act.

OCE Comment #10: Rule 2–6–404 (Timely Application): OCE stated that there is no justification for extending the deadline for certain applications to October 20, 2000 and, for this reason, the program should not be approved.

EPA Response to OCE Comment #10: Rule 2–6–404.8 states that, ''the initial application for a major facility review permit for a existing major facility with actual emissions lower than 50 tons per year of each regulated pollutant and 7 tons per year of any hazardous air pollutant shall be submitted by the applicant by October 20, 2000.'' This provision was adopted by the District Board on October 19, 1999 and provided warning to sources whose emissions were less than those specified, but whose PTE exceeded major source levels, that and initial application was due in one year. EPA finds that this provision is approvable because it was more restrictive than EPA policy on the matter at this time.[2] EPA's policy allowed a source to temporarily establish a potential to emit limit based on actual emissions to avoid major source status under section 112 and title V of the Clean Air Act. EPA's transition policy expired on December 31, 2000, which was after the October 20, 2000 date established by the District in its rule for these type of sources to submit timely title V applications.

OCE Comment #11: Rule 2–6–409 (Permit Content): The testing, monitoring, reporting and recordkeeping section of the rule should contain the requirement in 40 CFR 70.6(a)(3)(i)(C) for the requirements, as necessary, concerning the use, maintenance and, where appropriate, installation of monitoring equipment. This requirement could be included in Rule 2–6–503.

EPA Response to Comment #11: District rule 2–6–409.2 requires that permits include ''all applicable requirements for monitoring, recordkeeping and reporting, including applicable test methods and analysis procedures.'' Furthermore, the District MOP at 4.6 includes a reference to numerous federal and local regulations that require monitoring (e.g., Federal New Source Performance Standards, etc.) and a statement that, ''the requirements in the above regulations contain extensive instructions on monitoring procedures. They include details on the calibration of instruments, source testing for verification, number of data points per time period, averaging and statistical analysis. Such requirements will be included in the permit by reference.'' EPA finds that the MOP at section 4.6, and the general requirement at 2–6–409.2, adequately satisfy the part 70 requirement cited by the commenter. Therefore, we are approving 2–6–409.2.

OCE Comment #12: Rule 2–6–415 (Reopening for Cause): OCE objected to EPA's proposed program approval to the extent that Rule 2–6–314 may be read to restrict any resources the citizen may have to request revocation of permits. They stated that, consistent with the right provided to the public to enforce the terms of Title V permits and consistent with 40 CFR 70.6(a)(6)(i), any interested public member should be allowed to seek the remedy of revocation.

EPA Response to OCE Comment #12: We disagree with the comment. Part 70 does not require specific hearing board procedures to allow citizens to reopen or revoke a permit, but the Clean Air Act allows members of the public to sue to enforce permit requirements and to request appropriate relief from a court. See also our response to comment #9, above.

3. Comments From Commonweal

Commonweal raised concerns regarding provision 2–6–314, ''Revocation'' which states, ''the Air Pollution Control Officer (APCO) may request the Hearing Board to hold a hearing to determine whether a major facility permit should be revoked if it is found that the holder of the permit is violating any provision in the permit or any applicable permit.'' Commonweal commented that this provision needs more specificity concerning when the APCO requests a hearing. Commonweal also stated it is necessary to require that the APCO ''must'' request the Hearing Board to hold a hearing about whether a permit should be revoked when a consistent pattern of permit violations has occurred. Commonweal provided two slightly different options for what they would like to the revocation language to state.

EPA's Response to Commonweal's Comment: EPA does not agree that the provision at 2–6–314 needs to be modified before it can be approved as part of the Bay Area's part 70 permitting

[2] *See* January 25, 1995 Memorandum from John Seitz, Director, OAQPS and Robert Van Heuvelen, Director, Office of Regulatory Enforcement, to various Regional EPA Air Program Directors, entitled, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under section 112 and Title V of the Clean Air Act.'' *See* also, Memorandum dated December 20, 1999 entitled, ''Third Extension of January 25, 1995 Potential to Emit Transition Policy,'' from John Seitz, Director, OAQPS and Eric Schaeffer, Director, Office of Regulatory Enforcement.

program. Part 70 does not require that the APCO request a public hearing to determine if a permit should be revoked. The permit revocation procedure described in 2–6–314, including all District Hearing Board proceedings, is an attribute of California State Law and is not inconsistent with any provision in Part 70 (see California Health and Safety Code § 42307). In general, part 70 requires that all permit proceedings undergo adequate public notice requirements including ''offering an opportunity for public comment and a hearing on the draft permit.'' (See § 70.7(h)). Also, part 70 describes the procedures that must be followed if ''the Administrator or the permitting authority determines that the permit must be revised or revoked to assure compliance with the applicable requirements.'' (See § 70.7(f)(1)(iv)).

III. EPA's Final Action

EPA is granting full approval to the 34 operating permits programs submitted by CARB based on the revisions submitted by the 34 districts, which satisfactorily address the program deficiencies identified in EPA's interim approvals for these districts. In addition, EPA is approving, as title V operating permits program revisions, other changes made by some districts that are unrelated to the changes required by EPA for full program approval. EPA is not taking action on certain other changes made by some districts that are also unrelated to the changes required by EPA for full program approval. For detailed descriptions of these changes and the basis for EPA's actions, readers should refer to the **Federal Register** notices published on October 19, 2001 and October 22, 2001 (see Table 1 above for **Federal Register** citations), in which EPA proposed full approval of the 34 operating permit programs, as well as the Technical Support Documents associated with those proposals.

Today EPA is also approving, as part of their revised operating permits programs, changes to the definition of potential to emit (PTE) made by Kern County APCD (KCAPCD) and Amador County APCD (ACAPCD). Both districts had revised the PTE definition in their local rules such that the requirement to count fugitives towards the major source threshold was inconsistent with the requirement in the definition of major source in 40 CFR Part 70, and was therefore not approvable. However, when EPA proposed to fully approve the KCAPCD and ACAPCD operating permits programs, on October 22, 2001 (66 FR 53354), the Agency proposed to approve the KCAPCD and ACAPCD definitions of potential to emit provided that EPA finalized revisions to the part 70 rule that would make the revised PTE definitions of KCAPCD and ACAPCD approvable. EPA promulgated a final rule on November 27, 2001 (66 FR 59161) that revised the definition of major source in part 70; the KCAPCD and ACAPCD definitions are now consistent with part 70 and EPA is approving them as part of these districts' revised title V programs.

Finally, for the Bay Area Air Quality Management District's operating permits program, our full approval includes all provisions except for:

—Provisions identified in table 2 from our proposed FR notice dated October 19, 2001. (66 FR 53140); and

—the definition of Synthetic Minor Operating Permit. Section 2–6–231.

IV. Effective Date of EPA's Full Approval of the 34 Operating Permits Programs

EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the 34 districts' programs effective on November 30, 2001. In relevant part, the APA provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except— * * * (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the programs to take effect before December 1, 2001. EPA's interim approval of the 34 districts' programs expires on December 1, 2001. In the absence of this full approval of 34 districts' amended programs taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in the 34 districts and would remain in place until the effective date of the fully-approved state program. EPA believes it is in the public interest for sources, the public and 34 districts to avoid any gap in coverage of the district programs, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because the 34 districts have been administering the title V permit program for approximately six years under interim approvals. Through this action, EPA is approving a few revisions to the existing and currently operational programs. The change from the interim approved programs which substantially met the part 70 requirements, to the fully approved programs is relatively minor, in particular if compared to the changes between a district-established and administered program and the federal program.

V. What Is the Scope of EPA's Full Approval?

In its program submission, the 34 districts did not assert jurisdiction over Indian country. To date, no tribal government in California has applied to EPA for approval to administer a title V program in Indian country within the state. EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may be approved by EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. EPA's authority to issue permits in Indian country was challenged in *Michigan* v. *EPA,* (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

VI. Citizen Comments on Operating Permits Programs

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

One member of the public commented on what he believes to be deficiencies with respect to the California title V programs. As stated in the **Federal Register** notices published on October

19, 2001 and October 22, 2001 proposing to fully approve the 34 operating permits programs, EPA takes no action on those comments in today's action. Rather, EPA will respond by December 14, 2001 to timely public comments on programs that have obtained interim approval, and by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. In addition, we will publish a notice of availability in the **Federal Register** notifying the public that we have responded in writing to these comments and how the public may obtain a copy of our response. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight. Furthermore, in the future, EPA may issue an additional NOD if EPA or a citizen identifies other deficiencies.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. 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, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or 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. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. 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 State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program 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.

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 on November 30, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 29, 2001.

Wayne Nastri,

Regional Administrator, Region 9.

40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by revising paragraphs (a) through (hh) under California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

California

* * * * *

(a) Amador County Air Pollution Control District (APCD):

(1) Complete submittal received on September 30, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on April 10, 2001. The rule amendments contained in the April 10, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Amador County Air Pollution Control District is

hereby granted final full approval effective on November 30, 2001.

(b) Bay Area Air Quality Management District (AQMD):

(1) Submitted on November 16, 1993, amended on October 27, 1994, and effective as an interim program on July 24, 1995. Revisions to interim program submitted on March 23, 1995, and effective on August 22, 1995, unless adverse or critical comments are received by July 24, 1995. Approval of interim program, including March 23, 1995, revisions, expires December 1, 2001.

(2) Revisions were submitted on May 30, 2001. The rule amendments contained in the May 30, 2001 submittal adequately addressed the conditions of the interim approval effective on July 24, 1995. Bay Area Air Quality Management District is hereby granted final full approval effective on November 30, 2001.

(c) Butte County APCD:

(1) Complete submittal received on December 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 17, 2001. The rule amendments contained in the May 17, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Butte County APCD is hereby granted final full approval effective on November 30, 2001.

(d) Calaveras County APCD:

(1) Complete submittal received on October 31, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on July 27, 2001. The rule amendments contained in the July 27, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Calaveras County APCD is hereby granted final full approval effective on November 30, 2001.

(e) Colusa County APCD:

(1) Complete submittal received on February 24, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 22, 2001 and October 10, 2001. The rule amendments contained in the August 22, 2001 and October 10, 2001 submittals adequately addressed the conditions of the interim approval effective on June 2, 1995. Colusa County APCD is hereby granted final full approval effective on November 30, 2001.

(f) El Dorado County APCD:

(1) Complete submittal received on November 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 16, 2001. The rule amendments contained in the August 16, 2001 submittals adequately addressed the conditions of the interim approval effective on June 2, 1995. El Dorado County APCD is hereby granted final full approval effective on November 30, 2001.

(g) Feather River AQMD:

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 22, 2001. The rule amendments contained in the May 22, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Feather River AQMD is hereby granted final full approval effective on November 30, 2001.

(h) Glenn County APCD:

(1) Complete submittal received on December 27, 1993; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on September 13, 2001. The rule amendments contained in the September 13, 2001 submittal adequately addressed the conditions of the interim approval effective on August 14, 1995. Glenn County APCD is hereby granted final full approval effective on November 30, 2001.

(i) Great Basin Unified APCD:

(1) Complete submittal received on January 12, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 18, 2001. The rule amendments contained in the May 18, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Great Basin Unified APCD is hereby granted final full approval effective on November 30, 2001.

(j) Imperial County APCD:

(1) Complete submittal received on March 24, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 2, 2001. The rule amendments contained in the August 2, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Imperial County APCD is hereby granted final full approval effective on November 30, 2001.

(k) Kern County APCD:

(1) Complete submittal received on November 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 24, 2001. The rule amendments contained in the May 24, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Kern County APCD is hereby granted final full approval effective on November 30, 2001.

(l) Lake County AQMD:

(1) Complete submittal received on March 15, 1994; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 1, 2001. The rule amendments contained in the June 1, 2001 submittal adequately addressed the conditions of the interim approval effective on August 14, 1995. Lake County AQMD is hereby granted final full approval effective on November 30, 2001.

(m) Lassen County APCD:

(1) Complete submittal received on January 12, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 2, 2001. The rule amendments contained in the August 2, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Lassen County APCD is hereby granted final full approval effective on November 30, 2001.

(n) Mariposa County APCD:

(1) Submitted on March 8, 1995; approval effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on September 20, 2001. The rule amendments contained in the September 20, 2001 submittal adequately addressed the conditions of the interim approval effective on February 5, 1996. Mariposa County APCD is hereby granted final full approval effective on November 30, 2001.

(o) Mendocino County APCD:

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on April 13, 2001. The rule amendments contained in the April 13, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Mendocino County APCD is hereby granted final full approval effective on November 30, 2001.

(p) Modoc County APCD:

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on September 12, 2001. The rule amendments contained in the September 12, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Modoc County APCD is hereby granted final full approval effective on November 30, 2001.

(q) Mojave Desert AQMD:

(1) Complete submittal received on March 10, 1995; interim approval effective on March 6, 1996; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 4, 2001 and July 11, 2001. The rule amendments contained in the June 4, 2001 and July 11, 2001 submittals adequately addressed the conditions of the interim approval effective on March 6, 1995. Mojave Desert AQMD is hereby granted final full approval effective on November 30, 2001.

(r) Monterey Bay Unified Air Pollution Control District:

(1) Submitted on December 6, 1993, supplemented on February 2, 1994 and April 7, 1994, and revised by the submittal made on October 13, 1994; interim approval effective on November 6, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 9, 2001. The rule amendments contained in the May 9, 2001 submittal adequately addressed the conditions of the interim approval effective on November 6, 1995. Monterey Bay Unified Air Pollution Control District is hereby granted final full approval effective on November 30, 2001.

(s) North Coast Unified AQMD:

(1) Complete submittal received on February 24, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 24, 2001. The rule amendments contained in the May 24, 2001 submittal adequately addressed

the conditions of the interim approval effective on June 2, 1995. North Coast Unified AQMD is hereby granted final full approval effective on November 30, 2001.

(t) Northern Sierra AQMD:

(1) Complete submittal received on June 6, 1994; interim approval effective on June 2, 1995; interim approval expiresDecember 1, 2001.

(2) Revisions were submitted on May 24, 2001. The rule amendments contained in the May 24, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Northern Sierra AQMD is hereby granted final full approval effective on November 30, 2001.

(u) Northern Sonoma County APCD:

(1) Complete submittal received on January 12, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 21, 2001. The rule amendments contained in the May 21, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Northern Sonoma APCD is hereby granted final full approval effective on November 30, 2001.

(v) Placer County APCD:

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 4, 2001. The rule amendments contained in the May 4, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Placer County APCD is hereby granted final full approval effective on November 30, 2001.

(w) The Sacramento Metropolitan Air Quality Management District:

(1) Complete submittal received on August 1, 1994; interim approval effective on September 5, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 1, 2001. The rule amendments contained in the June 1, 2001 submittal adequately addressed the conditions of the interim approval effective on September 5, 1995. The Sacramento Metropolitan Air Quality Management District is hereby granted final full approval effective on November 30, 2001.

(x) San Diego County Air Pollution Control District:

(1) Submitted on April 22, 1994 and amended on April 4, 1995 and October 10, 1995; approval effective on February 5, 1996, unless adverse or critical comments are received by January 8, 1996. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on June 4, 2001. The rule amendments contained in the June 4, 2001 submittal adequately addressed the conditions of the interim approval effective on February 5, 1996. The San Diego County Air Pollution Control District is hereby granted final full approval effective on November 30, 2001.

(y) San Joaquin Valley Unified APCD:

(1) Complete submittal received on July 5 and August 18, 1995; interim approval effective on May 24, 1996; interim approval expires May 25, 1998. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on June 29, 2001. The rule amendments contained in the June 29, 2001 submittal adequately addressed the conditions of the interim approval effective on May 24, 1996. San Joaquin Valley Unified APCD is hereby granted final full approval effective on November 30, 2001.

(z) San Luis Obispo County APCD:

(1) Complete submittal received on November 16, 1995; interim approval effective on December 1, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 18, 2001. The rule amendments contained in the May 18, 2001 submittal adequately addressed the conditions of the interim approval effective on December 1, 1995. San Luis Obispo County APCD is hereby granted final full approval effective on November 30, 2001.

(aa) Santa Barbara County APCD:

(1) Submitted on November 15, 1993, as amended March 2, 1994, August 8, 1994, December 8, 1994, June 15, 1995, and September 18, 1997; interim approval effective on December 1, 1995; interim approval expires on December 1, 2001.

(2) Revisions were submitted on April 5, 2001. The rule amendments contained in the April 5, 2001 submittal adequately addressed the conditions of the interim approval effective on December 1, 1995. Santa Barbara County APCD is hereby granted final full approval effective on November 30, 2001.

(bb) Shasta County AQMD:

(1) Complete submittal received on November 16, 1993; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 18, 2001. The rule amendments contained in the May 18, 2001 submittal adequately addressed the conditions of the interim approval effective on August 14, 1995. Shasta County AQMD is hereby granted final full approval effective on November 30, 2001.

(cc) Siskiyou County APCD:

(1) Complete submittal received on December 6, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on September 28, 2001. The rule amendments contained in the September 28, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Siskiyou County APCD is hereby granted final full approval effective on November 30, 2001.

(dd) South Coast Air Quality Management District:

(1) Submitted on December 27, 1993 and amended on March 6, 1995, April 11, 1995, September 26, 1995, April 24, 1996, May 6, 1996, May 23, 1996, June 5, 1996 and July 29, 1996; approval effective on March 31, 1997. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on August 2, 2001 and October 2, 2001. The rule amendments contained in the August 2, 2001 and October 2, 2001 submittals adequately addressed the conditions of the interim approval effective on March 31, 1997. South Coast AQMD is hereby granted final full approval effective on November 30, 2001.

(ee) Tehama County APCD:

(1) Complete submittal received on December 6, 1993; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 4, 2001. The rule amendments contained in the June 4, 2001 submittal adequately addressed the conditions of the interim approval effective on August 14, 1995. Tehama County APCD is hereby granted final full approval effective on November 30, 2001.

(ff) Tuolumne County APCD:

(1) Complete submittal received on November 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on July 18, 2001. The rule amendments contained in the July 18, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Tuolumne County APCD is hereby granted final full approval effective on November 30, 2001.

(gg) Ventura County APCD:

(1) Submitted on November 16, 1993, as amended December 6, 1993; interim approval effective on December 1, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 21, 2001. The rule amendments contained in the May 21, 2001 submittal adequately addressed the conditions of the interim approval effective on December 1, 1995. Ventura County APCD is hereby granted final full approval effective on November 30, 2001.

(hh) Yolo-Solano AQMD:

(1) Complete submittal received on October 14, 1994; interim approval effective on June 2, 1995; interim approval expiresDecember 1, 2001.

(2) Revisions were submitted on May 9, 2001. The rule amendments contained in the May 9, 2001 submittal adequately addressed the conditions of the interim approval effective on June 2, 1995. Yolo-Solano AQMD is hereby granted final full approval effective on November 30, 2001.

* * * * *

[FR Doc. 01–30368 Filed 12–6–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 101

[IB Docket No. 98–172; FCC–01–323]

Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-band, and the Allocation of Additional Spectrum for Broadcast Satellite-Service Use

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document we grant in part and deny in part the petitions for reconsideration of the 18 GHz Order filed by Hughes Electronics Corporation (Hughes), the Fixed Wireless Communications Coalition (FWCC) and

Winstar Communications, Inc. (Winstar). We defer for action in a future Commission order certain issues raised by Hughes relating to the band plan adopted in the 18 GHz Order and blanket licensing. We also address a number of issues raised by Teledesic Corporation (Teledesic) in its letter to the Commission and its request for judicial review of the rules adopted by the Commission in the 18 GHz Order.

DATES: Effective January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Engelman, Planning & Negotiations Division, International Bureau, (202) 418–2150 or via electronic mail: *rengelma@fcc.gov.* In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, International Transcription Services (ITS), Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Summary of the Order on Reconsideration

1. In this First Order on Reconsideration we addressed issues raised by Hughes, FWCC, Winstar, and Teledesic in petitions to the Commission for reconsideration, and a petition to the United States Court of Appeals for the District of Columbia for judicial review of the *18 GHz Order.* The issues generally fall into one of four groups: 18 GHz band plan, licensing, Legacy List, and relocation.

2. With regard to the 18 GHz band plan, this Order gives the NGSO/FSS operators increased flexibility in relocating interfering terrestrial fixed stations by terminating after ten years the co-primary status of existing terrestrial fixed stations in the 19.26–19.3 GHz band, and low-power terrestrial fixed service stations in the 18.8–19.3 GHz band. This Order finds that it is appropriate to treat such operations in the same manner as other operations in the 18 GHz band, and that such treatment necessarily includes the right to compensation for relocation of both parts of a channel pair. Thus, this Order provides that, where it becomes necessary during the ten years to relocate an existing terrestrial fixed station in the 19.26–19.3 GHz band, or low-power terrestrial fixed service station in the 18.8–19.3 GHz band, the FS operator will be able to receive comparable facilities at no cost to the fixed operator.

3. We are persuaded by Hughes and several commenters to reverse the Legacy List policy that we adopted in the *18 GHz Order.* As a result, this Order removes § 25.145(i) of our rules and the requirement for a GSO/FSS space station licensee to use of the Legacy List coordination process to alleviate interference to a terrestrial fixed station.

4. This Order also generally affirms our basic findings in the *18 GHz Order* with regard to the blanket licensing rules. It changes, however the power flux-density (pfd) value for the 18.3–18.8 GHz frequency band to the values in § 25.208(c) to be consistent with the pfd limit in the Radio Regulations of the International Telecommunication Union and removes § 25.208(d). We also determine that the pfd level in § 25.138(a)(6) of −118 dBW/m2/MHz should apply to all Geostationary Satellite Orbit/Fixed Satellite Service (GSO/FSS) downlink bands in which the Commission permits blanket licensing. We amend § 101.97 to clarify that an incumbent Fixed Service (FS) licensee retains primary status notwithstanding a change in ownership or control. Further, we clarify that an incumbent licensee is entitled to a 12-month trial period after relocation to test the new facilities.

5. Finally, this Order generally denies the requests to reconsider the relocation issues, and reaffirms the Commission decision to adopt the relocation rules codified in §§ 101.89 and 101.91. This is in part because we find that it is appropriate to apply in the 18 GHz band the established policy that the Commission has employed in other similar circumstances. In addition, we find that it is Commission policy to enable an incumbent, that is required to relocate, to construct a comparable replacement system without the additional burden of undue costs. Moreover, this Order finds that the alternative proposals offered by Teledesic for measuring relocation costs are plainly inconsistent with this Commission goal. We further find that, contrary to the allegations made by Teledesic, new entrants benefit from the Commission policy of seeking to ensure that incumbents have every possible reasonable incentive to relocate promptly and voluntarily.

Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the *18 GHz Order.* The Commission sought written public comments on the proposals in the *18 GHz NPRM* including comment on the IRFA. This Supplemental Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Rules

In this First Order on Reconsideration, the Commission changes the pfd value for the 18.3–18.8 GHz frequency band to the values in § 25.208(c) to be consistent with the pfd limit in the Radio Regulations of the International Telecommunication Union and remove § 25.208(d). This First Order on Reconsideration also determines that the pfd level in § 25.138(a)(6) of −118 dBW/m2/MHz should apply to all Geostationary Satellite Orbit/Fixed Satellite Service (GSO/FSS) downlink bands in which the Commission permits blanket licensing. It amends § 101.97 to clarify that an incumbent Fixed Service (FS) licensee retains primary status notwithstanding a change in ownership or control. Further, this First Order on Reconsideration clarifies that an incumbent licensee is entitled to a twelve-month trial period after relocation to test the new facilities. Upon reconsideration, this First Order on Reconsideration also concludes that existing terrestrial services operating in the 19.26–19.3 GHz band will not be allowed to recover relocation reimbursement on a permanent basis, and will be subject to the ten year sunset period applicable to other FS operations in the 18 GHz band. This First Order on Reconsideration also takes the following steps to better reconcile the competing interests of the new entrants and the low-power terrestrial fixed service operators in satellite bands: (1) Cuts off any further low-power fixed service applications under § 101.147(r)(10) as of April 1, 2002 (outdoor applications were already cut off in the *18 GHz Order*); and (2) permits low-power services authorized pursuant § 101.147(r)(10) to continue to operate on a co-primary basis for a period of ten years, subject to the right of satellite providers to require low-power operators to relocate. Finally, this First Order on Reconsideration removes § 25.145(i) of our rules and reverses the Legacy List policy that the Commission adopted in the *18 GHz Order*; thus, the

Commission will no longer require the use of the Legacy List coordination process by an FSS space station licensee to alleviate interference to a terrestrial fixed station.

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

No comments were submitted in direct response to the IRFA.

C. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the adopted rules.

1. International Services

The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications service providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. The Census report does not provide more precise data.

2. Fixed Satellite Transmit/Receive Earth Stations

Currently there are no operational fixed satellite transmit/receive earth stations authorized for use in the 17.7–20.2 GHz and 27.5–30 GHz band. However, with 12 GSO/FSS licensees and 1 NGSO/FSS licensee, and our decision to adopt blanket licensing, we expect applications for FSS earth station licenses to be filed in the near future. We do not request or collect annual revenue information, and thus are unable to estimate the number of earth stations that would constitute a small business under the SBA definition.

3. Mobile Satellite Earth Station Feeder Links

We have granted one license for MSS earth station feeder links. We do not request or collect annual revenue information, and thus are unable to estimate of the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

4. Space Stations (Geostationary)

Commission records reveal that there are 12 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition, or apply any rules providing special consideration for Space Station (Geostationary) licensees that are small businesses.

5. Space Stations (Non-Geostationary)

There is one Non-Geostationary Space Station licensee and that licensee is operational. We do not request or collect annual revenue information, and thus are unable to estimate of the number of non-geostationary space stations that would constitute a small business under the SBA definition.

6. Direct Broadcast Satellites

Because DBS provides subscription services, DBS falls within the SBA definition of Cable and Other Pay Television Services (SIC 4841). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated more than $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

7. Auxiliary, Special Broadcast and Other Program Distribution Services

This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). At the frequencies under consideration in this proceeding there are no transmissions of this type directly to the public. The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations (SIC 4832) and television broadcasting stations (SIC 4833). These definitions provide, respectively, that a small entity is one with either $5.0 million or less in annual receipts or $10.5 million in annual receipts. 13 CFR 121.201, SIC CODES 4832 and 4833. The numbers of these stations are very small. The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that by themselves most, if not all, of these auxiliary facilities could be classified as small businesses. We also recognize that most of these types of services are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.

8. Microwave Services

Microwave services includes common carrier, private operational fixed, and

broadcast auxiliary radio services. At present, there are 22,015 common carrier licensees, approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. Inasmuch as the Commission has not yet defined a small business with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with no more than 1,500 persons. 13 CFR 121.201, SIC CODE 4812. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission has adopted rules in this First Order on Reconsideration that involve no reporting requirements.

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

The changes made by this First Order on Reconsideration do not affect small entities disproportionately and it is likely no additional outside professional skills will be necessary to comply with the rules and requirements here listed. The *18 GHz NPRM* solicited comment on several alternatives for spectrum sharing blanket licensing, and band segmentation. This First Order on Reconsideration considered comments offering alternatives, and has acted in response to stated concerns and suggestions, particularly those representing significant agreement or consensus by commenters. The decisions of this First Order on Reconsideration should positively impact both large and small businesses by providing a faster, more efficient, and less economically burdensome coordination and licensing procedure.

F. Report to Congress

The Commission will send a copy of this First Order on Reconsideration including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1966, *see* 5 U.S.C. 801 (a)(1)(A). In addition, the Commission will send a copy of this First Order on Reconsideration, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this First Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

Pursuant to sections 1, 4(i), 4(j), 301, 302, 303(c), 303(e), 303(f), 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i), 154(j), 301, 302, 303(c), 303(e), 303(f), 303 (r), and 403, this *First Order on Reconsideration* is adopted and that parts 25 and 101 of the Commission's rules ARE AMENDED, as specified in the rules, Effective January 7, 2002.

The Regulatory Flexibility Analysis as required by section 604 of the Regulatory Flexibility Act and as set forth is adopted.

The Commission's Consumer Information Bureau SHALL SEND a copy of this *First Order on Reconsideration,* including the Supplemental Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

This proceeding is terminated pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and 154 (j).

List of Subjects

47 CFR Part 25

Communications common carriers, communications equipment, Radio, Satellites, Telecommunications.

47 CFR Part 101

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons set forth in the preamble, parts 25, and 101 of title 47 of the Code of Federal Regulations are amended as follows:

PART 25—SATELLITE COMMUNICATIONS

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

Authority: 47 U.S.C. 701–744. Interprets or applies § 303, 47 U.S.C. 303. 47 U.S.C. §§ 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Section 25.138 is amended by revising paragraph (a)(6) to read as follows:

§ 25.138 Blanket licensing provisions of GSO FSS Earth Stations in the 18.58–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space) and 29.5–30.0 GHz (Earth-to-space) bands.

(a) * * *

(6) Power flux-density (PFD) at the Earth's surface produced by emissions from a space station for all conditions, including clear sky, and for all methods of modulation shall not exceed a level of -118 dBW/m^2/MHz, in addition to the limits specified in § 25.208 (d).

* * * * *

3. Section 25.145 is amended by revising paragraph (h) and removing paragraph (i) to read as follows:

§ 25.145 Licensing Conditions for the Fixed-Satellite Service in the 20/30 GHz Bands.

* * * * *

(h) *Policy governing the relocation of terrestrial services from the 18.58 to 19.3 GHz band.* Frequencies in the 18.58–19.3 GHz band listed in parts 21, 74, 78, and 101 of this chapter have been reallocated for primary use by the Fixed-Satellite Service, subject to various provisions for the existing terrestrial licenses. Fixed-Satellite Service operations are not entitled to protection from the co-primary operations until after the period during which terrestrial stations remain co-primary has expired. (see §§ 21.901(e), 74.502(c), 74.602(g), 78.18(a)(4), and 101.147(r) of this chapter).

4. In § 25.202, footnote 7 of the table following paragraph (a)(1) is revised to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

* * * * *

[7] The band 18.8–19.3 GHz is shared co-equally with terrestrial radiocommunications services until June 8, 2010.

* * * * *

5. Section 25.208 is amended by revising paragraph (c), removing paragraph (d), and redesignating paragraph (e) as paragraph (d) and paragraph (f) as paragraph (e) to read as follows:

§ 25.208 Power flux-density limits.

* * * * *

(c) In the 18.3–18.8 GHz, 19.3–19.7 GHz, 22.55–23.00 GHz, 23.00–23.55 GHz, and 24.45–24.75 GHz frequency bands, the power flux-density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the following values:

(1) -115 dB (W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane.

(2) $-115+0.5$ (d–5) dB (W/m^2) in any 1 MHz band for angles of arrival d (in degrees) between 5 and 25 degrees above the horizontal plane.

(3) -105 dB (W/m^2) in any 1 MHz band for angles of arrival between 25

and 90 degrees above the horizontal plane.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

6. The authority citation for part 101 continues to read as follows:

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

7. Section 101.85 is amended by revising paragraph (b) to read as follows:

§ 101.85 Transition of the 18.58–19.3 GHz band from the terrestrial fixed services to the fixed-satellite service (FSS).

* * * * *

(b) FS operations in the 18.58–19.30 GHz band that remain co-primary under the provisions of §§ 21.901(e), 74.502(c), 74.602(d), 78.18(a)(4) of this chapter, and § 101.147(r) will continue to be co-primary with the FSS users of this spectrum until June 8, 2010 or until the relocation of the fixed service operations, whichever occurs sooner, except for operations in the band 19.26–19.3 GHz and low power systems operating pursuant to § 101.47(r) (10), which shall operate on a co-primary basis until October 31, 2011. If no agreement is reached during the negotiations, an FSS licensee may initiate relocation procedures. Under the relocation procedures, the incumbent is required to relocate, provided that the FSS licensee meets the conditions of § 101.91.

* * * * *

8. Section 101.91 is amended by adding a sentence to the end of paragraph (c) to read as follows:

§ 101.91 Involuntary relocation procedures.

* * * * *

(c) * * * The FS licensee may take up to 12 months to make such adjustments and perform such testing.

* * * * *

9. Section 101.95 is amended by revising the section heading to read as follows:

§ 101.95 Sunset provisions for licensees in the 18.58–19.30 GHz band.

* * * * *

10. Section 101.97 is amended by adding a new paragraph (a)(9) to read as follows:

§ 101.97 Future licensing in the 18.58–19.30 GHz band.

(a) * * *

(9) Changes in ownership or control.

* * * * *

11. Section 101.147 is amended by revising paragraph (r) introductory text and by adding a sentence at the end of paragraph (r)(10)(iv) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(r) *17,700 to 19,700 and 24,250 to 25,250 MHz:* Stations operating on the following frequencies in the band 18.58–18.8 GHz that were licensed or had applications pending before the Commission as of June 8, 2010 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of the Commission's rules until June 8, 2010, except for operations in the band 19.26–19.3 GHz and low power systems operating pursuant to paragraph (r)(10) of this section, which shall operate on a co-primary basis until October 31, 2011. Those stations operating on the following frequencies in the band 18.8–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of the Commission's rules until June 8, 2010. After this date, operations in the 18.58–19.30 GHz band are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. No new part 101 licenses will be granted in the 18.58–19.3 GHz band after June 8, 2010, except for certain low power operations authorized under paragraph (r)(10) of this section, which may continue to be licensed until April 1, 2002. Licensees may use either a two-way link or one frequency of a frequency pair for a one-way link and must coordinate proposed operations pursuant to the procedures required in § 101.103. (Note, however, that stations authorized as of September 9, 1983, to use frequencies in the band 17.7–19.7 GHz may, upon proper application, continue to be authorized for such operations, consistent with the conditions related to the 18.58–19.3 GHz band.)

* * * * *

(10) * * *

(iv) * * * No new licenses will be authorized for applications received after April 1, 2002.

* * * * *

[FR Doc. 01–30304 Filed 12–6–01; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 66, No. 236
Friday, December 7, 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 THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[No. 2001–76]

RIN 1550–AB52

Authority for Certain Savings and Loan Holding Companies To Engage in Financial Activities

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of extension of comment period.

SUMMARY: The Office of Thrift Supervision is extending the comment period for the proposed rule published on November 8, 2001. The proposed rule would clarify what financial activities are authorized for certain savings and loan holding companies after the Gramm-Leach-Bliley Act. This extension will allow interested persons until January 10, 2002 to provide comments on the proposed rule.

DATES: Comments must be received by January 10, 2002.

ADDRESSES:

Mail: Send comments to Regulations Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001–69.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention Regulation Comments, Chief Counsel's Office, Docket No. 2001–69.

Facsimile: Send facsimile transmissions to FAX Number (202) 906–6518, Attention Docket No. 2001–69.

E-mail: Send e-mail to ''*regs.comments@ots.treas.gov*'', Attention Docket No. 2001–69, and include your name and telephone number.

Availability of comments: You may access the public comments and an index of comments on the OTS Internet Site at ''*www.ots.treas.gov*''. In addition, you may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail message to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect, to assist us in serving you.) We schedule appointments on business days between 10 a.m. until 4 p.m. In most cases, appointments will be available the next business day following the date we receive your request.

FOR FURTHER INFORMATION CONTACT: Donna M. Deale, (202) 906–7488, Manager, Holding Company and Affiliate Policy, Office of Supervision Policy; Kevin A. Corcoran, (202) 906–6962, Assistant Chief Counsel for Business Transactions, Business Transactions Division, Office of Chief Counsel; and Sally Warner Watts, (202) 906–7380, Counsel (Banking and Finance), Regulations and Legislation Division, Office of Chief Counsel; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. If you want to access any of these telephone numbers by text telephone (TTY), you may call the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On November 8, 2001, OTS published a proposed rule on financial activities that are authorized for certain savings and loan holding companies after the Gramm-Leach-Bliley Act (66 FR 56488). That rule required interested persons to submit their comments by December 10, 2001.

During the comment period, OTS received a written request to extend the comment period until January 10, 2002. The requestor, an association representing financial organizations, sought an extension to permit its member institutions to have time to review the proposal, consider its implications, and develop meaningful comments.

In response to this request, OTS is extending the comment period for the proposed rule until January 10, 2002. This will allow time for the requestor and other interested persons to develop and submit comments on the proposed rule.

OTS encourages e-mail or facsimile submissions to ensure that it receives comments in a timely manner, in light of recent experience with postal service interruptions in the Washington, DC area.

Dated: December 3, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 01–30306 Filed 12–6–01; 8:45 am]

BILLING CODE 6720–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10743; Airspace Docket No. 01–ASW–16]

Proposed Realignment of Federal Airway V–385; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This action proposes to realign Federal Airway 385(V–385) between Lubbock, TX, and Abilene, TX, so that aircraft navigating on the airway will be able to remain clear of the newly established Lancer Military Operations Area (MOA).

DATES: Comments must be received on or before January 28, 2002.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket numbers FAA–2001–10743/Airspace Docket No. 01–ASW–16 at the beginning of your comments.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address.

An informal docket may also be examined during normal business hours

at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Nos. FAA 2001–10743/ Airspace Docket No. ASD 01–ASW–16.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.*

Additionally, any person may obtain a copy of this action by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On February 21, 2002, the Lancer MOA will be designated between Lubbock, TX, and Abilene, TX. Currently, V–385 (between Lubbock and Abilene) passes through the eastern boundary of the new MOA. By moving a turning point (BOOMR intersection) on V–385, the airway would be relocated approximately seven miles to the east of its present location. With this realignment, aircraft may continue to use V–385 to navigate between Lubbock and Abilene without encroaching upon the new Lancer MOA.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to realign V–385 between Lubbock, TX, and Abilene, TX, by relocating the BOOMR intersection and moving the airway approximately seven miles to the east of its present location. This realignment will allow aircraft to navigate on the airway between Lubbock, TX, and Abilene, TX, without encroaching upon the new Lancer MOA.

This regulation is limited to an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since it has been determined that this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document would be published subsequently in the Order.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–385 [Revised]

From Lubbock, TX, INT Lubbock 105°T(094°M) and Abilene, TX, 329°T(319°M) radials; Abilene.

* * * * *

Issued in Washington, DC, on December 3, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–30360 Filed 12–6–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 500

[Docket No. 01N–0284]

Import Tolerances; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to March 11, 2002, the comment period for the advance notice of proposed rulemaking (ANPRM) that appeared in the **Federal Register** of August 10, 2001 (66 FR 42167). The ANPRM gave notice that FDA was proposing a regulation for establishing import tolerances. The ANPRM was soliciting comments on issues related to the implementation of the import tolerances provision in section 4 of the Animal Drug Availability Act of 1996 (ADAA). The ADAA authorizes FDA to establish drug residue tolerances (import tolerances) for imported food products of animal origin for drugs that are used in other countries, but that are unapproved new animal drugs in the United States. Food products of animal origin that are in compliance with the import tolerance will not be considered adulterated under the Federal Food, Drug, and Cosmetic Act (the act) and may be imported into the United States. FDA is taking action because it has rescheduled the public meeting on the issue and wishes to allow time for the consideration of comments made after the meeting.

DATES: Submit written or electronic comments by March 11, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–235), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Frances Pell, Center for Veterinary Medicine (HFV–235), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0188, e-mail: *fpell@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

In the **Federal Register** of August 10, 2001 (66 FR 42167), FDA published an ANPRM that gave notice that FDA intends to propose a regulation for establishing import tolerances. Interested persons were given until December 10, 2001, to comment on the ANPRM. The ANPRM is available on the Internet at: *http://www.fda.gov/OHRMS/DOCKETS/98fr/081001a.htm.* Because the agency has rescheduled the meeting of the Veterinary Medicine Advisory Committee (VMAC) from September 2001 to January 2002 (66 FR 58052, November 21, 2001), the agency is extending the comment period 90 days. The VMAC will be asked to discuss answers to questions similar to those posed in the ANPRM.

II. Comments

Interested persons may submit written or electronic comments regarding the ANPRM by March 10, 2002. Written or electronic comments should be submitted to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Comments may also be submitted electronically on the Internet at: *http://www.fda.gov/dockets/ecomments.* Once on the Internet site, select 01N–0284 Import Tolerances and follow the directions.

Dated: November 30, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–30331 Filed 12–6–01; 8:45 am]

BILLING CODE 4160–01–S

Notices

Federal Register

Vol. 66, No. 236

Friday, December 7, 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

Notice of Request for Approval of a New Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation to request approval for collecting information necessary to pre-approve producers who request Loan Deficiency Payments online. This request does not involve any revisions to program rules or eligibility. The proposed ''Request for E–LDP Services'' collects information that is necessary to determine whether the producer is eligible to obtain an LDP online.

DATES: Comments on this notice must be received on or before February 5, 2002, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Kimberly V. Graham, USDA/Farm Service Agency, 1400 Independence Avenue, SW., STOP 0512; Washington, DC 20250–0512, telephone number (202) 720–9154. Comments may also be submitted by e-mail to: *Kimberly_Graham@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Electronic LDP Services.

OMB Control Number: 0560–NEW.

Type of Request: Approval of a new information collection.

Abstract: On behalf of CCC, the Farm Service Agency (FSA) has developed an Electronic Loan Deficiency Payment pilot project. This internet-based process would allow producers to request an LDP online. The capability to request LDPs online would provide producers an alternative method for obtaining loan deficiency payments. The purpose for obtaining this information is to determine producer eligibility and establish producer profiles in support of the online process. The reporting method is customer/producer-based and focuses on collecting and maintaining information needed to authorize producers access to E–LDP Services.

Estimate of Burden: Public reporting burden for the collection of information is estimated to average 4 minutes per producer.

Respondents: Producers/corporations.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 25 hours.

Proposed topics for comment include: (a) 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 and protect the interests of CCC and the producer; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of the information on those who respond, including the use of appropriated automated, electronic, mechanical, or techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Kimberly V. Graham, USDA/Farm Service Agency, 1400 Independence Avenue, SW., STOP 0512; Washington, DC 20250–0512, telephone number (202) 720–9154. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on November 15, 2001.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 01–30312 Filed 12–6–01; 8:45 am]

BILLING CODE 3410–05–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: January 7, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 17, September 21, October 5, October 12 and October 19, 2001, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 43180, 48661, 51005, 52095 and 53201) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Trunklocker, Wood
8460–00–NSH–0003

Services

Administrative Services

U.S. Customs Service Academy, Glynco, Georgia.

Janitorial/Custodial

U.S. Army Reserve Center, Newington, Connecticut.

Mailroom Operation

At the following location: GSA Washington, 18th & F Streets NW, Washington, DC.

GSA Arlington

Crystal Mall #3, 1931 Jefferson Davis Highway, Arlington, Virginia.
GSA Regional Office Building 7th & D Streets, SW, Washington, DC.

Mailroom Operation

Internal Revenue Service, San Patricio Office Center Building, #7 Tabonuco Street, Guaynabo, Puerto Rico.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are deleted from the Procurement List:

Commodities

Skin Protectant Plus, Effective Prevention
6505–01–474–7707
6505–01–474–7343
Skin Protectant, Plus
6505–01–474–7724
Suspension Assembly, Liner, Helmet
8470–00–880–8814

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–30365 Filed 12–6–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 7, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Commissary Shelf Stocking, Custodial & Warehousing

U.S. Coast Guard Support Center, Kodiak, Alaska.
NPA: MQC Enterprises, Inc., Anchorage, Alaska.
Government Agency: Defense Commissary Agency, Fort Lee, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–30366 Filed 12–6–01; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Notice of Rescission of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea.

SUMMARY: On October 1, 2001, the Department of Commerce (''Department'') published a notice of initiation of an antidumping duty administrative review on certain corrosion-resistant carbon steel flat

products from Korea (66 FR 49924). This review covers three manufacturers/exporters of the subject merchandise. The period of review (''POR'') is August 1, 2000 through July 31, 2001. This review has now been rescinded as a result of a timely withdrawal of the request for administrative review by the interested parties.

EFFECTIVE DATE: December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Marlene Hewitt or Jim Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–1385 (Hewitt) or 202–482–0159 (Doyle), fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''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 the regulations at 19 CFR part 351 (2001).

Background

On August 1, 2001, the Department published a notice of opportunity to request an administrative review of this order for the period August 1, 2000 through July 31, 2001. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 39729 (August 1, 2001). Pohang Iron & Steel Co., Ltd. (''POSCO''), Dongbu Steel Co., Ltd. (''Dongbu'') and Union Steel Manufacturing Co., Ltd. (''Union''), Korean producers or exporters of subject merchandise (collectively ''respondents''), timely requested that the Department conduct an administrative review of their sales of subject merchandise to the United States. On October 1, 2001, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 49924 (October 1, 2001).

Rescission of Review

Dongbu and Union withdrew their request for review on November 5, 2001 and POSCO withdrew its request for review on November 7, 2001. The Department's regulations provide that the Secretary will rescind an administrative review ''if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' *See* 19 CFR 351.213(d)(1). Respondents withdrew their review requests within the 90 day time limit. There were no other requests for administrative review from petitioners or other interested parties. Therefore, in accordance with section 351.213(d)(1) of the Department's regulations, we are rescinding this administrative review. *See* Memorandum to the File from Marlene Hewitt, Enforcement Group III: Recission of Eighth Review (November 21, 2001). The Department will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751(a)(1) of the Act, and section 351.213(d) of the Department's regulations.

Dated: November 29, 2001.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–30377 Filed 12–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–807, A–533–823]

Notice of Postponement of Final Determinations for Antidumping Duty Investigations: Silicomanganese From Kazakhstan and India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final determinations in the antidumping duty investigations of silicomanganese from Kazakhstan and India.

SUMMARY: The Department of Commerce (''Department'') is extending the time limit for the final determinations in the antidumping duty investigations of silicomanganese from Kazakhstan and India.

EFFECTIVE DATE: December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Jean Kemp (Kazakhstan), at (202) 482–4037, and Sally Gannon (India) at (202) 482–0162, at the Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''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 the regulations codified at 19 CFR part 351 (2001).

Postponement of Final Determinations and Extension of Provisional Measures

On November 9, 2001, the affirmative preliminary determinations were published for the investigations of silicomanganese from Kazakhstan and India. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Silicomanganese from Kazakhstan*, 66 FR 56639 (November 9, 2001) and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Silicomanganese from India*, 66 FR 56644 (November 9, 2001). Pursuant to section 735(a)(2) of the Act and section 351.210(b)(2)(ii) of the Department's regulations, on November 8, 2001, Transnational Co. Kazchrome and its Aksu Ferroalloy Plant (''Kazchrome''), Considar, Inc. (''Considar''), and Alloy 2000 (''Alloy 2000'') requested that the Department extend the period for final determination for silicomanganese from Kazakhstan. On November 16, 2001, Kazchrome, Considar, and Alloy 2000 submitted an amended request that the Department extend provisional measures (i.e., suspension of liquidation) from a four-month period to a period not to exceed six months, pursuant to 19 CFR 351.210(e)(2). On November 20, 2001, Universal Ferro & Allied Chemicals, Ltd (''Universal''), requested that the Department postpone the final determination of silicomanganese from India until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and requested an extension of provisional measures.

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

In accordance with 19 CFR 351.210(b)(2)(ii), because (1) The preliminary determinations for silicomanganese from Kazakhstan and India are affirmative, (2) the respondents requesting a postponement account for a significant proportion of exports of the subject merchandise from their respective countries, and (3) no compelling reasons for denial exist, we are granting the respondents' requests and are postponing the final determinations to March 25, 2002, which is not later than 135 days after the publication of the preliminary determinations in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Furthermore, in the Department's November 9, 2001 preliminary determination on silicomanganese from Kazakhstan, the Department invited public comment with respect to Kazakhstan's status as a non-market economy (''NME'') country on factors listed in section 771(18) of the Act, which the Department must take into account in making a market/non-market economy determination. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Silicomanganese from Kazakhstan*, 66 FR 56641 (November 9, 2001). Public comments are currently due no later than December 10, 2001. The Department further requests any rebuttal comments be submitted no later than January 24, 2002.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: December 3, 2001.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–30376 Filed 12–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–817, C–351–835, C–427–823, C–580–849]

Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary determinations in countervailing duty investigations.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary determinations in the countervailing duty (''CVD'') investigations of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea from December 22, 2001 until no later than January 28, 2002. This extension is made pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam (Argentina and France), at (202) 482–0176; Sean Carey (Brazil), at (202) 482–3964; and Tipten Troidl (the Republic of Korea), at (202) 482–1767, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Extension of Due Date for Preliminary Determinations

On October 18, 2001, the Department of Commerce (''the Department'') initiated the CVD investigations of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea. *See Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea*, 66 FR 54218 (October 26, 2001). Currently, the preliminary determinations are due no later than December 22, 2001. However, pursuant to section 703(c)(1)(B) of the Act, we have determined that these investigations are ''extraordinarily complicated'' and are therefore extending the due date for the preliminary determinations by 37 days to no later than January 28, 2002. The Department notes that on November 27, 2001, petitioners submitted a letter to the Department indicating that they would not object to a 35-day postponement of the preliminary determinations. This requested postponement would result in a deadline that would fall on Saturday, January 26, 2002. Therefore, the Department has extended the due date for its preliminary determinations by 37 days, until the following Monday, January 28, 2002.

Under section 703(c)(1)(B), the Department can extend the period for reaching a preliminary determination until not later than the 130th day after the date on which the administering authority initiates an investigation if:

(B) The administering authority concludes that the parties concerned are cooperating and determines that

(i) the case is extraordinarily complicated by reason of

(I) the number and complexity of the alleged countervailable subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination.

Regarding the first requirement, we find that in each case all concerned parties are cooperating. Regarding the second requirement for extraordinarily complicated cases, it is the Department's position that the appropriate criterion for analysis is not the number of programs in question, but rather, the *specific transactions*, e.g., equity infusions, debt-to-equity conversions, etc., applied under those programs, which are numerous and appropriately categorized as ''practices.'' With respect to the issue of the complexity of the practice, these practices are complex in nature as reflected in the extensive analysis required to address these subsidies.

Therefore, we find that each of these four cases is extraordinarily complicated as described below.

Argentina

The Argentine investigation is extraordinarily complicated because a number of the alleged countervailable subsidies practices are complex or novel. For example, the Department must analyze complicated equity and debt assumption issues, involving multiple transactions, and conduct extensive and complex financial analysis. In addition, the Department is examining a ''committed investment'' which requires the examination of complicated circumstances and documents surrounding the privatization of the respondent. Furthermore, the Department is analyzing significant amounts of information in order to determine whether the respondent was ''creditworthy'' when the government provided equity and loans to the company (*i.e.,* whether a private investor would have provided the types of financing that the government provided) and/or was ''equityworthy'' when the government made certain equity infusions (*i.e.,* examining the government's investment decision against that of a private investor). In making these decisions, the Department must also determine the extent to which the particular countervailable subsidies are used by the individual respondent producers/exporters.

Brazil

The Brazilian investigation is extraordinarily complicated by reason of the number and complexity of the alleged countervailable subsidy practices. The Department has to reexamine the privatization of Brazilian mills under its new change-in-ownership methodology, which will involve the analysis of complicated circumstances and documents. In addition, petitioners have submitted additional allegations of new programs involving complex issues which will require novel and detailed analysis. In making these decisions, the Department must also determine the extent to which the particular countervailable subsidies are used by the individual respondent producers/exporters.

France

The French investigation is extraordinarily complicated because a number of the alleged programs are complex or novel. For example, the Department must analyze complicated equity and loan financing issues, involving extensive and complex financial analysis. The shareholder advance allegation will require the Department to delve into the investment decision process of the government. In addition, the Department is examining novel tax issues, involving tax benefits for foreign branches. Also, the Department will be analyzing several programs that have never been examined before or were deferred in a previous case, including government advances for SODIs, funding for electric arc furnaces, and a repayable grant to Sollac for ''pre-coating'' technology. Finally, the Department will be examining several allegations that the European Union provided new, additional funding to programs that were previously found not to be used on several occasions, requiring the Department to re-analyze the countervailability of some of these programs.

The Republic of Korea

The Korean investigation is extraordinarily complicated due to the number and complexity of the alleged countervailable subsidy practices. Specifically, there are nineteen programs which the Department is investigating, which involve numerous and complicated issues. Over one-fourth of these programs have never been investigated before and present novel issues, and over one-half of these programs require a significant amount of information and complex analysis, such as the various tax exemptions and credit programs. In addition, the subsidized infrastructure and R&D allegations are complex, and require various types of data and information. In making these decisions, the Department must also determine the extent to which the particular countervailable subsidies are used by the individual respondent producers/exporters.

Accordingly, we deem these investigations to be extraordinarily complicated and determine, with regard to the third requirement noted above, that additional time is necessary to make the preliminary determinations. Therefore, pursuant to section 703(c)(1)(B) of the Act, we are postponing the preliminary determinations in these investigations to January 28, 2002.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: November 30, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–30375 Filed 12–6–01; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 4, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 10, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, 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, call (202) 482–3715.

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 limits for certain categories are being increased for carryforward.

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 81846, published on December 27, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 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 20, 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 China and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on December 10, 2001, you are directed to increase the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	845,614 kilograms.
218	12,656,591 square meters.
237	2,315,711 dozen.
313	47,207,417 square meters.
314	56,352,424 square meters.
315	141,936,331 square meters.
317/326	24,719,048 square meters of which not more than 4,685,451 square meters shall be in Category 326.
331	5,826,384 dozen pairs.
334	362,498 dozen.
335	423,568 dozen.
336	197,343 dozen.
338/339	2,545,931 dozen of which not more than 1,932,640 dozen shall be in Categories 338–S/339–S [2].
340	869,692 dozen of which not more than 434,845 dozen shall be in Category 340–Z [3].
341	753,581 dozen of which not more than 439,590 dozen shall be in Category 341–Y [4]
342	296,652 dozen.
345	139,912 dozen.
347/348	2,544,403 dozen.
351	646,055 dozen.
352	1,794,941 dozen.
359–V [4]	1,001,152 kilograms.
360	8,984,782 numbers of which not more than 6,128,490 numbers shall be in Category 360–P [5]
361	4,903,526 numbers.
362	8,144,309 numbers.
363	24,053,920 numbers.
433	22,745 dozen.
434	14,543 dozen.
435	26,712 dozen.
438	28,797 dozen.
442	43,550 dozen.
443	140,697 numbers.
445/446	311,712 dozen.
447	77,031 dozen.
631	1,490,680 dozen pairs.
633	65,064 dozen.
634	707,861 dozen.
635	746,670 dozen.
636	608,711 dozen.
638/639	2,684,688 dozen.
640	1,512,506 dozen.
641	1,432,787 dozen.
642	385,198 dozen.
643	575,784 numbers.
644/844	4,061,951 numbers.
645/646	894,653 dozen.
647	1,730,578 dozen.
648	1,236,487 dozen.
651	878,123 dozen of which not more than 150,305 dozen shall be in Category 651–B [6].
652	3,209,352 dozen.
659–C [7]	464,888 kilograms.
659–H [8]	3,239,176 kilograms.
666	4,026,236 kilograms.
845	2,543,417 dozen.
Group II	
330, 332, 349, 353, 354, 359–O [9], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [10], as a group.	136,222,783 square meters equivalent.
Group III	
201, 220, 222, 223, 224–V [11], 224–O [12], 225, 227, 229, 369–O [13], 400, 414, 464, 465, 469, 600, 603, 604–O [14], 606, 618–622, 624–629, 665, 669–O [15] and 670–O [16], as a group.	282,573,291 square meters equivalent.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	13,396,518 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[4] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[5] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[6] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[10] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[11] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[12] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[13] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369S)

[14] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[15] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[16] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

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).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–30373 Filed 12–6–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Reduction of Charges for Certain Cotton Textile Products Produced or Manufactured in the Republic of Turkey

December 4, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing charges.

EFFECTIVE DATE: December 11, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

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.

On June 26, 2001, in response to a request from the Government of Turkey, CITA published an adjusted limit for Category 350 from Turkey. On November 21, 2001, CITA reduced charges against this limit by 9,533 dozen (see 66 FR 58123, published on November 20, 2001, with an amendment published on November 29, 2001 in 66 FR 59602). As a result of further discussions with the Government of Turkey, CITA is instructing U.S. Customs to reduce the charges applied to the limit established in the directive dated October 27, 2000, for goods exported in 2001, for Category 350 by an additional 20,000 dozens.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Pursuant to further discussions with the Government of Turkey, effective on December 11, 2001, you are directed to reduce the charges applied to the limit established in the directive dated October 27, 2000, for goods exported in 2001, for Category 350 by 20,000 dozens.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of 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. 01–30374 Filed 12–4–01; 2:55 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 7, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 3, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Generic Application Package for Discretionary Grant Programs.

Frequency: Annually.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 7,525.

Abstract: This is a generic application package using ED standard forms and instructions and will be used for Office of Educational Research and Improvement (OERI) discretionary grant program competitions. The purpose is to provide a common and easily recognizable format for applicants to experiment with research and demonstration programs.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–30319 Filed 12–6–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Talent Search Program

AGENCY: Department of Education.

ACTION: Notice reopening competition and establishing a new application deadline date for fiscal year (FY) 2002.

SUMMARY: The Department of Education (we) announces the reopening of the competition for new awards under the Talent Search Program for FY 2002. We also establish a new deadline date for the transmittal of applications. We are taking these actions because recent disruptions in the U.S. Postal Service may have interfered with our receipt of many applications. The reopening is intended to help potential applicants compete fairly under this competition.

DATES: The new deadline date for transmitting applications is December 17, 2001. The previous date was October 19, 2001. The new deadline date for the transmittal of State process recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties under Executive Order 12372 is February 15, 2002. The previous date was December 19, 2001.

ADDRESSES: The addresses and telephone numbers for obtaining applications for, or information about, this competition were in the original application notice published in the **Federal Register** on June 11, 2001 (66 FR 31338–31339).

If you use a telecommunications device for the deaf (TDD), you may call the TDD number, if any, listed in the individual application notice. If we have not listed a TDD number, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

If you want to transmit a recommendation or comment under Executive Order 12372, you can find the latest list and addresses of individual SPOCs on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants*.

SUPPLEMENTARY INFORMATION: On June 11, 2001, we published in the **Federal Register** a notice inviting applications for new awards under this program for FY 2002 and establishing a deadline date for the transmittal of applications.

In the application package, which hundreds of potential applicants requested, we stated that if you send your application by mail or if you or your courier deliver it by hand, our Application Control Center will mail a Grant Application Receipt Acknowledgment to you.

We further stated that if you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

In recent weeks numerous applicants have called to say that they did not get a notification that we had received their respective applications even though they had proof of having mailed the applications. Through a search of our records, we determined that we had not received those applications. In addition, we determined that we had received far fewer applications for new awards under this program than we had received in previous years and far fewer than we had expected for the FY 2002 competition.

We have concluded that many applications may be delayed because of the recent disruptions of normal mail service, particularly in the Washington, DC area. Because we do not know when delayed applications may be delivered, we have decided to reopen this competition to give all applicants a chance to transmit their applications to us. This reopening and new deadline date for transmittal of applications apply to the entire country, as well as to eligible Territories.

Please note that there are alternative methods of transmittal besides the U.S. Postal Service. These include commercial carriers and courier services, as well as hand delivery. If you use a commercial carrier, please make sure to get a dated shipping label, invoice, or receipt from the carrier. If you use one of these alternative means of transmittal, we will mail a Grant Application Receipt Acknowledgment to you.

Note: If you have already submitted an application by mail and have not received a notification of application receipt from us by now, we urge you to resubmit your application and to indicate on the application that this is a resubmission. You may also wish to consider an alternative means of transmittal. Otherwise, we may not receive your application in time to consider it.

Assistance for Individuals With Disabilities

If you are an individual with a disability, you may obtain a copy of this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT** in the application notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Dated: December 3, 2001.

Maureen A. McLaughlin,

Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education.

[FR Doc. 01–30356 Filed 12–6–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Science; Biological and Environmental Research Advisory Committee; Renewal

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with section 102–3.65, title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Biological and Environmental Research Advisory Committee has been renewed for a two-year period beginning in November 2001. The Committee will provide advice to the Director, Office of Science, on the Biological and Environmental Research Program managed by the Office of Biological and Environmental Research.

The renewal of the Biological and Environmental Research Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Public Law No. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee can be obtained from Ms. Rachel M. Samuel at (202) 586–3279.

Issued in Washington, DC on November 27, 2001.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 01–30353 Filed 12–6–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office; University Research for the Geothermal Program

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of Competitive Financial Assistance Solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for research projects in earth science at universities to expand the geothermal knowledge base. The knowledge gained from this work will result in new and improved technology that will help meet geothermal program goals. University earth science research and development is sought to enhance exploration tools, increase reservoir productivity, and improve reservoir management. The Program's overarching goal is to reduce the levelized cost of generating geothermal power to 3 to 5 cents/kWh by 2010, as compared to 5 to 8 cents/kWh in 2000.

DATES: The Standard Form 424, and the technical application (20 page maximum), must have an IIPS transmission time stamp of not later than *5 p.m. ET on Thursday, February 28, 2002.*

ADDRESSES: Completed applications are required to be submitted via the U.S. Department of Energy Industry Interactive Procurement System (IIPS) at the following URL: *http://e-center.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Dahl, Contract Specialist at *dahlee@id.doe.gov,* facsimile at (208) 526–5548, or by telephone at (208) 526–7214.

SUPPLEMENTARY INFORMATION: Approximately $2,000,000 dollars in Federal funds is expected to be available over the next three fiscal years. A maximum of $500,000 dollars is expected to be available in fiscal year 2002 to totally fund the first year of selected research efforts. DOE anticipates awarding three to five grants, each with a duration of three years or less. U.S. institutions of higher education may submit applications in response to this solicitation. National laboratories will not be eligible for an award under this solicitation. Multi-partner collaborations between U.S. universities and U.S. industry are encouraged. Cost share is not required but encouraged. The issuance date of Solicitation Number DE–PS07–02ID14263 is on or about November 29, 2001. The solicitation is available in its full text via the Internet at the following address: *http://e-center.doe.gov.* The statutory authority for this program is the Department of Energy Organization Act of 1977, Public Law 95–238, Section 207, and Public Law 101–218. The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.087, Renewable Energy Research and Development.

Issued in Idaho Falls on November 29, 2001.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 01–30354 Filed 12–6–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–22–000]

Michigan Gas Storage Company; Notice of Application

December 3, 2001.

Take notice that on November 9, 2001, Michigan Gas Storage Company (Michigan Gas), 212 West Michigan Avenue, Jackson, Michigan, 49201, filed an application pursuant to section 1(c) of the Natural Gas Act (NGA), as amended, and section 152.1 of the Commission's regulations, for a declaration of exemption from the provisions of NGA. 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).

Any person desiring to be heard or make any protest with reference to said application should on or before December 24, 2001, file with the Commission 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (19 CFR sections 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR section 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition in accordance with the Commission's Rules. 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.

Take notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission, on its own review of the matter, will determine whether granting the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advise, it will be unnecessary for Michigan to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30351 Filed 12–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–26–000]

Nevada Power Company and Sierra Pacific Power Company, Complainants, v. Duke Energy Trading and Marketing, Inc., Respondent; Notice of Complaint

December 3, 2001.

Take notice that on November 30, 2001, Nevada Power Company (NPC) and Sierra Pacific Power Company (SPPC) (collectively, the Nevada companies) filed a complaint requesting that the Commission mitigate unjust and unreasonable prices in sales contracts between NPC and Duke Energy Trading and Marketing, Inc. (Duke) and between SPPC and Duke entered into in late 2000 and the first half of 2001 for delivery after January 1, 2001.

The Nevada companies request that the Commission set a refund effective

date of 60 days from the date of filing of their complaint.

Copies of the Nevada companies' filing were served on Duke and the Public Utilities Commission of Nevada.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before December 20, 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. Answers to the complaint shall also be due on or before December 20, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30352 Filed 12–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–39–000, et al.]

Rocky Mountain Power, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 30, 2001.

Take notice that the following filings have been made with the Commission:

1. Rocky Mountain Power, Inc.

[Docket No. EG02–39–000]

Take notice that on November 27, 2001, Rocky Mountain Power, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Rocky Mountain Power is a Montana corporation that will be engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities to be located in Hardin, Montana. The eligible facilities will consist of an approximately 110 MW coal-fired single cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale or market based rates.

Comment date: December 21, 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. Consumers Energy Company

[Docket Nos. ER92–331–010 and ER92–332–010]

Take notice that on November 27, 2001, Consumers Energy Company (Consumers) tendered for filing the following tariff sheets as part of its FERC Electric Tariff No. 5 in compliance with Order No. 614, dealing with tariff sheet designations: Second Revised Volume Original Sheet Nos. 1.00 through 14.00.

The second sheet listed is to have an effective date of June 21, 1993. The remaining sheets are to have an effective date of May 2, 1992.

Copies of these sheets were served upon the Michigan Public Service Commission and upon those on the official service lists in these proceedings.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Company, Select Energy, Inc., and Northeast Generation Company

[Docket Nos. ER96–496–010, ER99–14–007 and ER99–4463–001]

Take notice that on November 27, 2001, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service of New Hampshire (the NU Operating Companies), and Select Energy, Inc. (Select), and Northeast Generation Company (NGC) (collectively, Applicants) jointly filed with the Federal Energy Regulatory Commission an updated market power analysis. This filing serves as the triennial updated market power analysis in Docket Nos. ER96–496–000 for the NU Operating Companies; ER99–3658–000 for Select; and ER99–4463–000 for NGC. In addition, Applicants request the Commission to synchronize their future triennial market power updates.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Carolina Power & Light Co. and Florida Power Corporation

[Docket Nos. ER01–1807–007 and ER01–2020–004]

Take notice that on November 26, 2001, Progress Energy, Inc. (Progress Energy), on behalf of Carolina Power & Light Company (CP&L), tendered for filing revised service agreements under CP&L's open access transmission tariff, FERC Electric Tariff, Third Revised Volume No. 3 in compliance with the Commission's June 25, 2001 and September 21, 2001 orders in these proceedings. See Carolina Power & Light Co. and Florida Power Corp., 95 FERC ¶ 61,429 (2001). Progress Energy also tendered for filing an index of Revised Service Agreements and Notices of Cancellation for certain of CP&L's currently-effective service agreements.

Progress Energy respectfully requests that the Revised Service Agreements become effective on the date set forth on the cover sheet for each Revised Service Agreement and that the Notices of Cancellation become effective as of November 26, 2001.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. New York Independent System Operator, Inc.

[Docket Nos. ER01–3009–002, ER01–3153–002 andEL00–90–002]

Take notice that on November 27, 2001, the New York Independent System Operator, Inc. (NYISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing in accordance with the Commission's October 25, 2001, order in the above-captioned proceedings.

A copy of this filing was served upon all persons designated on the official service list compiled by the Secretary in the above-captioned proceedings.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corporation

[Docket No. ER02–157–001]

Take notice that on November 27, 2001, Wisconsin Public Service Commission (WPSC) filed a letter withdrawing its October 23, 2001 filing in Docket No. ER02–157–000 as required by the Commission's staff.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER02–408–000]

Take notice that on November 27, 2001, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a fully executed Integration and Exchange Agreement (Agreement) dated October 22, 2001 between Seattle City Light and PacifiCorp.

PacifiCorp has requested a November 26, 2001 effective date.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Exelon Generation Company, LLC

[Docket No. ER02–409–000]

Take notice that on November 27, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Aquila Energy Marketing Corporation, under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER02–410–000]

Take notice that on November 27, 2001, Florida Power Corporation (FPC) filed a Service Agreement with Exelon Generation Company, LLC under FPC's Short-Form Market-Based Wholesale Power Sales Tariff (SM–1), FERC Electric Tariff No. 10.

FPC is requesting an effective date of November 1, 2001 for this Agreement.

A copy of this filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Company Services, Inc.

[Docket No. ER02–411–000]

Take notice that on November 27, 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), filed one (1) agreement for network integration transmission service between Southern Companies and Generation Energy Marketing, a Department of SCS, as agent for Mississippi Power Company, under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). Under this agreement, power will be delivered to the South Mississippi Electric Power Association's Coastal EPA Cedar Lake Delivery Point. Additionally, the agreement provides for Generation Energy Marketing to pay the Direct Assignment Facilities Charges specified in the agreement. This agreement is being filed in conjunction with a power sale by SCS, as agent for Mississippi Power Company, to the South Mississippi Electric Power Association under Southern Companies' Market-Based Rate Power Sales Tariff, as was approved in FERC Docket No. ER01–1284–000.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. American Transmission Company LLC

[Docket No. ER02–412–000]

Take notice that on November 27, 2001, American Transmission Company LLC (ATCLLC) tendered for filing an executed Distribution-Transmission Interconnection Agreement between ATCLLC and the City of Wisconsin Rapids.

ATCLLC requests an effective date of July 26, 2001.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Arizona Public Service Company

[Docket No. ER02–413–000]

Take notice that on November 27, 2001 , Arizona Public Service Company (APS) tendered for filing a cancellation of APS FERC Rate Schedule No. 231, a Wholesale Power Agreement between the Colorado River Commission of Nevada and APS.

A copy of this filing has been served on the Colorado River Commission of Nevada and the Arizona Corporation Commission.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER02–414–000]

Take notice that on November 27, 2001, the California Independent System Operator Corporation (ISO) tendered for filing Second Revised Service Agreement No. 229 Under ISO Rate Schedule No.1, which is a Participating Generator Agreement (PGA) between the ISO and Geysers Power Company, LLC (Geysers). The ISO has revised the PGA to modify the description of generating units contained in Schedule 1 of the PGA, and to modify Schedule 3 of the PGA to reflect the new addresses, phone numbers, and fax numbers for Jacob Rudisill and Calpine's Western Region Office.

The ISO requests that the agreement be made effective as of August 22, 2000.

The ISO states that this filing has been served on all entities that are on the official service list for Docket No. ER99–2820–000, Geysers, and the Public Utilities Commission of the State of California.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. LG&E Power Monroe LLC

[Docket No. ER02–415–000]

Take notice that on November 27, 2001, LG&E Power Monroe LLC (Power Monroe) tendered for filing a service agreement between Power Monroe and LG&E Energy Marketing Inc. executed pursuant to Power Monroe's FERC Electric Tariff No. 1.

Power Monroe requests an effective date of November 28, 2001.

Copies of the filing were served upon LG&E Energy Marketing Inc.

Comment date: December 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power Corporation

[Docket No. ER02–416–000]

Take notice that on November 26, 2001, Progress Energy, Inc. (Progress Energy), on behalf of Florida Power Corporation (FPC), tendered for filing revised service agreements (Revised Service Agreements) under FPC's open-access transmission tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 6 (FPC's OATT), to comply with the Commission's June 25, 2001 and September 21, 2001 orders in Carolina Power & Light Co. and Florida Power Corp., 95 FERC ¶ 61,429 (2001). Progress Energy also tendered for filing an index of Revised Service Agreements as filed under FPC's OATT.

Copies of the filing were served upon the Commission's official service list and the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment date: December 18, 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30320 Filed 12–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–17–000]

Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Freehold Project and Request for Comments on Environmental Issues

December 3, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Freehold Project involving the construction and operation of facilities by Texas Eastern Transmission, LP (Texas Eastern) in Somerset and Hunterdon Counties, New Jersey.[1] These facilities would consist of one 5,000 horsepower (hp) compressor station and facilities related to the uprate of certain segments of its mainline facilities east of Lambertville, New Jersey. This EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Texas Eastern provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.fed.us*).

Summary of the Proposed Project

Texas Eastern proposes to provide service to New Jersey Natural Gas Company's local distribution system at Texas Eastern's Freehold Lateral M&R Stations 953 and 2210. Texas Eastern proposes to:

- Construct and operate a 5,000-horsepower electric motor-driven compressor station in Somerset County, New Jersey (Freehold Compressor Station);
- Uprate the maximum allowable operating pressure of the 36-inch-diameter Line No. 20 and the 42-inch-diameter Line No. 38 from 975 pounds per square inch gauge (psig) to 1,170 psig from milepost (MP) 0.0 to MP 13.9;
- Install two pressure limiting devices at MP 13.9 of Line Nos. 20 and 38, respectively; and
- Replace five road crossings on Line No. 38 with heavier wall thickness pipeline at the following locations in Somerset and Hunterdon Counties, New Jersey:
  - County Road 605/Queens Road (MP 0.06);
  - State Route 31 (MP 2.69);
  - County Road 607/Rileyville Road (MP 6.12);
  - Montgomery Road (MP 9.37); and
  - Long Hill Road (MP 10.44).

The general location of Texas Eastern's proposed facilities is shown on the map attached as appendix 1.[2]

Land Requirements for Construction

The proposed Freehold Compressor Station would be constructed on a 5-acre site which Texas Eastern would own. Texas Eastern indicated it would need an additional 25 acres which it would acquire through easements, for use as a noise buffer. Construction of the proposed pressure limiting devices and the five road crossings would require a total of about 6.9 acres of land, of which about 5.9 acres consist of existing and maintained right-of-way. The remaining 1.0 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We[3] call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands

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[1] Texas Easterns's application was filed with the Commission on October 26, 2001, under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects.

- Vegetation and wildlife
- Endangered and and threatened species
- Land use
- Cultural resources
- Air quality and noise
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Eastern. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential impact on 3 Federally-listed threatened reptile (1) and plant (2) species.
- Conversion to industrial use of about 30 acres of land that is registered with the New Jersey Green Acres program.
- Proximity of the proposed facilities to homes and residential land-use impacts.
- Impact and routing of a 25 kilovolt electric service line, about 1.5 miles long, to be installed by Public Service Electric & Gas Company.
- The Franklin Township Board of Education is in the process of acquiring land for construction of a new high school within 0.25 mile of the proposed Freehold Compressor Station site.
- Noise impacts due to operation of the proposed Freehold Compressor Station.
- Impact of operation of the proposed Freehold Compressor Station on Franklin Township Board of Education's plan to construct a new high school.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas/Hydro, PJ–11.3.
- Reference Docket No. CP02–17–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 15, 2002.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be removed from the environmental mailing list.

Due to current events, we cannot guarantee that we will receive mail on a timely basis from the U.S. Postal Service, and we do not know how long this situation will continue. However, we continue to receive filings from private mail delivery services, including messenger services in a reliable manner. The Commission encourages electronic filing of any comments or interventions or protests to this proceeding. We will include all comments that we receive within a reasonable time frame in our environmental analysis of this project.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

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).

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket#'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30350 Filed 11–29–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6624–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed November 26, 2001 Through November 30, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010501, Draft Supplement, FHW, NM, US 70 Corridor Improvement, Between Ruidoso Downs to Riverside, New Information and Circumstances, Implementation, Right-of-Way Acquisition, Lincoln County, NM, Comment Period Ends:

January 22, 2002, Contact: Gregory D. Rawlings (505) 820–2027.

EIS No. 010502, Draft EIS, NAS, CA, Programmatic EIS—NASA Ames Development Plan (NADP) for Ames Research Center, New Research and Development Uses, Implementation, San Francisco Bay, Santa Clara County, CA, Comment Period Ends: January 28, 2002, Contact: Sandy Olliges (650) 604–3355. This document is available on the Internet at: *http://researchpark.arc.nasa.gov.*

EIS No. 010503, Final Supplement, AFS, UT, Rendezvous Vegetation Management Project, To the South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron and Kane Counties, UT, Wait Period Ends: January 07, 2002, Contact: Phillip G. Eisenhauer (435) 865–3200.

EIS No. 010504, Final EIS, FHW, TX, IH–10 West from Taylor Street to FM–1489, Construction and Reconstruction, Central Business District (CBD), Funding, Right-of-Way Permit and COE Section 404 Permit, Harris, Fort Bend and Waller Counties, TX, Wait Period Ends: January 07, 2002, Contact: John R. Mack (512) 536–5960.

EIS No. 010505, Draft Supplement, COE, FL, Central and Southern Florida Project, Tamiami Trail Feature (US Highway 41), Modified Water Deliveries to Everglades National Park, Dade County, FL, Comment Period Ends: February 04, 2002,

Contact: Jon Moulding (904) 232–2286.

Amended Notices

EIS No. 010419, Draft EIS, AFS, UT, Ray's Valley Road Realignment, Proposal to Reduce or Eliminate Adverse Impacts to Watershed, and Aquatic Species, Provide Safer Driving Conditions, Uinta National Forest, Spanish Fork Ranger District, Utah County, UT, Due: January 11, 2002, Contact: Renee Flanagan (801) 342–5145. Revision of FR notice published on 11/16/2001: CEQ Comment Period Ending 01/02/2002 has been Corrected to 1/11/2002.

Dated: December 4, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–30380 Filed 12–6–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6624–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the OFFICE OF FEDERAL ACTIVITIES at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (66 FR 27647).

Draft EISs

ERP No. D–AFS–K65236–AZ Rating LO, Buck Springs Range Allotment Rangeland Management, Implementation, Blue Ridge Coconino National Forest, Coconino County, AZ.

Summary: EPA supports the dual objectives of providing grazing land and protecting sensitive habitat analyzed in the Buck Springs Range Allotment DEIS. EPA has no objections to the proposed project.

ERP No. D–AFS–L65390–ID Rating EO2, Garnet Stars and Sands Project, To Test and Develop Future Recreation, Garnet, Idaho Panhandle National Forests, St. Joe Ranger District, Latah, Shoshone and Benewah Counties, ID.

Summary: EPA had environmental objections because the proposed project would likely worsen already impaired water quality and degrade habitat for listed and sensitive fish species and riparian areas. EPA recommended that the final EIS contain sufficient mitigation measures to conserve aquatic resources consistent with section 313 of the Clean Water Act, section 7(a)(1) of the Endangered Species Act and the Forest Plan, utilize the Forest Service's Protocol for 303(d) Waters and include a comprehensive monitoring plan specifically tied to the project.

ERP No. D–APH–A65169–00 Rating EC2, Programmatic—EIS Rangeland Grasshopper and Mormon Cricket Suppression Program, Authorization, Funding and Implementation in 17 Western States, AZ, CA, CO, ID, KS, MT, NB, NV, NM, ND, OK, OR, SD, TX, UT, WA and WY.

Summary: EPA expressed environmental concerns since the draft EIS did not fully identify a proposed action nor fully analyze a reasonable range of alternatives. EPA requested that additional information and analyses be available in the final EIS.

ERP No. D–BLM–K65235–AZ Rating LO, Las Cienegas Resource Management Plan, Implementation, Las Cienegas National Conservation Area (NCA) and Sonoita Valley Acquisition Planning District, AZ.

Summary: EPA expressed a lack of environmental objections to the proposed project. ERP No. D–FHW–F40398–IN Rating EO2, Indianapolis Northeast Corridor Transportation Connections Study, To Identify Actions to Reduce Expected Year 2025 Traffic Congestion and Enhance Mobility, Between I–69: from I–465 to IN–328; I–465: from US 31 to I–70; I–70: from I–65 to I–465: IN–37 from I–69 to Allisonville Road (Noblesville), Marion and Hamilton Counties, IN.

Summary: EPA expressed objections to and requested additional information regarding: Alternatives, noise, air quality, wetlands, threatened and endangered species habitat, water quality/storm water management, flood plains and mitigation.

ERP No. D–NOA–K36136–CA Rating EC2, Goat Canyon Enhancement Project, Implementation, Tijuana River Estuary, City and County of San Diego, CA.

Summary: EPA expressed environmental concerns regarding impacts to water quality, cumulative impacts and the objectives for improvements to Monument Road and the trail system. EPA requested that additional information be provided to address EPA's concerns on these issues.

ERP No. DS–COE–E39054–FL Rating LO, Cape Sable Seaside Sparrow Protection, Interim Operating Plan (IOP), Updated Information on a New Alternative 7 for Emergency Sparrow Protection Actions, Implementation, Everglades National Park, Miami-Dade County, FL.

Summary: EPA had no objection to the proposed action sinceAlternative 7 appears to address our previous water quality concerns, but still provides adequate protection to the Cape Sable Seaside Sparrow.

Final EISs

ERP No. F–AFS–L65232–OR, Deep Vegetation Management Project, Implementation, Ochoco National Forest, Paulina Ranger District, Crook and Wheeler Counties, OR.

Summary: The final EIS adequately discloses the impacts and satisfactorily responded to most of EPA's previous comments on the draft EIS. In addition, the project overall should benefit the landscape. Therefore, EPA has no objection to the action as proposed.

ERP No. F–DOE–E09807–TN
Programmatic EIS—Oak Ridge Y–12 Plant Mission, Processing and Storage of Highly Enriched Uranium, U.S. Nuclear Weapons Stockpile, Anderson County, TN.

Summary: EPA continues to have environmental concerns about construction impacts of the project.

Dated: December 4, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–30381 Filed 12–6–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–970; FRL–6737–9]

Notice of Filing Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–970, must be received on or before January 7, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–970 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Adam Heyward, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (703) 308–6422; e-mail address: heyward.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–970. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–970 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov'', or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–970. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record.

Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 28, 2001.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. . The petition summaries announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

I. Ecolab Inc.

PP 0F6193

EPA has received a pesticide petition (0F6193) from Ecolab Inc., 370 N. Wabasha Street, St. Paul MN 55102 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for pelargonic acid nonanoic acid in or on the raw agricultural commodity, in processed commodities, and in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, milk, and dairy products, eggs, seafood, and shellfish, and fruits and vegetables when such residues results from the use of pelargonic acid as a component of a food contact surface sanitizing solution for use in food handling establishments. The request is for unlimited clearance. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method*. Because Ecolab Inc. is petitioning for an exemption from the requirement of a tolerance, an enforcement method for pelargonic acid is not needed.

2. *Magnitude of residues*. The residues which transfer from the sanitized dish or utensil to food are not of toxicological significance.

B. Toxicological Profile

1. *Acute toxicity*. From published literature values the acute oral LD_{50} in rats was determined to be greater than 3.2 gram/kilogram (g/kg); the acute oral LD_{50} in mice was 15 g/kg. The dermal LD_{50} is greater than 5 g/kg. It is considered to be essentially non-toxic via the oral and dermal routes.

2. *Genotoxicity*. Nothing in the available literature indicates that the pelargonic acid is genotoxic.

3. *Reproductive and developmental toxicity*. Nothing in the available literature indicates the pelargonic acid is a developmental or reproductive toxin. No evidence of maternal or developmental toxicity was seen in a rat oral developmental toxicity screen with pelargonic acid at a dose of 1,500 milligrams/kilograms/day (mg/kg/day).

4. *Subchronic toxicity*. Nothing in the available literature indicates chronic exposure of pelargonic acid products any adverse toxicological effects unless it is ingested at an extremely high concentration. A 14-day oral toxicity test with rats revealed no adverse effects from pelargonic acid at any dose level, including the highest dietary concentration of 20,000 ppm, (equivalent to 1,834 mg/kg/day, a level exceeding the limit dose of 1,000 mg/kg/day). In another study, eight rats were exposed to a diet consisting of 4.19% pelargonic acid for 4 weeks equivalent to approximately 2,090 mg/kg/day). There was no effect on survival. At normal dietary intake levels in the human diet, no adverse effects would result.

5. *Chronic toxicity*. Chronic exposure would not produce any additional effect over what is noted in subchronic exposure, therefore, no additional concerns were warranted. Nothing in the literature indicates that pelargonic acid may be carcinogenic.

6. *Endocrine disruption*. A review of information from the Agency of Toxic Substances and Disease Registry indicates that potential endocrine effects from exposure to pelargonic acid have not been studied. The best of our knowledge, nothing in the available literature suggests that nonanoic acids as an endocrine disrupter or that it possesses intrinsic hormonal activity.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Acute*. There are no acute toxicology concerns for pelargonic acid, an acute dietary risk assessment is not required.

ii. *Chronic indirect*. Using a worst-case scenario, the exposure resulting from the use of this material in a sanitizer would be 0.005 mg/kg/day for a 70 kg person (adult) and 0.007 mg/kg/day for a 28 kg person (child).

2. *Food—Chronic direct*. A typical adult ingest significant quantities of pelargonic acid via diet. When pelargonic acid is used as a compound

of a food contact surface sanitizer, the residue that would be introduce into food will be insignificant. Based on this, there are no toxicological concerns resulting from exposures to residues of pelargonic acid from the use of sanitizing solutions.

3. *Drinking water*—i. *Acute*. Since there are no acute toxicological concerns for pelargonic acid, an acute drinking water risk assessment is not required.

ii. *Chronic*. There are no toxicological concerns about the exposure of low concentrations of pelargonic acid in the drinking water. Although it is possible that the trace amounts pelargonic acid resulting for its use as a sanitizer may ultimately get into drinking water, no adverse health effects would results.

4. *Non-dietary exposure*. The potential for significant additional non-occupational exposure to the general population (including children) is unlikely.

D. Cumulative Effects

Potentially small amounts of pelargonic acid exposure will be the result of non-food uses. The amount of pelargonic acid exposure resulting from direct exposure to sanitizing solutions will be minuscule. Since pelargonic acid in the diet poses no toxicological risk, the cumulative toxicity resulting form this additional exposure is negligible.

E. Safety Determination

1. *U.S. population*. Since there are no adverse toxicological effects resulting from normal dietary concentrations of pelagonic acid, there is no need to determine aggregate risks, or to conduct a safety determination. Pelargonic acid is generally recognized as safe and the incremental exposure due to its use as an inert in a food contact surface sanitizer is negligible.

2. *Infants and children*. As in adults, infants and children ingest pelargonic acid in their diet. Children are at no greater ''risk'' from exposure to pelargonic acid. Therefore, as with adults, a safety determination is not appropriate.

F. International Tolerances

No codex maximum residue levels have been established for pelargonic acid.

II. Ecolab Inc.

PP 0F6194

EPA has received a pesticide petition (0F6194) from Ecolab Inc., 370 N. Wabasha St., St. Paul MN 55102 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for decanoic acid in or on the raw agricultural commodity, in processed commodities, and in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, milk, and dairy products, eggs, seafood, and shellfish, and fruits and vegetables when such residues results from the use of decanoic acid as a component of a food contact surface sanitizing solution for use in food handling establishments. The request is for unlimited clearance. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method*. Because Ecolab Inc. is petitioning for an exemption from the requirement of a tolerance, an enforcement method for decanoic acid is not needed.

2. *Magnitude of residues*. The residues which transfer from the sanitized dish or utensil to food are not of toxicological significance.

B. Toxicological Profile

1. *Acute toxicity*. From published literature values the acute oral LD_{50} in rats ranged from 3.2 g/kg to greater than 10 g/kg. The dermal LD_{50} in rats greater than 5 g/kg.

2. *Genotoxicity*. Nothing in the available literature indicates that the decanoic acid is genotoxic.

3. *Reproductive and developmental toxicity*. Nothing in the available literature indicates the decanoic acid is a developmental or reproductive toxin. It is generally recognized as safe and is normal constituent in the human diet.

4. *Subchronic toxicity.* Long term studies with decanoic acid have shown that this material is a relatively non-toxic. In on study, rats were fed decanoic acid in their diet at the level of 10% for 150 days. No adverse effects were observed at the conclusion of the study. In another study rats were administered decanoic acid at dietary levels 8% (corresponding to approximately 4 g/kg/day for 6 weeks. These animals exhibited reduced body weight gain and increased plasma triglyceride levels. Dogs fed approximately 4.4 g/kg/day of decanoic acid for 102 days showed no adverse effects.In another study, rats were fed 2.5 g/kg/day of decanoic acid (as the triglyceride) for 47 weeks. These animals showed no abnormalities in the cellular structure of the liver or intestine. Other animals ingesting 5 g/kg/day for 150 days did not develop abnormal tissues in the gastrointestinal tract. No other tissues were examined.

5. *Chronic toxicity*. Chronic exposure would not produce any additional effect over what is noted in subchronic exposure, therefore, no additional concerns were warranted. Nothing in the literature indicates that decanoic acid may be carcinogenic.

6. *Endocrine disruption*. A review of information from the Agency for Toxic Substances and Disease Registry indicates that potential endocrine effects from exposure to decanoic acid have not been studied. The best of our knowledge, nothing in the available literature suggests that decanoic acid acts as an endocrine disrupter or that is possesses intrinsic hormonal activity.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Acute*. There are no acute toxicology concerns for decanoic acid, an acute dietary risk assessment is not required.

ii. *Chronic indirect*. Using a worst-case scenario, the exposure resulting from the use of this material in a sanitizer would be 0.0008 mg/kg/day for a 70 kg person (adult) and 0.0010 mg/kg/day for a 28 kg person (child).

2. *Food—Chronic direct*. A typical adult ingest significant quantities of decanoic acid via diet. When decanoic acid is used as a compound of a food contact surface sanitizer, the residue that would be introduce into food will be insignificant compared to the normal dietary intake. Based on this, there are no toxicological concerns resulting from exposures to residues of decanoic acid from the use of sanitizing solutions.

3. *Drinking water*— i. *Acute*. Since there are no acute toxicological concerns for decanoic acid, an acute drinking water risk assessment is not required.

ii. *Chronic*. There are no toxicological concerns about the exposure of low concentrations of decanoic acid in the drinking water. Although it is possible that the trace amounts decanoic acid resulting for its use as a sanitizer may ultimately get into drinking water, no adverse health effects would results.

4. *Non-dietary exposure*. The potential for significant additional non-occupational exposure to the general population (including children) is unlikely.

D. Cumulative Effects

Over 99% of the exposure to decanoic acid is expected to be via the diet.

Potentially small amounts of decanoic acid exposure will be the result of non-food uses. The amount of decanoic acid exposure resulting from indirect exposure to sanitizing solutions will be minuscule. Since decanoic acid in the diet pose no toxicological risk, the cumulative toxicity resulting from the additional exposure is negligible.

E. Safety Determination

1. *U.S. population*. Since there are no adverse toxicological effects resulting from normal dietary concentrations of decanoic acid, there is no need to determine aggregate risks, or to conduct a safety determination. Decanoic acid is generally recognized as safe and the incremental exposure due to its use as an inert in a food contact surface sanitizer is negligible.

2. *Infants and children*. As in adults, infants and children ingest decanoic acid in their diet. Children are at no greater ''risk'' from exposure to decanoic acid. Therefore, as with adults, a safety determination is not appropriate.

F. International Tolerances

No codex maximum residue levels have been established for decanoic acid.

[FR Doc. 01–30369 Filed 12–6–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51979; FRL–6815–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new Chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the Chemicals under review and the receipt of notices of commencement to manufacture those Chemicals. This status report, which covers the period from September 17, 2001 to October 24, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket control number OPPTS–51979 and the specific PMN number, must be received on or before January 7, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51979 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'','' Regulations and Proposed Rules, and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51979. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51979 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51979 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why Is EPA Taking This Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new Chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the Chemicals under review and the receipt of notices of commencement to manufacture those Chemicals. This status report, which covers the period from September 17, 2001 to October 24, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 102 PREMANUFACTURE NOTICES RECEIVED FROM: 09/17/01 TO 10/24/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0921	09/17/01	12/16/01	Arch Chemicals, Inc.	(S) Component in a photoresist formulation to be use in the manufacture of semiconductor and related devices	(G) Derivatized ethoxylated polystyrene resin
P–01–0922	09/17/01	12/16/01	Xerox Corporation	(G) Open, non-dispersive use as a constituent in solid, crayon like inks for computer printers	(G) Copper phthalocyanine
P–01–0923	09/17/01	12/16/01	CBI	(G) Ingredients for use in consumer products: highly dispersive use	(G) Cycloalkyl acetate
P–01–0924	09/17/01	12/16/01	CBI	(G) Ingredients for use in consumer products: highly dispersive use	(G) Carbo cyclic oxime
P–01–0925	09/17/01	12/16/01	CBI	(G) Sealant	(G) Substituted methoxysilane
P–01–0926	09/17/01	12/16/01	CBI	(G) Sealant	(G) Acrylic polymer
P–01–0927	09/18/01	12/17/01	CBI	(G) An open, non-dispersive use	(G) Polycarbonate and polyester-type polyurethane
P–01–0928	09/18/01	12/17/01	CBI	(G) Catalyst	(G) Alkoxysilane
P–01–0929	09/19/01	12/18/01	BASF Corporation	(S) Protective colloid	(S) 1,3-benzenedicarboxylic acid, 5-sulfo-, monosodium salt, polymer with 1,3-benzenedicarboxylic acid, 1,4-benzenedicarboxylic acid, 1,2-ethanediol, 2,2′-[1,2-ethanediylbis(oxy)]bis[ethanol] and 2,2′-oxybis[ethanol]
P–01–0930	09/18/01	12/17/01	International Flavors and Fragrances, Inc.	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(S) 3-hexene, 1-[(2-methyl-2-propenyl)oxy]-, (3z)-

I. 102 PREMANUFACTURE NOTICES RECEIVED FROM: 09/17/01 TO 10/24/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0931	09/21/01	12/20/01	The Goodyear Tire and Rubber Company	(S) Polymerization catalyst	(G) Neodymium ziegler-natta catalyst
P–01–0932	09/24/01	12/23/01	CBI	(S) Coatings; additives	(G) Aliphatic epoxide
P–01–0933	09/24/01	12/23/01	CBI	(G) Open, non-dispersive use	(G) Aromatic alkanoate
P–01–0934	09/24/01	12/23/01	CBI	(G) This product will be used to manufacture flexible polyurethane foam	(G) Polymeric polyol
P–01–0936	09/26/01	12/25/01	Crompton Corporation	(G) Catalyst	(S) Zirconium, dichloro[rel-(7ar,7′ar)-1,2-ethanediylbis[(1,2,3,3a,7a-.eta.)-4,5,6,7-tetrahydro-1h-inden-1-ylidene]]-
P–01–0937	09/21/01	12/20/01	The Procter and Gamble Company	(S) Industrial lubricant for metal finishing	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsatd., esters with sucrose
P–01–0938	09/21/01	12/20/01	The Procter and Gamble Company	(S) Industrial lubricant for metal finishing	(S) Fatty acids, C_{18} and C_{18}-unsatd., esters with sucrose
P–01–0939	09/21/01	12/20/01	The Procter and Gamble Company	(S) Industrial lubricant for metal finishing	(G) Methyl esters of long-chain fatty acids and sucrose
P–01–0940	09/21/01	12/20/01	The Procter and Gamble Company	(S) Industrial lubricant for metal finishing	(S) alpha-d-glucopyranoside, beta-d-fructofuranosyl, docosanoate
P–01–0941	09/21/01	12/20/01	The Procter and Gamble Company	(S) Industrial lubricant for metal finishing	(S) alpha-d-glucopyranoside, beta-d-fructofuranosyl, hexadecanoate
P–01–0942	09/21/01	12/20/01	The Procter and Gamble Company	(S) Industrial lubricant for metal finishing	(S) alpha-d-glucopyranoside, beta-d-fructofuranosyl, (9z)-9-octadecenoate
P–01–0943	09/26/01	12/25/01	CBI	(G) Coating application	(G) Methylsiloxane polymer
P–01–0944	09/26/01	12/25/01	CIBA Specialty Chemicals Corporation	(S) Pigment for use in plastics	(G) Benzenesulfonic acid derivative, salt
P–01–0945	09/26/01	12/25/01	CBI	(G) Acrylic polymer for use in a coating application	(G) Copolymer of alkyl acrylates and alkyl methacrylates
P–01–0946	09/27/01	12/26/01	CBI	(G) Destructive use as a chemical intermediate	(G) Alkoxylated fatty amine
P–01–0947	09/25/01	12/24/01	CBI	(G) Open, non-dispersive (resin)	(G) Meko blocked aromatic polyisocyanate based on tdi
P–01–0948	09/28/01	12/27/01	CBI	(G) Conductive agent	(G) Spiro arylamine derivative
P–02–0001	10/01/01	12/30/01	CBI	(G) Coating material	(G) Acrylic polymer on the basis of methyl methacrylate and n-butyl methacrylate
P–02–0002	10/01/01	12/30/01	CBI	(G) Colorant for printing inks	(G) Polyimide terminated, polyester/ polyamide graft to styrene/ acrylic polymer
P–02–0003	10/02/01	12/31/01	CBI	(G) Contained use in sealed electrical components	(G) Tetraalkylammonium salt
P–02–0004	10/02/01	12/31/01	CBI	(G) Open, non-dispersive use in a coating application	(G) Aqueous polyurethane dispersion
P–02–0005	10/02/01	12/31/01	CBI	(G) Open, non-dispersive use in a coating application	(G) Aqueous polyurethane dispersion
P–02–0006	10/02/01	12/31/01	CBI	(G) Contained use in sealed electrical components	(G) Tetraalkylammonium salt
P–02–0007	10/02/01	12/31/01	CBI	(G) Destructive use as chemical intermediate	(G) Maleic acid monoester
P–02–0008	10/04/01	01/02/02	CBI	(G) Destructive use as chemical intermediate	(G) Maleic acid monoester
P–02–0009	10/02/01	12/31/01	Dow Corning Corporation	(S) Lubricant for fibers	(S) Silsesquioxanes, 2(or 3)-methylbutyl, hydroxy-terminated
P–02–0010	10/01/01	12/30/01	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-propenoic acid, sodium salt
P–02–0011	10/01/01	12/30/01	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-methyl-2-propenoic acid and 2-propenoic acid, sodium salt
P–02–0012	10/01/01	12/30/01	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-propenamide and 2-propenoic acid, sodium salt
P–02–0013	10/01/01	12/30/01	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-methyl-2-propenoic acid, 2-propenamide and 2-propenoic acid, sodium salt

I. 102 PREMANUFACTURE NOTICES RECEIVED FROM: 09/17/01 TO 10/24/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0014	10/04/01	01/02/02	CBI	(G) Pigment dispersant	(G) Maleated fatty acid
P–02–0015	10/04/01	01/02/02	CBI	(G) Additive for paint	(G) Aliphatic benzoate ester
P–02–0016	10/04/01	01/02/02	3M Company	(G) Protective coating	(G) Fluorochemical urethane
P–02–0017	10/05/01	01/03/02	CBI	(G) Colour transfer printing	(G) Azo oil soluble dye
P–02–0018	10/05/01	01/03/02	The Dow chemical Company	(G) Paint additive	(G) Polyalkoxylated alkyl carbamate
P–02–0019	10/05/01	01/03/02	The Dow chemical Company	(G) Paint additive	(G) Polyalkoxylated alkyl carbamate
P–02–0020	10/05/01	01/03/02	CBI	(G) Ester wax	(G) Ester wax
P–02–0021	10/09/01	01/07/02	CBI	(G) Dispersive use: oilfield performance chemical.	(G) Modified polyamide
P–02–0022	10/09/01	01/07/02	CBI	(G) Dispersive use: oilfield performance chemical.	(G) Modified fatty amide
P–02–0023	10/09/01	01/07/02	CBI	(G) Dispersive use: oilfield performance chemical.	(G) Modified polyamide
P–02–0024	10/09/01	01/07/02	CBI	(G) Dispersive use: oilfield performance chemical.	(G) Modified fatty amide
P–02–0025	10/09/01	01/07/02	Chemetall chemical products, Inc.	(G) Aluminum welding, destructive use	(S) Aluminum cesium fluoride
P–02–0026	10/05/01	01/03/02	CBI	(S) Specialty grease thickener	(G) Mixed aliphatic substituted bis-p-phenylene diurea
P–02–0027	10/09/01	01/07/02	Solutia Inc.	(S) Defoamer for water based industrial coatings	(G) Modified fatty acid ester
P–02–0028	10/09/01	01/07/02	CBI	(S) Inherently conducting polymer in corrosion control coatings	(S) Lignosulfonic acid, ethoxylated, compounds with polyaniline, hydrochlorides
P–02–0029	10/09/01	01/07/02	CBI	(S) Inherently conducting polymer in corrosion control coatings	(S) Lignosulfonic acid, ethoxylated, compounds with polyaniline, p-toluenesulfonates
P–02–0030	10/09/01	01/07/02	BASF Corporation	(S) Processing aid for leather tanning	(G) Counter ion of vegetable oil, oxidized and sulfited
P–02–0031	10/05/01	01/03/02	Quest International Fragrances Co.	(S) Fragrance ingredient	(S) Cyclohexan-1-ol, 1-methyl-3-(2-methylpropyl)-
P–02–0032	10/10/01	01/08/02	CIBA Specialty Chemicals Corporation	(S) Photoacid generator for resists in semiconductor and display mfg.	(G) Aromatic thiophene derivative
P–02–0033	10/10/01	01/08/02	CBI	(G) Dispersant for inorganic materials	(G) Sodium salt of methacrylic acid, methylacrylate copolymer
P–02–0034	10/11/01	01/09/02	CBI	(S) Phenolic resin used as a raw material for photoresist	(G) Phenolic resin
P–02–0035	10/12/01	01/10/02	Burlington Chemical Company, Inc.	(S) Fabric softener	(S) Ethanaminium, n-ethyl-2-hydroxy-n,n-bis(2-hydroxyethyl)-, mono- and diesters with branched and linear $C_{16–18}$ and C_{18}-unsatd, fatty acids, et sulfates (salts)
P–02–0036	10/12/01	01/10/02	Burlington Chemical Company, Inc.	(S) Component of automotive spray wax	(S) Imidazolium compounds, 2-($C_{15–17}$ and C_{17}-unsatd. branched and linear alkyl)-1-ethyl-4,5-dihydro-3-(hydroxyethyl), et sulfates (salts)
P–02–0037	10/12/01	01/10/02	Burlington Chemical Company, Inc.	(S) fabric softener; component of automotive spray wax	(S) Imidazolium compounds, 2-($C_{15–17}$ and C_{17}-unsatd. branched and linear alkyl)-1-[2-($C_{16–18,}$ and C_{18}-unsatd. branched and linear amido)ethyl]-3-ethyl-4,5-dihydro, et sulfates
P–02–0038	10/11/01	01/09/02	CBI	(G) Polymer for waterborne paints	(G) Modified acrylic emulsion
P–02–0039	10/11/01	01/09/02	CBI	(G) Polymer for waterborne paints	(G) Modified acrylic emulsion
P–02–0040	10/12/01	01/10/02	CBI	(G) Open non-dispersive (thermoplastic material)	(G) Modified polycarbonate
P–02–0041	10/12/01	01/10/02	Solutia Inc.	(S) Binding agent for waterborne coatings	(G) Modified acrylic copolymer
P–02–0042	10/12/01	01/10/02	CBI	(G) Acrylate resin for the coating, adhesive and sealant industry	(G) Hexanedioc acid, polymer with 1,1′-methylenebis[4-isocyanatocyclohexane] and a difunctional alcohol, 2-hydroxyethyl acrylate-blocked
P–02–0043	10/12/01	01/10/02	BASF Corporation	(S) Processing aid for leather tanning	(G) Metal salt of an aliphatic acid
P–02–0044	10/12/01	01/10/02	CIBA Specialty Chemicals Corporation	(S) Photoreactive dye for recordable compact discs(cd-r)	(G) Copper phthalocyanine derivative

I. 102 PREMANUFACTURE NOTICES RECEIVED FROM: 09/17/01 TO 10/24/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0045	10/12/01	01/10/02	CBI	(G) Antistatic agent; surfactant rinse aid; flotation reagent; surfactant rinse aid	(G) Esterquat
P–02–0046	10/12/01	01/10/02	CBI	(G) Antistatic agent; surfactant rinse aid; flotation reagent; surfactant rinse aid	(G) Esterquat
P–02–0047	10/12/01	01/10/02	CBI	(G) Antistatic agent surfactant rinse aid; flotation reagent; surfactant rinse aid	(G) Esterquat
P–02–0048	10/12/01	01/10/02	CBI	(G) Antistatic agent surfactant rinse aid; flotation reagent; surfactant rinse aid	(G) Esterquat
P–02–0049	10/15/01	01/13/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with fatty amines, ethylenediamine and 2-methyl-1,5-pentanediamine
P–02–0050	10/15/01	01/13/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsatd., dimers, polymers with fatty amines, ethylenediamine and 2-methyl-1,5-pentanediamine
P–02–0051	10/15/01	01/13/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine, neopentyl glycol and fatty alcohol
P–02–0052	10/15/01	01/13/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsatd., dimers, polymers with ethylenediamine, neopentyl glycol and fatty alcohol
P–02–0053	10/15/01	01/13/02	Solutia Inc.	(S) Wetting agent for waterborne coatings	(G) Neutralized acrylic copolymer
P–02–0054	10/15/01	01/13/02	CBI	(G) Open, non-dispersive (resin)	(G) Aliphatic thermoplastic polyurethane
P–02–0055	10/15/01	01/13/02	CBI	(S) Aqueous dispersion of polyurethane for leather finishing	(G) Dioic acid, polymer with (substituted)diol, hydrazine, hydroxypoly[(substituted)diyl], (substituted)propanoic acid and [(substituted)cyclohexane], compound with (substituted)amine
P–02–0056	10/16/01	01/14/02	Solutia Inc.	(S) Dispersing agent for industrial coatings	(G) Modified phosphoric acid group ester
P–02–0057	10/16/01	01/14/02	Solutia Inc.	(S) Binder for industrial paints	(G) Polycarboxylic resin
P–02–0060	10/17/01	01/15/02	Dow corning Corporation	(S) Adhesion promoter	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-w-(2-propenyloxy)-, ether with bis[ethyl 3-(oxo-k0)butanoato-k0′]bis(1,2-propanediolato-k0)titanium (2:1)
P–02–0061	10/17/01	01/15/02	Jeneil Biosurfactant Company	(G) Agriculture chemical additive, additive for soil remediation, additive for waste water treatment, additive for petroleum tank cleaning and hydrocarbon slugde remediation, additive for cleaning formulations.	(S) Decanoic acid, 3-[[6-deoxy-2-o-(6-deoxy-.alpha.-l-mannopyranosyl)-.alpha.-l-mannaopyranosyl]oxy]-, 1-(carboxymethyl)octyl ester, mixture with 1-(carboxymethyl)octyl 3-[(6-deoxy-.alpha.-l-mannopyranousyl)oxy]decanoate
P–02–0062	10/18/01	01/16/02	CBI	(G) Reactive hot melt adhesive	(G) Reactive hot melt
P–02–0063	10/19/01	01/17/02	Quest International Fragrances Co.	(S) Fragrance ingredient	(S) Cyclohexanecarboxylic acid, 1,4-dimethyl-, methyl ester (cis and trans); cyclohexanecarboxylic acid, 1,3-dimethyl-, methyl ester (cis and trans)
P–02–0064	10/18/01	01/16/02	CBI	(G) Open, non-dispersive (resin)	(G) Copolymer from acrylic acid and diethylene glycol divinylether with carboxylic acid groups in h-form
P–02–0065	10/19/01	01/17/02	CBI	(G) Open, non-dispersive (catalyst)	(G) Polyether - polycarbonat-carbamate
P–02–0066	10/19/01	01/17/02	Nippon Kayaku America, Inc.	(S) Photosensitive oligomer for solder mask	(S) Formaldehyde, polymer with (chloromethyl)oxirane and phenol, hydrogen 4-cyclohexene-1,2-dicarboxylate 2-propenoate

I. 102 PREMANUFACTURE NOTICES RECEIVED FROM: 09/17/01 TO 10/24/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0067	10/19/01	01/17/02	Nippon Kayaku America, Inc.	(S) Photosensitive oligomer for solder mask	(S) Formaldehyde, polymer with (chloromethyl)oxirane and 2-methylphenol, hydrogen 4-cyclohexene-1,2-dicarboxylate 2-propenoate
P–02–0068	10/19/01	01/17/02	Dow Corning Corporation	(S) Silicone matting agent	(G) Organo silicone elastomer
P–02–0069	10/24/01	01/22/02	Sasol North America Inc.	(G) Solubilizer	(S) Glycerides, mixed decanoyl and octanoyl mono-, di- and tri-,ethoxylated
P–02–0070	10/24/01	01/22/02	CBI	(G) Alkaline battery component - contained use enclosed in battery container	(S) 2-propenoic acid, polymer with sodium 4-ethenylbenzenesulfonate
P–02–0071	10/24/01	01/22/02	CBI	(G) Resin for coating	(G) Acrylic copolymer
P–02–0079	10/22/01	01/20/02	CBI	(S) Tackifying resin for adhesive formulations	(G) Polymer of phenol and substituted benzenes
P–02–0080	10/24/01	01/22/02	BASF Corporation	(S) Processing aid for leather tanning	(G) Diglyceride fatty acid, acetylated
P–02–0082	10/22/01	01/20/02	CBI	(G) Polymeric binder	(G) Strene-methacrylate copolymer
P–02–0083	10/22/01	01/20/02	CBI	(G) Polymeric binder	(G) Strene-methacrylate copolymer
P–02–0084	10/22/01	01/20/02	CBI	(G) Polymeric binder	(G) Strene-methacrylate copolymer
P–02–0085	10/22/01	01/20/02	CBI	(G) Polymeric binder	(G) Strene-methacrylate copolymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received

II. 3 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 09/17/01 TO 10/24/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–02–0001	10/12/01	11/26/01	Westvaco Corporation - chemical division	(S) Binding agent in paper coatings	(G) Butyl acrylate, polymer with styrene and ,ethylamino chloride compounds, acetic acid salt
T–02–0002	10/12/01	11/26/01	Westvaco Corporation - chemical division	(S) Binding agent in paper coatings	(G) Butyl acrylate, polymer with styrene and ,ethylamino chloride compounds, lactic acid salt
T–02–0003	10/12/01	11/26/01	Westvaco Corporation - chemical division	(S) Binding agent in paper coatings	(G) Butyl acrylate, polymer with styrene and ,ethylamino chloride compounds, nitric acid salt

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 71 NOTICES OF COMMENCEMENT FROM: 09/17/01 TO 10/24/01

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0065	10/15/01	09/17/01	(G) Amines, n-tallow alkylpoly-, hydrochlorides
P–00–0066	09/17/01	08/29/01	(G) Amines, n-tallow alkylpoly-
P–00–0099	10/11/01	09/12/01	(G) Fatty acid condensate
P–00–0115	10/05/01	10/01/01	(S) 8-undecenal, (8z)-
P–00–0118	09/24/01	09/18/01	(G) Unsaturated dialkyl acetal
P–00–0482	09/20/01	08/24/01	(G) Alkyl methacrylate copolymer
P–00–0736	09/27/01	09/04/01	(G) Polyester acrylate
P–00–0802	10/16/01	09/14/01	(S) Rosin, polymd., compound with 2-(dimethylamino) ethanol
P–00–1228	09/24/01	09/10/01	(G) Substituted benzophenone
P–01–0013	09/17/01	09/17/01	(S) Oxacycloheptadec-11-en-2-one
P–01–0074	10/03/01	09/15/01	(G) Modified styrene acrylate polymer
P–01–0121	10/02/01	08/29/01	(G) Aromatic saturated copolymer
P–01–0122	09/26/01	09/14/01	(G) Acetate-substituted bicyclic olefin
P–01–0130	10/24/01	10/08/01	(S) Sulfur, trifluoro[2-methoxy-n-(2-methoxyethyl)ethanaminato-kn]-, (t-4)-
P–01–0161	09/17/01	08/24/01	(G) Aliphatic capped polyester
P–01–0232	09/27/01	09/18/01	(G) Perfluoroalkyl derivative

III. 71 NOTICES OF COMMENCEMENT FROM: 09/17/01 TO 10/24/01—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0282	09/26/01	09/12/01	(G) Urethane acrylate
P–01–0313	10/01/01	09/13/01	(G) Alkanoic acid diester
P–01–0315	10/09/01	09/09/01	(G) Urethane acrylate dispersion
P–01–0391	10/09/01	09/27/01	(G) Modified phenolic resin
P–01–0399	09/26/01	09/24/01	(G) Polyacrylate, salt with polyalkylene glycolbutylether, phosphate
P–01–0411	10/09/01	09/23/01	(G) Acrylic copolymer
P–01–0412	09/21/01	09/19/01	(G) Acrylic copolymer
P–01–0414	09/21/01	09/17/01	(G) Acrylic copolymer
P–01–0416	09/21/01	09/18/01	(G) Acrylic copolymer
P–01–0441	10/09/01	09/17/01	(G) Modified phenolic resin
P–01–0444	09/21/01	08/23/01	(G) Hydroxy functional polyester resin
P–01–0445	10/15/01	09/26/01	(G) Aminomodified silicone-polyether copolymer
P–01–0451	09/25/01	08/21/01	(G) Fatty acid modified polyester
P–01–0476	10/09/01	09/17/01	(G) O-macroalkyl hydroxylamine
P–01–0482	10/09/01	09/09/01	(G) Modified polyurethane resin
P–01–0496	09/17/01	09/05/01	(G) Acrylate ester
P–01–0503	10/12/01	10/10/01	(G) Bis substituted amino benzenesulfonic acid, amine salt
P–01–0530	09/19/01	08/24/01	(G) Alkoxylated alcohol
P–01–0553	10/02/01	08/29/01	(G) Aromatic/aliphatic copolyester
P–01–0554	10/02/01	08/29/01	(G) Copolyester
P–01–0561	09/21/01	09/06/01	(G) Modified phenolic resin
P–01–0562	09/17/01	08/29/01	(G) Water redispersible cationic acrylic copolymer
P–01–0566	09/18/01	08/13/01	(G) Modified polyurethane resin
P–01–0572	10/01/01	09/08/01	(S) Fatty acids, C_{18}-unsatd., dimers, di-me esters, hydrogenated, polymers with 1,1′-methylenebis[4-isocyanatobenzene], polypropylene glycol and trimethylolpropane
P–01–0576	10/16/01	10/03/01	(G) Aromatic benzaldehyde polymer
P–01–0587	10/01/01	08/29/01	(S) Glycerides, tall-oil mono-, di-, and tri-
P–01–0588	10/15/01	10/03/01	(G) Rosin, maleated, metal oxide salts.
P–01–0597	09/24/01	09/10/01	(G) Acrylate and urethane modified polyester resin
P–01–0604	10/15/01	10/05/01	(G) Diketo pyrrolo pyrrol isomers
P–01–0615	09/25/01	09/12/01	(G) Acrylic polymer
P–01–0617	10/09/01	09/28/01	(S) Hexadecene, polymer with pentadecene, hydrogenated*
P–01–0618	10/09/01	09/28/01	(S) Tetradecene, homopolymer, hydrogenated*
P–01–0635	09/17/01	09/07/01	(G) Polyurethane resin
P–01–0638	10/16/01	10/04/01	(G) (monosubstituted naphthalene azo)tri substituted naphthalene sulfonic acid, salt
P–01–0645	10/03/01	09/15/01	(G) Isoprene based polymer
P–01–0647	09/27/01	09/25/01	(G) Substituted arylcarboxamide
P–01–0651	10/09/01	09/23/01	(G) Polyester acrylate
P–01–0652	10/10/01	09/22/01	(G) Plant extract
P–01–0660	09/26/01	09/20/01	(G) Alkylated aromatic
P–01–0665	10/17/01	10/01/01	(G) Benzenesulfonic acid, 2,2′-(1,2-ethenediyl)bis[5-[[4-substituted-6-substituted-1,3,5-triazin-2-yl]amino-, sodium salt, compound with (substituted)oxirane polymer with sorbitol, (substituted)amine and (substituted)triol formate (salt)
P–01–0671	10/10/01	09/28/01	(G) Polyalkoxylated aromatic chromophore
P–01–0673	10/15/01	10/05/01	(G) Polyalkoxylated intermediate
P–01–0675	10/10/01	09/20/01	(G) Polyalkoxylated aromatic chromophore
P–01–0679	10/04/01	09/21/01	(G) Polyalkoxylated intermediate
P–01–0681	10/12/01	09/24/01	(G) Polyalkoxylated intermediate
P–01–0699	10/15/01	10/01/01	(G) Alkene adduct, calcium phenate, sulfurized
P–94–0943	09/28/01	09/21/01	(G) Alkyl - aminophenol
P–97–0492	10/09/01	09/26/01	(G) Acrylic polymer
P–97–0579	09/21/01	09/06/01	(S) Benzene, 1,2-bis(phenoxymethyl)
P–97–0736	10/02/01	09/25/01	(G) Fatty acids, C_{18}-unsatd., dimers, polymers with ethylenediamine and a fatty alcohol.
P–98–0494	10/09/01	09/28/01	(G) Polyurethane polymer
P–98–1257	09/19/01	09/13/01	(G) Blocked aromatic isocyanate
P–99–0214	09/18/01	09/07/01	(G) Hydrofluorocarbon (hfc)
P–99–0444	09/18/01	07/27/01	(G) Urethane modified alcohol
P–99–0957	10/02/01	09/17/01	(G) Chromophore substituted polyoxyalkylene

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: November 28, 2001.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 01–30370 Filed 12–6–01; 8:45 m]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[EB 01–66; DA 01–2775]

Emergency Alert Systems

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission has received an *ex parte* submission from the Media AccessProject regarding the use of Emergency Alert System (EAS) decoders at low power FM broadcast stations. The Commission also received an *ex parte* submission jointly filed by the National Cable & Telecommunications Association, the National Association of the Deaf and the Telecommunications for the Deaf regarding the use of EAS decoders at small cable television systems. The Commission requests specific information regarding these requests to assist it in reaching an informed decision.

DATES: Comments are due on or before December 24, 2001.

ADDRESSES: Federal Communications Commission, Office of the Secretary, TW–A325, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George Dillon of the Enforcement Bureau at (202) 418–1215 or by e-mail at *gdillon@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Media Access Project (MAP) submitted an ex parte presentation regarding the use of certified Emergency Alert System (EAS) decoders at low power FM broadcast stations. The National Cable & Telecommunications Association, the Telecommunications for the Deaf, Inc. and the National Association of the Deaf (NCTA/NAD) submitted an *ex parte* presentation regarding the use of Emergency Alert System (EAS) decoders in connection with the Commission's Notice of Proposed Rule Making, Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, EB Docket No. 01–66.

MAP notes that the Commission adopted rules in the Low Power FM proceeding that recognized the budgetary constraints under which low power FM stations would operate and permitted low power FM station to install a FCC certified EAS decoder in lieu of an EAS encoder/decoder. MAP states that when the Commission adopted this requirement it recognized that FCC certified EAS decoders were not available, but expected certified decoders to become available at a cost similar to non-certified decoders. MAP states that there are no certified EAS decoders available and that it does not believe that they will become available at a reasonable price. In this regard, MAP indicates that the cost of a certified decoder would likely be at or near the cost of a certified EAS encoder/decoder. MAP requests that the FCC consider alternatives to the EAS requirement for Low Power FM stations, such as temporarily exempting low power FM stations from the requirement to install EAS decoders.

NCTA/NAD filed a joint *ex parte* submission requesting that the Commission permit small cable systems to use EAS decoders rather than an EAS encoder/decoder. NCTA/NAD state that the use of an EAS decoder could serve as an alternative to the Commission's EAS rules for cable systems that serve fewer than 5,000 subscribers and will meet the ''best practices'' procedures that the Commission agreed to consider in the Second Report and Order amending the EAS rules.

We seek to supplement the record in this docket with respect to MAP's request for alternative arrangements for EAS alerting and NCTA/NAD's request that small cable systems be permitted to install an EAS decoder as an alternative to the requirements of section 11.11 of the Commission's rules for small cable systems. We also seek specific comment from EAS manufacturers about the likelihood that they will manufacture and certify an EAS decoder. The date by which a FCC certified decoder would likely be available for purchase and the cost of any such decoder.

We note that small cable systems are required to install EAS encoder/decoders by October 1, 2002. This request for supplemental comment on the NCTA/NAD ex parte submission does not alter that requirement.

Interested parties may file comments concerning this matter on or before December 24, 2001. All filings must reference EB Docket No. 01–66 and should be sent to Magalie Roman Salas, Secretary, Federal Communications Commission, TW-A325, 445 12th Street, SW., Washington, DC 20554. Two copies should also be sent to the Technical and Public Safety Division, 445 12th Street, SW., Suite 7–C802, Washington, DC, 20554. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, electronic filers should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. This is a ''permit but disclose'' proceeding pursuant to section 1.1206 of the Commission's rules. Presentations to or from Commission decision-making personnel are permissible provided that *ex parte* presentations are disclosed pursuant to section 1.1206(b) of the Commission's rules.

The full text of the comments is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The documents 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.* A copy of the requests from MAP and NCTA/NAD may also be viewed online at the FCC's E-filing System located at *http://gullfoss2.fcc.gov/cgi-bin/ws.exe/prod/ecfs/comsrchv.hts* by typing EB 01–66 in the Proceeding Block and clicking on Retrieve Document.

Federal Communications Commission.

David H. Solomon,

Chief, Enforcement Bureau.

[FR Doc. 01–30341 Filed 12–6–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2517]

Petition For Reconsideration and Clarification of Action in Rulemaking Proceeding

November 30, 2001.

Petition for Reconsideration and Clarification has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by December 24, 2001. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Inquiry Regarding Software Defined Radios (ET Docket No. 00–47).

Number of Petitions Filed: 1.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–30302 Filed 12–6–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act; Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 66 FR 59595, November 29, 2001.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, December 5, 2001.

CHANGE OF MEETING DATE: Notice is hereby given that the Board of Directors meeting scheduled for December 5, 2001 has been changed to Tuesday, December 11, 2001 at 3 p.m.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–30429 Filed 12–5–01; 10:50 am]

BILLING CODE 6725–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 21, 2001.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. M. Charles Kellogg, Overland Park, Kansas; individually, and as Trustee of the C.H. Goppert Trust; to acquire voting shares of Country Agencies & Investments, Inc., Odessa, Missouri, and thereby indirectly acquire voting shares of Bank of Odessa, Odessa, Missouri, Commercial Bank of Oak Grove, Oak Grove, Missouri, and LaMonte Community Bank, LaMonte, Missouri.

Board of Governors of the Federal Reserve System, December 3, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–30300 Filed 12–6–01; 8:45 am]

BILLING CODE 6210–01–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 December 31, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Peoples Bancorp, Rock Valley, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank, Rock Valley, Iowa.

In connection with this application, Applicant also has applied to acquire Peoples Financial Inc., Rock Valley, Iowa, and thereby engage in insurance activities in a place of less than 5,000 in population, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Texas Regional Bancshares, Inc., McAllen, Texas, and Texas Regional Delaware, Inc., Wilmington, Delaware; to merge with Riverway Holdings, Inc., Houston, Texas, and thereby indirectly acquire Riverway Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, December 3, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–30301 Filed 12–6–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Charges for Certain Disclosures

AGENCY: Federal Trade Commission.

ACTION: Notice regarding charges for certain disclosures.

SUMMARY: The Federal Trade Commission announces that the ceiling on allowable charges under Section 612(a) of the Fair Credit Reporting Act (''FCRA'') will increase from $8.50 to $9.00 on January 1, 2002. Under 1996 amendments to the FCRA, the Federal Trade Commission is required to increase the $8.00 amount referred to in

paragraph (1)(A)(i) of Section 612(a) on January 1 of each year, based proportionally on changes in the Consumer Price Index (''CPI''), with fractional changes rounded to the nearest fifty cents. The CPI increased 10.16 percent between September 1997, the date the FCRA amendments took effect, and September 2001. This increase in the CPI and the requirement that any increase be rounded to the nearest fifty cents results in an increase in the current maximum allowable charge to $9.00 effective January 1, 2002.

EFFECTIVE DATE: January 1, 2002.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Keith B. Anderson, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, 202–326–3428.

SUPPLEMENTARY INFORMATION: Section 612(a)(1)(A) of the Fair Credit Reporting Act, as amended in 1996, states that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to Section 609, the charge shall not exceed $8 and shall be indicated to the consumer before making the disclosure. Section 612(a)(2) goes on to state that the Federal Trade Commission (''the Commission'') shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents. The allowable charge was increased from $8.00 to $8.50 on January 1, 2000. (See 64 FR 69769 (December 14, 1999).)

The Commission considers the $8 amount referred to in paragraph (1)(A)(i) of Section 612(a) to be the baseline for the effective ceiling on reasonable charges dating from the effective date of the amended FCRA, *i.e.,* September 30, 1997. Each year the Commission calculates the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) from September 1997 to September of the current year. The Commission then determines what modification, if any, from the original base of $8 should be made effective on January 1 of the subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2001, the Consumer Price Index for all urban consumers and all items increased by 10.61 percent—from an index value of 161.2 in September 1997 to a value of 178.3 in September 2001. An increase of 10.61 percent in the $8.00 base figure would lead to a new figure of $8.85. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the allowable charge should be $9.00.

The Commission therefore determines that the allowable charge for the year 2002 will be $9.00

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–30355 Filed 12–6–01; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

[Document No. JFMIP–SR–01–03]

Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMSR)

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document availability.

SUMMARY: The JFMIP is seeking public comment on an exposure draft entitled ''Acquisition/Financial Systems Interface Requirements,'' dated November 2001. The draft is the first Federal Financial Management System Requirements (FFMSR) document to address standard financial requirements for Federal acquisition/financial systems. The document is intended to assist agencies when developing, improving or evaluating benefit systems. It provides the baseline functionality that agency systems must have to support agency missions and comply with laws and regulations. When issued in final, the document will augment the existing body of FFMSR that define financial system functional requirements which are used in evaluating compliance with the Federal Financial Management Improvement Act (FFMIA) of 1996.

DATES: Comments are due by February 28, 2002.

ADDRESSES: Copies of the exposure draft have been mailed to senior financial officials, chief information officers, and procurement executives, together with a transmittal memo listing items of interest for which JFMIP is soliciting feedback. The Exposure Draft, transmittal memo, and comment response matrix are available on the JFMIP Web site: *www.jfmip.gov* Responses should be addressed to JFMIP, 1990 K Street, NW., Suite 430, Washington, DC 20006.

FOR FURTHER INFORMATION: Dennis Mitchell, (202) 219–0529 or *dennis.mitchell@gsa.gov.*

SUPPLEMENTARY INFORMATION: The FFMIA of 1996 mandated that agencies implement and maintain systems that comply substantially with FFMSR, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial system requirements documents as a key benchmark that agency systems must meet to substantially comply with systems requirements provisions under FFMIA. To support the provisions outlined in the FFMIA, the JFMIP is updating obsolete requirements documents and publishing additional requirements documents. Comments received will be reviewed and the exposure draft will be revised as necessary. Publication of the financial document will be mailed to agency financial officials, procurement executives, chief information officers, and others, and will be available on the JFMIP website. An open house is scheduled for Thursday, December 13, 2001, from 9:30 a.m. to noon in the General Services Administration (GSA) Auditorium in the main GSA Building, located at 18th and F Streets NW, to provide additional information on the Exposure Draft. The name, organization, telephone number, and e-mail address for attendees should be e-mailed to *dennis.Mitchell@gsa.gov* or faxed to 202–219–0549.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 01–30308 Filed 12–6–01; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0519]

Medical Devices: Draft Guidance on Cardiac Ablation Catheters Generic Arrhythmia Indications for Use; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Cardiac Ablation Catheters Generic Arrhythmia Indications for Use.'' This draft guidance document encourages manufacturers of approved conventional cardiac ablation catheters to submit supplements to broaden their

labeling from arrhythmia-specific indications to a generic arrhythmic treatment indication. The Center for Devices and Radiological Health (CDRH) is issuing this draft guidance document to allow companies to label these products for a broader indication without submitting additional clinical information. This recommendation is based on a comprehensive search of the medical literature. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments concerning this draft guidance by March 7, 2002.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Cardiac Ablation Catheters Generic Arrhythmia Indications for Use'' to the Division of Small Manufacturers, International and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Donna-Bea Tillman, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517.

SUPPLEMENTARY INFORMATION:

I. Background

The draft guidance document recommends that manufacturers of approved conventional cardiac radiofrequency ablation catheters submit a premarket approval supplement to obtain a generic indication for creating endocardial lesions to treat arrhythmias. The draft guidance document provides evidence from the medical literature to support this broadening of indications from arrhythmia-specific indications to a generic arrhythmia treating indication.

II. Significance of Guidance

The draft guidance document, when finalized, represents the agency's current thinking on generic indications for cardiac ablation catheters. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute and regulations.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance document is issued as a level 1 guidance in accordance with the GGP regulations.

III. Electronic Access

In order to receive ''Cardiac Ablation Catheters Generic Arrhythmia Indications for Use'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 1382 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. Guidance documents are also available on the Dockets Management Branch Web site at http://www.fda.gov/ohrms/dockets/default.htm.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the draft guidance by March 7, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 28, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 01–30330 Filed 12–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–C–35]

Announcement of Funding Awards; Indian Housing DrugElimination Program; Fiscal Year 2001; Correction

AGENCY: Office of Native American Programs, HUD.

ACTION: Announcement of funding awards for fiscal year 2001; Correction.

SUMMARY: On October 19, 2001 (66 FR 53242), the Department published a notice that announced the funding awards for Fiscal Year (FY) 2001 funding for its Indian Housing Drug Elimination Program. This document makes a correction to the list of funded applicants.

FOR FURTHER INFORMATION CONTACT: Please contact the office or individual identified in the notice published in the **Federal Register** on October 19, 2001 for further information.

SUPPLEMENTARY INFORMATION: On October 19, 2001 (66 FR 53242), the Department published a notice that announced the funding awards for Fiscal Year (FY) 2001 funding for its Indian Housing Drug Elimination Program. In Appendix A, Awarded Applicants, HUD incorrectly stated that the Housing Authority of the Cherokee Nation received a grant award. Through this document, HUD corrects the successful applicant's name.

Accordingly, FR Doc. 01–26333, Announcement of Funding Awards for the Indian Housing Drug Elimination Program for Fiscal Year 2001, published in the **Federal Register** on October 19, 2001 at 66 FR 53242, is corrected as follows:

- On page 53244, Appendix A.—Awarded Applicants FY 2001 Indian Housing Drug Elimination Program, is corrected to delete the Housing Authority of the Cherokee Nation from the list of awarded applicants, and to revise the Applicant name to read as follows: Cherokee Nation.

Dated: December 3, 2001.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 01–30309 Filed 12–6–01; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–49]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 30, 2001.

John D. Garrity,

Director, Office of Special Needs, Assistance Program.

[FR Doc. 01–30310 Filed 12–6–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27(f)(3)), notice is hereby given that the following Letters of Authorization to take polar bears incidental to oil and gas industry exploration activities in the Beaufort Sea and adjacent northern coast of Alaska has been issued to the following companies:

Company	Activity	Location	Date issued
WesternGeco	Exploration	Alaska North Slope	October 19, 2001.
Phillips Alaska, Inc	Exploration	Spark #1	October 22, 2001.
Phillips Alaska, Inc	Exploration	Oxbow #1	October 22, 2001.
Phillips Alaska, Inc	Exploration	Outlook #1	October 22, 2001.
Phillips Alaska, Inc	Exploration	Hunter #1	October 23, 2001.
Phillips Alaska, Inc	Exploration	Rendezvous #1 & # 2	October 23, 2001.
Phillips Alaska, Inc	Exploration	Nanuq #4	October 24, 2001.
Phillips Alaska, Inc	Exploration	Antigua #1	October 29, 2001.
BP Exploration (Alaska), Inc	Exploration	Sakonowyak River	October 30, 2001.

Contact: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: The Letter of Authorization is issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities (65 FR 16828; March 30, 2000).''

Dated: November 8, 2001.

David B. Allen,

Regional Director.

[FR Doc. 01–30303 Filed 12–6–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–130–01–1610–DS–241A]

Notice of Intent To Prepare an Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management(BLM) announces its intent to prepare a management plan for the CCNCA. This notice initiates the public scoping, the planning review process; and the EIS associated with completion of the CCNCA Management Plan. The Act establishing the CCNCA directs the Secretary of the Interior to develop a ''comprehensive plan for the long-range protection and management of the Conservation Area'' by October 24, 2003.

DATES: The formal scoping comment period will commence with the publication of this notice and end 60 days after publication of this notice. Comments on issues, alternatives, and the preliminary planning criteria to be addressed in the CCNCAManagement Plan and EIS should be received on or before the end of the scoping period at the address listed below. During this formal scoping comment period, an open house will be held in Grand Junction, Colorado, where BLM personnel will be available to respond to questions and provide other information pertaining to the preparation of the documents. There will be subsequent public review periods and open houses where additional public comment will be requested, including a formal comment period on the draft EIS/CCNCA Management Plan. At least 15 days public notice will be given for the open houses or other public meetings. Written comments will be accepted throughout the planning process at the address shown below. All open house and comment deadlines will be announced through the local news media, newsletters and on the CCNCA website (*http://www.co.blm.gov/gjra/ccnca/ccncahome.htm*).

ADDRESSES: For further information, to provide written comments, or to be placed on the mailing list, contact Bureau of LandManagement, CCNCA RMP Amendment, 2815 H Road, Grand Junction,Colorado 81506; e-mail *Jane__Ross@co.blm.gov;* Telephone (970) 244-3000. Individual respondents may request confidentiality. If you wish to withhold your name and/or address

from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The CCNCA is located in both Colorado and Utah, and preparation of the CCNCA plan may involve amendment of both the Grand Junction RMP in Colorado and the Grand RMP in Utah. The Grand Junction Field Office, located in Colorado, is responsible for management of the CCNCA and preparation of the CCNCA plan. The BLM will work closely with interested parties to identify the management discussions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. The Act establishing the 122,300 acre CCNCA in western Colorado and eastern Utah was signed into law by the President on October 24, 2000. The purpose of the Act is to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the unique and nationally important values of the public lands in the CCNCA, including geology, recreation, cultural, paleontological, biological, wilderness, wildlife, educational, and scenic resources. The Act also designates 75,550 acres of the CCNCA as the Black Ridge Canyons Wilderness Area. There are 5,500 acres of the CCNCA located in the state of Utah. The Grand Junction Field Office in Colorado will coordinate with the Moab Field Office in Utah during preparation of the CCNCA Management Plan.

Management of the CCNCA is currently guided by the Ruby Canyon/Black Ridge Integrated Management Plan completed in March 1998. The Grand Junction RMP and the Grand RMP, in addition to several activity level management plans, include other decisions affecting the CCNCA. On February 13, 2001, the BLM Colorado State Director issued interim guidance for management of the CCNCA pending completion of the final Management Plan. All of these documents will be reviewed during preparation of the CCNCA Management Plan.

The CCNCA Plan and associated EIS will be prepared by an interdisciplinary team. Disciplines to be represented on the team include: Archaeology, botany, fisheries, geology, hydrology, paleontology, range management, realty, recreation, soils, wilderness, and wildlife. Pursuant to the Act establishing the CCNCA, an advisory council is currently being established to advise the BLM the management of the CCNCA. The advisory council is also anticipated to take an active role in preparation of the CCNCA Management Plan.

Preliminary issues identified by the BLM for the CCNCA plans include travel management, recreation, use authorizations such as rights-of-ways and grazing, management of natural resources, wilderness stewardship, and integration of the CCNCA Management Plan with other agency and community plans. Public involvement gained through the initial scoping comment period will be utilized to refine these topics and identify any additional issues to be evaluated.

Planning criteria are the standards, rules, and other factors used in formulating judgements about data collection, analysis, and decision making associated with preparation of the CCNCA Management Plan. These criteria establish parameters and help focus preparation of the effort. Public comment is also welcomed on the following preliminary planning criteria, which will be utilized in the preparation of the CCNCA Management Plan.

A. The CCNCA Management Plan will be completed in compliance with the Federal Land Policy and Management Act and all other applicable laws.

B. The project team will work cooperatively with the States of Colorado and Utah, tribal governments, county and municipal governments, other Federal agencies, and all other interested groups, agencies, and individuals. Public participation will be encouraged throughout the process.

C. Completion of the CCNCA Management Plan will include preparation of an EIS that will comply with the National Environmental Policy Act.

D. The CCNCA Management Plan will evaluate valid existing rights in the various alternative management schemes.

E. The lifestyles and concerns of area residents, including the activities of grazing, recreational use, off-highway vehicle use, and wilderness management will be addressed in the CCNCA Management Plan.

F. Preparation of the CCNCA Management Plan will involve coordination with Native American tribal governments and will provide strategies for the protection of recognized traditional uses.

G. Decisions in the CCNCA Management Plan will strive to be compatible with existing plans and policies of adjacent local, State and Federal agencies.

H. The CCNCA Management Plan will comply with the legislative directives, needs, and obligations set forth by the legislation establishing the CCNCA.

Catherine Robertson,

Field Manager, Grand Junction Field Office.

[FR Doc. 01–30322 Filed 12–6–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/General Management Plan Lassen Volcanic National Park Lassen, Plumas, Shasta, Tehama Counties, CA; Notice of Availability

SUMMARY: Pursuant to § 102 (2) © of the National Environmental Policy Act of 1969 (Pub.L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a Final Environmental Impact Statement identifying four alternatives for (and assessing the potential impacts of) a proposed General Management Plan for Lassen Volcanic National Park, located in northeastern California. Upon approval, the new General Management Plan will serve as a ''blueprint'' for the management and use of Lassen Volcanic National Park over the next 10–15 years.

Proposal and Alternatives Considered

The ''no action'' alternative, Alternative A, assumes that physical facilities and ongoing activities would remain largely unchanged, and that staffing and operational funding would remain constant over the planning period.

Alternative B: Resource Preservation and Basic Visitor Service, provides a program for preserving, and where necessary, restoring significant park resources. It includes essential staffing and funding increases for the park's cultural and natural resource management functions, restores key elements of the park's infrastructure, provides for restoration of several specific sites with natural system conflicts, establishes a standards-based management zoning system, and proposes designation of approximately

25,000 acres as part of the National Wilderness Preservation System (increasing the total amount of designated Wilderness to approximately 104,000 acres). The plan also includes program increases and visitor facility improvements to provide for quality basic visitor service.

Alternative C: The Proposed General Management Plan—Resource Protection and Enhanced Visitor Experience. This plan includes all the features of Alternative B, and provides enhancement to visitor experience by making more facilities available during winter months, and increasing interpretive services, facilities, and information.

Alternative D: Resource Protection and Expanded Visitor Opportunities, includes all of the features of Alternative C and, in addition, provides for expansion of family and group campgrounds at several locations. It also expands winter access at the north entrance by plowing the park road an additional 9 miles to the Devastated Area, and keeping one loop of the campground open for winter camping.

Significant adverse environmental impacts and potential impairment of park values would be expected to result from Alternative A as a number of cultural, natural, and environmental resources are undergoing deterioration under current conditions. All of the action alternatives include programs to arrest the deterioration of resources and mitigation features to avoid or reduce impacts, which might ensue from implementation of project features. It was determined that the ''environmentally preferred'' alternative is Alternative C.

Public Comment

A Notice of Intent to prepare an EIS was published in the **Federal Register** on July 24, 1998. During the subsequent scoping phase leading to development of the Draft EIS, the NPS conducted seven public meetings, three agency meetings, and several Tribal meetings. In all, information provided by 120 commentors and 49 letters was obtained. A Notice of Availability of the Draft EIS was published in the **Federal Register** on August 18, 2000. During the subsequent public comment period, seven public workshops were conducted and over 650 copies of the Draft EIS were distributed. Throughout the process contacts were undertaken with Tribes, the State Historic Preservation Office, U.S. Forest Service, the four surrounding County Boards of Supervisors, and other entities. Altogether 189 comment letters were received; these as well as the responses obtained during the scoping phase are filed in the administrative record.

Copies

Inquiries and requests for printed copies of the final EIS for the proposed General Management Plan may be directed to Superintendent, Lassen Volcanic National Park, P.O. Box 100, Mineral, California 96063–0100, or via telephone at (530) 595–4444 ext.5101. Public review copies will also be available at area libraries.

During the Ano action'' period following release of the Final EIS, if any individuals submit comments and request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision

A Record of Decision may be approved by the Regional Director, Pacific West Region, no sooner than 30 days after publication of a Notice of filing of this Final EIS in the **Federal Register** by the Environmental Protection Agency. The official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation of the plan is the Superintendent, Lassen Volcanic National Park.

Dated: October 25, 2001.

Martha K. Leicester,

Acting Regional Director, Pacific West Region.

[FR Doc. 01–30336 Filed 12–6–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Aniakchak National Monument Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order (Chair).

(2) SRC Roll Call and Confirmation of Quorum.

(3) Welcome and Introductions.

(4) Review and Adopt Agenda.

(5) Review and adopt minutes from last meeting.

(6) Commission Purpose.

(7) Status of Membership.

(8) Public and Agency Comments.

(9) Old Business:

a. Customary Trade.

b. Status of Subsistence Management Plan.

c. Status of Hunting Plan Recommendation 97–1, Establish One-Year Minimum Residency Requirement for Resident Zone Communities.

d. Status of Aniakchak National Preserve Non-Subsistence User Permit Request.

(1) New Business:

a. October 2001 Chairs Workshop Report.

b. Federal Subsistence Board and Bristol Bay Regional Council Report.

c. Land Status Map.

d. Subsistence Access.

e. Hunting Guide Issues

(11) Election of SRC Chair and Vice Chair.

(13) Public and Agency Comments.

(14) SRC work session (draft proposals, letters, and recommendations).

(15) Set time and place of next SRC meeting.

(16) Adjournment.

DATES: The meeting will begin at 10 a.m. on Tuesday, February 12, 2002 and conclude at approximately 6 p.m. The meeting will reconvene at 9 a.m. on Wednesday, February 13, 2002 and adjourn at approximately 1 p.m.

Location: The meeting will be held at the Chignik Lake Subsistence Community Building, Chignik Lake, Alaska, (907) 845–2212.

FOR FURTHER INFORMATION CONTACT: Mary McBurney at Phone (907) 257–2633, or Tom O'Hara, Subsistence Manager, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–2101.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

In light of a recent attempt to relocate National Park Service administrative personnel and offices in Washington, DC, this notice may not be published at least 15 days prior to the meeting. The National Park Service regrets these events, but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling would require of commission members who have adjusted their schedules to accommodate the proposed meeting dates.

Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting at the Aniakchak National Monument Office, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–2101.

Robert L. Arnberger,

Regional Director.

[FR Doc. 01–30337 Filed 12–6–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Section 10), notice is hereby given that the Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.

(2) Roll call. Confirm quorum.

(3) Approval of summary of meeting minutes for November 13–14, 2001 meeting in Fairbanks.

(4) Review agenda.

(5) Superintendent's Welcome.

(6) Introductions of Guests and Agency Staff.

(7) Review Commission Role and Purpose.

(8) Superintendent's Management and Research Update.

(9) Public and agency comments.

(10) Old Business:

a. October 2001 SRC Chair's Workshop Report.

b. Status Gates of the Arctic National Park and Preserve Subsistence Management Plan.

c. Status Customary Trade Hunting Plan Recommendation 99–01.

(11) New Business:

a. Review Federal Subsistence Board and Regional Advisory Council Proposals and Record of Actions Taken.

b. Federal Subsistence Fisheries Management Update.

c. SRC Work Session.

(12) SRC Elections for Chair and Vice Chair.

(13) Set time and place of next SRC meeting.

(14) Adjournment.

DATES: The meeting will be held from 8:30 a.m. to 5 p.m. on Thursday, December 13, 2001, and 8:30 a.m. to 5 p.m. on Friday, December 14, 2001.

Location: The meeting will be held at Wedgewood Manor Resorts, 212 Wedgewood Drive, University Ave., Fairbanks, Alaska 99701, Tel. (907) 452–1442.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Superintendent and Fred Andersen, Subsistence Manager, 201 First Avenue, Doyon Bldg., Fairbanks, Alaska 99701, Telephone (907) 456–0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487 and operate in accordance with the provisions of the Federal Advisory Committees Act.

In light of a recent attempt to relocate National Park Service administrative personnel and offices in Washington, DC, this notice may not be published at least 15 days prior to the meeting. The National Park Service regrets these events, but is compelled to hold the meeting as scheduled because of the significant sacrifice rescheduling would require of commission members who have adjusted their schedules to accommodate the proposed meeting dates.

Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting at the Gates of the Arctic National Park & Preserve Office, 201 First Avenue, Doyon Bldg., Fairbanks, Alaska 99701, Telephone (907) 456–0281.

Paul R. Anderson,

Acting Regional Director.

[FR Doc. 01–30332 Filed 12–6–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Wrangell-St. Elias National Park Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Wrangell-St. Elias National Park and the Chairperson of the Subsistence Resource Commission announce a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to Order (Chairman)

(2) Roll Call: Confirmation of Quorum

(3) An introduction of Commission members, staffs, and guests

(4) Review Agenda

(5) Review and approval of minutes from February 20–21, 2001 meeting

(6) Superintendent's welcome and review of the Commission purpose

(7) Commission membership status

(8) Election of Chair and Vice Chair

(9) Public and other agency comments

(10) Superintendent's report

(11) Old Business:

a. Proposal to change Unit 11 sheep regulations

b. Subsistence Hunting Program Recommendation 97–01: establish minimum residency requirement for resident zone communities

c. Customary Trade Concerns

d. Alternate SRC members

e. Roster Regulations

(12) Wrangell-St. Elias National Park and Preserve Staff Report

a. Chief of Resources Update

b. Fisheries Report

c. Cultural Resources Update

d. Wildlife Report

(13) New Business:

a. Update on Federal Fish Management and Resource Monitoring

b. Review of 2001–2002 Federal Subsistence Board Fisheries proposals

c. Subsistence Wildlife Regulations Proposed Changes

d. October 2001 Chairs Workshop Report

(14) Public and other agency comments

(15) Subsistence Resource Commission Work Session

(16) Set time and place of next Subsistence Resource Commission meeting

(17) Adjourn meeting.

DATES: The meeting will begin at 9 a.m. on Tuesday, February 19, 2002, and

conclude at approximately 5 p.m. The meeting will reconvene at 9 a.m. on Wednesday, February 20, 2002, and adjourn at approximately 5 p.m. The meeting will adjourn earlier if the agenda items are completed.

LOCATION: The Meeting will be held at the Chitina Village Community Hall, Chitina, Alaska, Telephone (907) 823–2223.

FOR FURTHER INFORMATION CONTACT: Devi Sharp, Chief Natural Resources, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Phone (907) 822–5234.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

In light of a recent attempt to relocate National Park Service administrative personnel and offices in Washington, DC, this notice may not be published at least 15 days prior to the meeting. The National Park Service regrets these events, but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling would require of commission members who have adjusted their schedules to accommodate the proposed meeting dates.

Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting at the Wrangell-St. Elias National Park and Preserve Office, P.O. Box 439, Copper Center, Alaska 99573. Phone (907) 822–5234.

Robert L. Arnberger,

Regional Director.

[FR Doc. 01–30338 Filed 12–6–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 17, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St. NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836 . Written or faxed comments should be submitted by December 24, 2001.

Carol D. Shull,

Keeper of the National Register Of Historic Places.

DISTRICT OF COLUMBIA

District of Columbia

Clifton Terrace (Apartment Buildings in Washington, DC, MPS), 1308, 1312, 1350 Clifton St., Washington, 01001366

Owl's Nest, 3031 Gates Rd., NW, Washington, 01001365

Trinity Towers (Apartment Buildings in Washington, DC, MPS), 3023 14th St., NW, Washington, 01001367

MARYLAND

Baltimore Independent city

Greater Homeland Historic District, Roughly bounded by Charles St. Homeland Ave., York Rd., and Melrose Ave., Baltimore (Independent City), 01001377

Lake Drive Apartments, 903 Druid Park Lake Dr., Baltimore (Independent City), 01001368

Lauraville Historic District, Rghly bnded by Harford Rd, Herring Run Cr, Cold Spring Ln, Charlton Ave., Halcyon Ave., Grindon Rd, and Echodale Ave., Baltimore (Indepedent City), 01001371

Mount Washington Mill Historic District (Boundary Increase), 1405–1407 Forge Ave., Baltimore (Independent City), 01001376

Northern District Police Station, 3355 Keswick Rd., Baltimore (Independent City), 01001372

Sellers Mansion, 801 N. Arlington St., Baltimore (Independent City), 01001369

Southern District Police Station, 28 E. Ostend St., Baltimore (Independent City), 01001373

Stone Hill Historic District, Pacific, Puritan, Bay, Field and Worth Sts., Baltimore (Independent City), 01001370

Frederick County

Sheffer, Daniel, Farm, 8924A Mt. Tabor Rd., Middletown, 01001375

Howard County

Dorsey Hall, 5100 Dorsey Hall Dr., Columbia, 01001374

MISSOURI

Jackson County

Chambers Building, 25 E. 12th St., Kansas City, 01001379

Phelps County

National Bank of Rolla Building, 718 Pine St., Rolla, 01001380

St. Louis County

Ball—Essen Farmstead Historic District, 749 Babler Park Dr., Wildwood, 01001378

NEW YORK

Albany County

Schoonmaker House, 283 Beaver Dam Rd., Selkirk, 01001396

Delaware County

Hobart Masonic Hall, 6 Cornell Ave., Hobart, 01001399

Greene County

Cleveland, L.E., House, 7818 NY 81, Durham, 01001385

DeWitt, W.F., Hotel, 7803 NY 81, Durham, 01001389

Ford's Store, 7811 NY 81, Durham, 01001395

Jewett Presbyterian Church Complex, Church St., Jewett, 01001382

Osburn, Mrs., House, 7872 NY 81, Durham, 01001390

Pierce, Charles, House, 7846 NY 81, Durham, 01001386

Union Chapel, Mill Rd., Windham, 01001394

Herkimer County

Lalino Stone Arch Bridge, 319 NY 29, Middleville, 01001397

Old City Road Stone Arch Bridge, Old City Rd., Welch Corners, 01001398

Orange County

Dunning House, 633 Ridgebury Rd., Wawayanda, 01001383

Walsh, A., Stone House and Farm Complex (Cornwall MPS), 1570 NY 94, Cornwall, 01001384

Sullivan County

Bennett Family House, 11 Hamilton Ave., Monticello, 01001400

Tompkins County

Second Baptist Society of Ulysses, 1 Congress St., Trumansburg, 01001381

Ulster County

Boice House, 110 Fair St., Kingston, 01001388

Chichester House, 116 Fair St., Kingston, 01001392

Kenyon, William, House, 104 Fair St., Kingston, 01001387

Second Reformed Dutch Church of Kingston, 213–223 Fair St., Kingston, 01001393

OREGON

Lane County

Psi Alpha Chapter, Chi Omega House (Residential Architecture of Eugene, Oregon MPS) 1461 Alder St., Eugene, 01001402

South University Historic District (Residential Architecture of Eugene, Oregon MPS) Roughly bounded by E. 19th, Agate, E 23rd, and Alder Sts., Eugene, 01001401

Malheur County

Blackaby, James Rowley and Mary J., House, 717 SW 2nd St., Ontario, 01001391

[FR Doc. 01–30333 Filed 12–6–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 10, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St. NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by December 24, 2001.

Carol D. Shull,

Keeper of the National Register Of Historic Places.

FLORIDA

Miami-Dade County

Curtiss, Glenn, House (Country Club Estates TR), 500 Deer Run, Miami Springs, 01001359

Polk County

Winston School, 3415 Swindell Rd., Lakeland, 01001362

MISSOURI

St. Louis Independent city

Forest Park Southeast Historic District, Roughly bounded by Chouteau Ave., Manchester and Cadet Aves., Kingshighway Blvd., and S. Sarah St., St. Louis (Independent City), 01001360

OHIO

Summit County

Akron—Fulton International Airport Administration Building, 1800 Triplett Blvd., Akron, 01001361

VERMONT

Addison County

Lampson School (Educational Resources of Vermont MPS), 44 Summer Rd., New Haven, 01001363

Chittenden County

North Street Historic District, Roughly Along North St., from North Ave. to N. Winooski Ave., Burlington, 01001364

[FR Doc. 01–30334 Filed 12–6–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 24, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St. NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836 . Written or faxed comments should be submitted by December 24, 2001.

Carol D. Shull,

Keeper of the National Register Of Historic Places.

ALABAMA

Baldwin County

State Bank Silverhill, 15950 Silverhill Ave., Silverhill, 01001410

Lee County

Northside Historic District, Roughly Bounded by 7th Ave., 3rd St., 2nd Ave., and N. 11th St., Opelika, 01001409

Madison County

Alabama Agricultural and Mechanical University Historic District, Chase Rd., Normal, 01001407

Montgomery County

Stone Plantation, 5001 Old Selma Rd., Montgomery, 01001411

Shelby County

McKibbon House, 611 E. Boundary St., Montevallo, 01001408

CONNECTICUT

Litchfield County

Terryville Waterwheel, 262 Main St., Plymouth, 01001412

FLORIDA

Leon County

Rollins House, 5456 Rollins Pointe, Tallahassee, 01001415

Polk County

Downtown Winter Haven Historic District, (Winter Haven, Florida MPS) Roughly Avenue A NW, Avenue A SW, 3rd and 5th Sts., Winter Haven, 01001414

MAINE

Androscoggin County

Gay—Munroe House, 64 Highland Ave., Auburn, 01001422

Cumberland County

Hanson, Asa, Block, 548–550 Congress St., Portland, 01001418

Tarr—Eaton House, 906 Harpswell Neck Rd., Harpswell Center, 01001416

Kennebec County

Capitol Complex Historic District, State and Capitol Sts., Augusta, 01001417

Knox County

Union Town House (Former), 128 Town House Rd., Union, 01001419

Sagadahoc County

Ropes End, 36 Hyde Rd., Phippsburg, 01001421

York County

Cummings Shoe Factory, 2 Railroad Ave., South Berwick, 01001420

MISSOURI

Jackson County

West Ninth Street—Baltimore Avenue Historic District (Boundary Increase I), West 100 blk. of 10th St. and 1000 blk. of Baltimore Ave.,Kansas City, 01001413

NORTH CAROLINA

Alamance County

South Broad—East Fifth Streets Historic District, (Burlington MRA)Roughly bounded by E. Morehead, S. Broad, Sixth, and W. Main Sts., Burlington, 01001427

Buncombe County

Kenilworth Inn, 60 Caledonia Rd., Asheville, 01001423

Cleveland County

Sperling, George, House and Outbuildings, 1219 Fallston Rd., Shelby, 01001425

Duplin County

Loftin Farm (Duplin County MPS), NC 1368, 0.65 mi. S of jct. with NC 1367, Beautancus, 01001426

Henderson County

West Side Historic District (Hendersonville MPS) Roughly bounded by Fifth Ave. W., Washington St., Third Ave. W., and Blythe St., Hendersonville, 01001424

OREGON

Josephine County

Allen Gulch Mill (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1 mi. SE of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001148

Allen Gulch Townsite (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1 mi. SE. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001136

Cameron Mine (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 2 mi. S. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001144

Deep Gravel Mine (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1 mi. N. of Jct of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001141
Esterly Pit No. 2—Llano De Oro Mine (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1.5 mi. N. of Jct. of Waldo Rd. and BLM Rd. 40–8–28,Cave Junction, 01001145
Fry Gulch Mine (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. .75 mi. from Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001143
High Gravel Mine (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1.3 mi. S. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001142
Logan Cut (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Logan Cut, Cave Junction, 01001154
Logan Drain Ditches (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 2 mi. N. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001155
Logan Wash Ditch (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Logan Wash Ditch, Cave Junction, 01001153
Middle Ditch (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Logan-Esterly Middle Ditch, Cave Junction, 01001150
Old Placer Mine (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. .65 mi. W. of Jct. of Rockydale Rd. and BLM Rd. 40–8–15, Cave Junction, 01001140
Osgood Ditch (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Osgood Ditch, Cave Junction, 01001151
Plataurica Mine (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. .75 mi. SE. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001146
St. Patrick's Roman Catholic Cemetery (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. 1 mi. SE. of Jct. of Waldo Rd. and Waldo Lookout Rd., Cave Junction, 01001137
Upper Ditch (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Logan-Esterly Upper Ditch, Cave Junction, 01001149
Waldo Cemetery (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. .5 mi. SW. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001138
Waldo Chinese Cemetery (Upper Illinois Valley, Oregon Mining Resources MPS) Approx. .5 mi. SW. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001139
Waldo Mine (Upper Illinois Valley, Oregon Mining Resources MPS) SW. of Jct. of Waldo Rd. and BLM Rd. 40–8–28, Cave Junction, 01001147
Wimer Ditch (Upper Illinois Valley, Oregon Mining Resources MPS) Historic Channel of Wimer Ditch, Cave Junction, 01001152

WYOMING

Teton County

Flat Creek Ranch, Approx. 12 mi. E and N, Jackson, 01001428

To assist in preservation of the following resource the comment period has been shortened to seven (7) days:

MASSACHUSETTS

Barnstable County

Old Village Historic District, Roughly bounded by Main, Holway, Bridge Sts., Bearse's Ln., Chatham Harbor, Mill Pond, and Little Mill Pond, Chatham, 01001406.

[FR Doc. 01–30335 Filed 12–6–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Native American Cultural Items in the Possession of the U.S. Department of the Interior, National Park Service, Capitol Reef National Park, Torrey, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate three cultural items in the possession of the U.S. Department of the Interior, National Park Service, Capitol Reef National Park, Torrey, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibilities of the National Park Service unit that has control or possession of these Native American cultural items. The Assistant Director, Cultural Resources Stewardship and Partnerships is not responsible for the determinations within this notice.

In 1926, Ephraim P. Pectol discovered three buffalo-hide shields cached in a rock crevice on public lands southeast of Torrey, UT. Though he had not obtained the permit required to remove an object of antiquity from Federal lands, Mr. Pectol removed the shields from the rock crevice and took them to his home and place of business. In 1932, a Federal agent seized the shields and returned them to Federal control, though they remained in the possession of Mr. Pectol. Capitol Reef National Monument acquired the shields in 1953. The three shields have been designated as CARE-11, CARE-12, and CARE-191.

CARE-11 is a roughly circular piece of buffalo hide with a diameter of approximately 79 centimeters. The original shape and dimensions of the shield have been altered by minor damage along its perimeter probably caused by rodent gnawing and/or exposure to weathering processes while in the cache. The face of the shield is concave and is decorated with a wing-shaped design of red pigment and a fan-shaped section of radiating green stripes. The convex side of the shield exhibits some red pigment stain and some incised triangular patterns. Three buckskin ties hang from the face as fringe and, on the back of the shield, serve to fasten an arm strap. A looping piece of buckskin is tied to 2 holes about 20 centimeters apart on the perimeter of the shield. A series of 12 holes in a straight line angles outward from the center of the shield to the perimeter. A tear in the rawhide, about 1.9 centimeter long, has been repaired with a hide lace.

CARE-12 is a roughly circular piece of buffalo hide measuring approximately 88 centimeters by 70 centimeters. The original shape and dimensions of the shield have been altered by damage along its perimeter probably caused by rodent gnawing and/or exposure to weathering processes while in the cache. It is believed to have been circular when originally constructed. The face of the shield is convex and is decorated with parallel rows of unpainted, stenciled dots on a painted field. Approximately two-thirds of the painted field is black and one-third is covered with a rust-colored pigment. Five buckskin ties hang from the face as a fringe and, on the back of the shield, some serve to fasten an arm sling. The arm sling has a padded piece of hide. The shield exhibits a cut mark along one edge, probably caused when a radiocarbon dating sample was removed by researchers in the 1960s.

CARE-191 is a roughly circular piece of buffalo hide measuring approximately 95 centimeters by 74 centimeters. The original shape and dimensions of the shield have been altered by damage along its perimeter probably caused by rodent gnawing and/or exposure to weathering processes while in the cache. It is believed to have been circular when originally constructed. The face of the shield is convex and is decorated in four painted quadrants. One quadrant is painted with a rust-colored pigment. One quadrant is painted red. One quadrant is painted black. One quadrant is painted with green bands. Three buckskin ties hang from the face as fringe and hold a buckskin arm strap on the back.

An assessment of the three shields was made by National Park Service professional staff, specially contracted independent scholars, and representatives of the Navajo Nation, Arizona, New Mexico and Utah; Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; and Kaibab

Band of Paiute Indians of the Kaibab Indian Reservation, Arizona. Representatives of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Paiute Tribe of Utah (Cedar City, Indian Peak, Kanosh, Koosharem, Shivwits Bands); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah; and Zuni Reservation, New Mexico also were contacted but did not participate in consultation regarding the three shields.

Over the years, several researchers have considered the cultural origin and age of the Capitol Reef shields. Archeologist Noel Morss (1931) observed similarities among the three shields, known Apache shields, and historic-era pictographs of shields in association with horses. He attributed the Capitol Reef shields to recent (post-introduction of the horse) Apaches or Navajos. While subsequent radiocarbon dating indicates that the Capitol Reef shields pre-date the introduction of the horse to south-central Utah, the dates do not invalidate Morss's favorable comparisons to Navajo/Apache pictograph shields.

Archeologist Carling Malouf (1944) suggested that the shields were modern in origin, although he did not offer an opinion regarding who made them. Archeologist Marie Wormington (1955) found the Capitol Reef shields to resemble shield and shield-bearer pictographs attributed to the Fremont Culture. Shield pictographs attributed to the Fremont Culture exist near the area in which the Capitol Reef shields were discovered. However, subsequent radiocarbon dating shows the shields to significantly post-date the commonly accepted, archeologically derived Fremont Culture termination date of A.D. 1300.

Archeologist C. Melvin Aikens (1966), in an article postulating a Plains origin for Fremont Culture, described Plains-style cultural attributes of the Capitol Reef shields. His later abandonment of the Plains/Fremont construct does not invalidate his observations regarding the Plains-like attributes of the shields.

In 1967, Campbell Grant obtained a standard radiocarbon age from a sample of CARE-12. Reported as UCLA sample 1221, the age had a tree-ring calibrated radiocarbon age of (1) modern, or (2) A.D. 1650, or (3) A.D. 1750 (Berger and Libby 1968). Based on the radiocarbon dates, archeologist and rock art scholar Polly Schaafsma (1971) concluded that the shields were made in recent times and therefore were not associated with Fremont Culture.

In a 1976 study of Puebloan shields, researcher Barton Wright attributed the shields to Pueblo warriors. He noted the smaller size of historic Navajo shields when compared to Pueblo shields as an important consideration. Researcher Stuart Baldwin (1997) suggested that the shields are Ute, based on the 1967 radiocarbon dates.

Loendorf and Conner (1993) reported three accelerator mass spectrometry radiocarbon ages for a small piece of strap from CARE-11. Based on recently developed tree ring calibrations and weighted averages, the likely date of construction for the shields is between A.D. 1420 and A.D. 1640 (Loendorf 2001).

Capitol Reef National Park contracted with three experts to help determine the cultural affiliation of the three shields. Lawrence Loendorf is a research professor at the Department of Anthropology, New Mexico State University. Benson Lanford is a researcher, appraiser, and lecturer on American Indian arts and material culture. Barton A. Wright is a retired research anthropologist and archeologist specializing in the study of Southwestern cultures, and author of the book ''Pueblo Shields From the Fred Harvey Collection'' (1976). These scholars examined a wide body of archeological and ethnographic evidence, including comparative artistic motifs; construction techniques; tribal oral traditions; and known origins, historic distributions, and inter-tribal affiliations of ethnographic groups of the Plains and Southwest. Each observed that assigning these shields, the oldest dated shields known in North America, to a specific historic or modern tribe by anthropological and scientific methods is problematic. These researchers did not nor were they asked to offer advice or opinions regarding the potential repatriation of the shields to a claimant tribe. Rather, they independently and objectively traced the various lines of evidence relating to possible cultural affiliation(s) of the shields.

Regarding CARE-11, Dr. Loendorf attributes the shield to Athabaskan speakers based on similarities between its design elements and the so-called Castle Garden rock art style found in Wyoming and Montana and also believed to have been made by Athabaskans. He also documents similar design elements on historic Apache shields. Based on the radiocarbon dates for this shield and CARE-12, and taking into account various related factors, Dr. Loendorf suggests that the three Capitol Reef shields were likely constructed at different times between A.D. 1420 and A.D. 1640, and likely were made toward the recent end of that range. Mr. Lanford traces the vertical orientation and grid-like patterning on CARE-11 to similar elements that are common in the Great Basin, Plains, and Montane regions, but rare in the Southwest region. He finds very little similarity between the design elements of this shield and motifs common to Southwestern rock art, historic Puebloan shields, or other Puebloan painted iconographic objects. Mr. Wright observes design similarities between CARE-11 and shields produced at Jemez, particularly in the use of rays or fans of feathers as decorative motifs.

Regarding CARE-12, Dr. Loendorf attributes the shield to Athabaskan speakers based on similarities between the dot design elements and the Castle Garden rock art style, shield warrior petroglyphs in the Dinetah region of New Mexico, and other Athabaskan petroglyph and pictograph shields. Mr. Lanford observes that the pattern of vertically aligned dots in CARE-12 is in keeping with the radical asymmetry and freedom of expression typical of Apache painted motifs. He draws parallels between the design on this shield and rock art shields found in the La Sal Mountains of Utah and in Weatherman Draw in Montana. He also observes that the vertical orientation and grid-like patterning on CARE-12 is similar to elements common in the Great Basin, Plains, and Montane regions, but rare in the Southwest region. He finds very little similarity between the design elements of this shield and motifs common to Southwestern rock art, historic Puebloan shields, or other Puebloan painted iconographic objects. Mr. Wright noted the use of bands with dots on them in Jemez shields.

Regarding CARE-191, Dr. Loendorf indicated the difficulty of assigning a cultural affiliation to this shield, but he tentatively suggests that it may be

Puebloan in origin, and possibly from the Pueblo of Jemez. His conclusion is based on the shield's design, which is replicated on a Pueblo rock art shield that dates to about the same period when the CARE shields were made. He also noted that Jemez had allied with the Navajo in fights with the Spanish as early as A.D. 1640. Mr. Lanford notes similarities between the black-dash lines and related artistic design elements and Apache parfleche painting and beadwork designs.

Regarding the three shields collectively, Mr. Lanford identifies the clear glaze on each as a type of sizing or varnish, applied to seal and protect the painted surface, which is typical of painted rawhide objects originating outside of the Southwest culture area. Mr. Wright notes that most documented Navajo shields were creased across the middle so that they could be folded for storage. The Capitol Reef shields are not creased across the middle. Mr. Wright also notes that the three shields are not similar to documented 19th century Hopi shields.

To date, no archeological sites directly attributable to Navajo occupation have been identified within Capitol Reef National Park. However, Navajo oral tradition places Navajo ancestors in the park area prior to Euro-American settlement. Archeologists continue to debate the evidence for Southern Athabaskan and Navajo/Apache cultural origins, linguistics, chronology, and territorial expansion. They generally concur, however, that modern Navajo and Apache tribes are related, all having descended from an ancestral Southern Athabaskan culture. Cultural anthropologists document that Apacheans (including Navajos) share mythological accounts of origins, culture heroes, and events; principles of kinship and social organization; marriage customs and division of labor; religion; and other aspects of cultural tradition. Linguists have identified seven separate Southern Athabaskan or Apachean-speaking groups, which include the Navajo. Navajo and many Apache languages are mutually intelligible. Glottochronological data suggest that the Apachean languages began diverging, as a result of geographic separation, as recently as A.D. 1300. Material culture traits probably began diverging at approximately the same time. However, whether or not Navajo artifacts can be reliably differentiated from Apache artifacts between A.D. 1420 and A.D. 1650 is a matter of professional opinion. Making such a determination for the Capitol Reef shields, which were discovered outside of any identifiable cultural context, is particularly difficult.

Consultation with representatives of the Navajo Nation indicates that the three shields were made by Many Goat White Hair and four other men and used in a battle with the Spanish. After the battle, Many Goat White Hair hid the three shields in the rock crevice and prayed that they would be found in the future, as they have been. Many Goat White Hair's clan affiliation was not identified. However, nearly half of the Navajo clans trace their ancestry to other Native American groups, including the Ma'iideeshgiizhinii, or Coyote Pass People, who are descendant of people from Jemez Pueblo.

According to Kluckhohn, Hill, and Kluckhohn (1971), Navajo shields were made by warriors under strict ritual conditions. Only men who knew one of the war chants could make shields. The war leader held a special Blessing Way over the shields while they were being painted. The designs on a shield represent the chantway in which the man went to war.

According to representatives of the Navajo Nation, the Naayéé (Protection Way) ceremony deals with the armor and shields of Navajo deities and Navajo people. People who have possession of such shields must be knowledgeable in the proper songs, prayers, and oral history of the Naayéé ceremony. Jon Holiday, a recognized Naayéé chanter, has identified the designs and colors on the three shields as representing earth, sky, sun rays, day and night, stars, and the male and female mountains, as described in Navajo oral history. Mr. Holiday has indicated that he intends to use the three shields in the Naayéé ceremony. The Naayéé ceremony provides individuals with a protective barrier behind which they may regain strength, harmony, and balance after a physical or mental illness.

On June 11, 2001, a representative of the Navajo Nation requested repatriation of the three shields. The Navajo Nation claim identified the three shields as sacred objects, indicating that they are needed by Navajo traditional religious leaders for the practice of the Naayéé (Protection Way) ceremony by present-day adherents. The Navajo claim also identified the three shields as objects of cultural patrimony, but did not provide documentation as to whether they were considered inalienable by the Navajo in the 1600s.

Based on the above-mentioned information, the superintendent of Capitol Reef National Park determined that, pursuant to 43 CFR 10.2 (d), the three shields are related to a tribe, people, or culture that is indigenous to the United States. The superintendent of Capitol Reef National Park also determined that, pursuant to 43 CFR 10.2 (d)(3), the three shields are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Lastly, the superintendent of Capitol Reef National Park determined that, pursuant to 43 CFR 10.2 (c), there is a relationship of shared group identity that can be reasonably traced between the three shields and the Navajo Nation, Arizona, New Mexico, and Utah.

This notice has been sent to officials of the Apache Tribe of Oklahoma; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico and Utah; Paiute Tribe of Utah (Cedar City, Indian Peak, Kanosh, Koosharem, Shivwits Bands); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these cultural items

should contact Albert J. Hendricks, Superintendent, Capitol Reef National Park, HC 70 Box 15, Torrey, UT 84775, telephone (435) 425-3791, extension 101, before January 7, 2002. Repatriation of the cultural items to the Navajo Nation may begin after that date if no additional claimants come forward.

Dated: October 19, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–30339 Filed 12–6–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the U.S. Department of Agriculture, U.S. Forest Service, Chugach National Forest, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the U.S. Department of Agriculture, U.S. Forest Service, Chugach National Forest, Anchorage, AK, that meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43, CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 16 objects are 1 bone harpoon point, 1 bone-toggling harpoon point, 1 stone end blade, 1 whetstone, 2 sea mammal bones, 9 glass beads, and 1 small piece of red ochre.

In 1981, U.S. Department of the Interior, Bureau of Indian Affairs and U.S. Department of the Interior, National Park Service, Cooperative Park Studies Unit archeologists conducted a survey of the Esther Bay site, a 14(h)(1) selection on the southern side of Esther Island, Prince William Sound, AK. Cultural items, along with human remains, were collected from two burial sites. The human remains from these sites were were reinterred at the original burial location in the spring of 1990. The cultural items are one bone harpoon point, one bone-toggling harpoon point, one stone end blade, one whetstone, and two sea mammal bones. Based on archeological evidence, the Esther Bay site is identified as a prehistoric Chugach Eskimo burial cave. Chugach National Forest is not in possession or control of the human remains from these burial sites.

In 1933, Frederica de Laguna investigated the Campbell Bay site, located on the northwestern shore of Glacier Island, Prince William Sound, AK, and collected two sets of human remains from burials there. The human remains were curated at the National Museum of Denmark, Copenhagen, and were previously repatriated to the Chugach Alaska Corporation.

In 1981, U.S. Department of the Interior, Bureau of Indian Affairs and U.S. Department of the Interior, National Park Service, Cooperative Park Studies Unit archaeologists conducted a survey of the same site, a 14(h)(1) selection, and located the area from which de Laguna had removed the human remains. No human remains were located during the 1981 survey, but 10 cultural items were recovered from the burial site: 7 blue and 2 white glass beads, along with 1 small piece of red ochre. Based on archeological evidence, the Campbell Bay site is identified as a postcontact, late 18th-century Chugach Eskimo burial cave. Chugach National Forest is not in possession or control of human remains from these burial sites.

Based on the above-mentioned information, officials of Chugach National Forest have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 16 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of Chugach National Forest also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can reasonably be traced between these unassociated funerary objects and the Native Village of Chenega and Native Village of Tatitlek, which are represented by Chugach Alaska Corporation.

This notice has been sent to officials of the Chugach Alaska Corporation, Chenega Corporation, Native Village of Chenega, Tatitlek Corporation, Native Village of Tatitlek, English Bay Corporation, Native Villages of Nanwalek, Port Graham Corporation, Native Village of Port Graham, Eyak Corporation, and Native Village of Eyak. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Linda Finn Yarborough, Forest Archaeologist, Chugach National Forest, 3301 C Street, Suite 300, Anchorage, AK 99503, telephone (907) 271-2511, facsimile (907) 271-2725, before January 7, 2002. Repatriation of these unassociated funerary objects to the Chugach Alaska Corporation may begin after that date if no additional claimants come forward.

Dated: November 5, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–30349 Filed 12–6–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Michael C. Carlos Museum, Emory University, Atlanta, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Michael C. Carlos Museum, Emory University, Atlanta, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Michael C. Carlos Museum professional staff in consultation with representatives of the Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Thlopthlocco Tribal Town, Oklahoma; and United

Keetoowah Band of Cherokee Indians of Oklahoma.

Between 1925 and 1928, human remains representing two individuals were excavated from Mound C, Etowah site, Bartow County, GA, by an unknown person under the direction Warren K. Moorehead, of Phillips Academy, Andover, MA. Prior to 1932 the remains and associated funerary objects were donated to the Michael C. Carlos Museum by Phillips Academy. No known individuals were identified. The 21 associated funerary objects are 2 shell vessels, 1 grinding stone (pestle?), 1 projectile point, 1 whelk columella pendant (?), 1 lot of freshwater pearl beads, and 15 lots of shell beads.

The Etowah site is located on the north bank of the Etowah River, near present-day Cartersville in northeastern Georgia. Archeological evidence documents that the site was inhabited from A.D. 800-1550, spanning the entirety of the Mississippian culture, through its Early, Middle, and Late periods. The site is believed to have housed several thousand inhabitants at its peak, circa A.D. 1300, making it one of the largest Middle Mississippian period settlements in the southeastern United States.

The burials were excavated from Mound C at the Etowah site. Mound C is the third largest of seven mounds at the site and the only burial mound. Radiocarbon 14 dating has dated burials associated with the mound to A.D. 800-1400. There is no absolute archeological proof that links the site with any modern day tribe. However, consultations and studies with the federally recognized Cherokee and Muscogeean (Creek) tribes have indicated that there is a reasonable link to a shared group identity with the Muscogeean-speaking tribes of today based on historical documents, early maps, certain common lifeway traits, and linguistic evidence.

Based on the above-mentioned information, officials of the Michael C. Carlos Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Michael C. Carlos Museum also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 21 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Michael C. Carlos Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma.

This notice has been sent to officials of the Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Thlopthlocco Tribal Town, Oklahoma; and United Keetoowah Band of Cherokee Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Todd Lamkin, Registrar, Michael C. Carlos Museum, Emory University, Atlanta, GA 30322, telephone (404) 727-4456, before January 7, 2002. Repatriation of the human remains and associated funerary objects to the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma may begin after that date if no additional claimants come forward.

Dated: November 5, 2001.

Robert D. Stearns,

Manager, National NAGPRA Program.

[FR Doc. 01–30348 Filed 12–6–01; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–429]

Certain Bar Clamps, Bar Clamp Pads, and Related Packaging, Display and Other Materials; Notice of Commission Decision To Grant-In-Part a Joint Motion for Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided to grant-in-part a joint motion for termination of the above-captioned investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: David I. Wilson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–708–2310. General information concerning the Commission also may be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired individuals can obtain information concerning this matter by contacting the Commission's TDD terminal at 202–205–1810. 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: The Commission instituted the investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain bar clamps, bar clamp pads, and related packaging, display, and other materials. The complainants were American Tool Companies, Inc., and its subsidiary, Peterson Manufacturing Co., Inc. The respondents were Wolfcraft GmbH and Wolfcraft, Inc. The complainants alleged that the respondents' imported merchandise infringes claims of a U.S. patent owned by complainants, infringes complainants' registered trademark, and misappropriated complainants' trade dress. *See* 65 FR 13307 (Mar. 13, 2001).

The patent-based portion of the complaint was deemed withdrawn and that portion of the investigation was terminated when the Commission granted complainants' motion to amend the complaint and notice of investigation (Motion No. 429–4) (Sept. 6, 2000). *See* Commission Order (Jan. 4, 2001) and Commission Opinion (Jan. 4, 2001).

On March 13, 2001, the ALJ issued his final ID, pursuant to 19 CFR 210.42(a)(1), holding that there is no violation of section 337 in the importation and sale of the respondents' merchandise.

On July 3, 2001, complainants and respondents filed a joint motion (Motion No. 429–10C) in which they sought (a) vacatur of the final ID, (2) termination of the investigation with prejudice and (3) withdrawal of respondents' sanctions motion.

The Commission denied the requests in the joint motion that the investigation be terminated with prejudice, and granted the requests that the ID be vacated and that respondents' motion for sanctions be withdrawn.

The authorities for this action are section 337(c) of the Tariff Act of 1930, 19 U.S.C. 1337(c), and Commission rules 210.46(a) and 210.42(h)(2) and (i), 19 CFR 210.46(a), and 210.42(h)(2) and (i).

All nonconfidential documents filed in the investigation are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–1802.

By Order of the Commission.

Issued: December 3, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–30362 Filed 12–6–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–465]

Certain Semiconductor Timing Signal Generator Devices, Components Thereof, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 5, 2001, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Integrated Circuit Systems, Inc. of Valley Forge, Pennsylvania. Supplements to the complaint were filed on November 14 and 26, 2001. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor timing signal generator devices, components thereof, and products containing same, by reason of infringement of claim 9 of U.S. Letters Patent 5,036,216 and claim 6 of U.S. Letters Patent 5,703,537. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD 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 at *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*.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2580.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2001).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on December 3, 2001, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor timing signal generator devices, components thereof, and products containing same, by reason of infringement of claim 9 of U.S. Letters Patent 5,036,216 or claim 6 of U.S. Letters Patent 5,703,537, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Integrated Circuit Systems, Inc., 2435 Boulevard of the Generals, Valley Forge, Pennsylvania 19428.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Cypress Semiconductor Corp., 3901 North First Street, San Jose, California 95134.

(c) Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation;

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge; and

(4) The Commission has determined to assign this investigation to Judge Luckern, who is the presiding administrative law judge in Certain Power Saving Integrated Circuits and Products Containing Same, Inv. No. 337–TA–463, in view of the overlapping subject matter in the two investigations. The presiding administrative law judge is authorized to consolidate Inv. No. 337–TA–463 and this investigation if he deems it appropriate.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Issued: December 3, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–30363 Filed 12–6–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–01–042]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

Time and Date: December 13, 2001 at 2 p.m.

Place: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

Status: Open to the public.

Matters to be Considered:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–267–268 (Review)(Remand)(Top-of-Stove Stainless Steel Cooking Ware from Korea and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its views on remand to the Court of International Trade on December 26, 2001.)
5. Inv. No. 731–TA–921 (Final)(Folding Gift Boxes from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on December 21, 2001.)
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

Issued: December 5, 2001.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 01–30450 Filed 12–5–01; 2:06 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Passenger list, crew list.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 16, 2001 at 66 FR 43031, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Passenger List, Crew List.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–418, Inspection Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is prescribed by the Attorney General for the INS for use by masters, owners or agents of vessels in complying with sections 231 and 251 of the Immigration and Nationality Act.

(5) *As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 95,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 95,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: November 29, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–30313 Filed 12–6–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under Review: Application for certificate of citizenship on behalf of an adopted child.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in

accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 15, 2001, at 66 FR 52456, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extention of currently approved collection.

(2) *Title of the Form/Collection:* Application for Certification of Citizenship in Behalf of an Adopted Child.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–643, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection allows United States citizen parents to apply for a certificate of citizenship on behalf of their adopted alien children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 11,159 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,159 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 30, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–30314 Filed 12–6–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Aircraft/vessel report.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 8, 2001 at 66 FR 41806, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Aircraft/Vessel Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–92, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary Individuals or Households. This form is part of the manifest requirements of Section 231 and 251 of the Immigration and Nationality Act and is used by the

Immigration and Naturalization Service and other agencies for data collection and statistical analysis.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 720,000 responses at 11 minutes (.183 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 129,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: November 30, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–30315 Filed 12–6–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Immigrant petition by alien entrepreneur.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 27, 2001 at 66 FR 39206, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—7th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Information Collection.

(2) *Title of the Form/Collection:* Immigrant Petition by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–526, Immigration Services Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by qualified immigrants seeking to enter the United States under section 203(b)(5) of the Immigration and Nationality Act for the purpose of engaging in a commercial enterprise, must petition the Immigration and Naturalization Service.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,368 responses at 1 hour and 15 minutes (1.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,710 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: November 30, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–30316 Filed 12–6–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for transmission of citizenship through a grandparent.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 15, 2001 at 66 FR 52456, allowing for a 60-

day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Transmission of Citizenship Through a Grandparent.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–600/N–643, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Section 322 of the Immigration and Nationality Act Technical Corrections Act of 1994 enables a U.S. citizen parent, who is unable to transmit citizenship of his or her children, to use a citizen grandparent's residence for transmission. This form is required so that information on a grandparent's residence may be collected to establish a child's eligibility for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 9,641 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,820 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: November 30, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–30317 Filed 12–6–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Petition to remove conditions on residence.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 28, 2001 at 66 FR 49697, allowing for a 60-day public comment period. No public comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

(3) 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.

Overview of this information collection:

(1) *Type of Information Collection*: Extension of a currently approved collection.

(2) *Title of the Form/Collection*: Petition to Remove Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection*: Form I–751, Adjudications, Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*: Primary: Individuals or Households. Persons granted conditional residence through marriage to a United States citizen or permanent

resident use this form to petition for the removal of those conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: 118,008 responses at 80 minutes (1.33 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection*: 156,951 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: November 29, 2001.

Richard A. Sloan,

Department Clearance Office, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–30318 Filed 12–6–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decision, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contracts for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
- MA010001 (Mar. 2, 2001)
- MA010002 (Mar. 2, 2001)
- MA010006 (Mar. 2, 2001)
- MA010007 (Mar. 2, 2001)
- MA010009 (Mar. 2, 2001)
- MA010017 (Mar. 2, 2001)
- MA010018 (Mar. 2, 2001)
- MA010019 (Mar. 2, 2001)

Maine
- ME010001 (Mar. 2, 2001)
- ME010002 (Mar. 2, 2001)

Rhode Island
- RI010001 (Mar. 2, 2001)
- RI010002 (Mar. 2, 2001)

Volume II

Pennsylvania
- PA010007 (Mar. 2, 2001)
- PA010010 (Mar. 2, 2001)

Virginia
- VA010026 (Mar. 2, 2001)

West Virginia
- WV010001 (Mar. 2, 2001)
- WV010002 (Mar. 2, 2001)
- WV010003 (Mar. 2, 2001)
- WV010006 (Mar. 2, 2001)
- WV010009 (Mar. 2, 2001)
- WV010010 (Mar. 2, 2001)
- WV010011 (Mar. 2, 2001)
- WV010012 (Mar. 2, 2001)

Volume III

Florida
- FL010002 (Mar. 2, 2001)

Georgia
- GA010036 (Mar. 2, 2001)
- GA010053 (Mar. 2, 2001)
- GA010055 (Mar. 2, 2001)

Tennessee
- TN010041 (Mar. 2, 2001)

Volume IV

Michigan
- MI010002 (Mar. 2, 2001)
- MI010005 (Mar. 2, 2001)
- MI010017 (Mar. 2, 2001)
- MI010060 (Mar. 2, 2001)
- MI010062 (Mar. 2, 2001)
- MI010075 (Mar. 2, 2001)
- MI010078 (Mar. 2, 2001)

MI010081 (Mar. 2, 2001)
MI010082 (Mar. 2, 2001)
MI010083 (Mar. 2, 2001)
MI010084 (Mar. 2, 2001)
MI010085 (Mar. 2, 2001)
MI010087 (Mar. 2, 2001)
MI010088 (Mar. 2, 2001)
MI010089 (Mar. 2, 2001)
MI010090 (Mar. 2, 2001)
MI010091 (Mar. 2, 2001)
MI010092 (Mar. 2, 2001)
MI010093 (Mar. 2, 2001)
MI010094 (Mar. 2, 2001)
MI010095 (Mar. 2, 2001)
MI010096 (Mar. 2, 2001)
MI010097 (Mar. 2, 2001)

Ohio
OH010002 (Mar. 2, 2001)
OH010003 (Mar. 2, 2001)
OH010008 (Mar. 2, 2001)
OH010012 (Mar. 2, 2001)
OH010014 (Mar. 2, 2001)
OH010020 (Mar. 2, 2001)
OH010023 (Mar. 2, 2001)
OH010029 (Mar. 2, 2001)

Wisconsin
WI010004 (Mar. 2, 2001)

Volume V

Iowa
IA010002 (Mar. 2, 2001)
IA010005 (Mar. 2, 2001)
IA010006 (Mar. 2, 2001)
IA010010 (Mar. 2, 2001)
IA010016 (Mar. 2, 2001)
IA010017 (Mar. 2, 2001)
IA010025 (Mar. 2, 2001)
IA010028 (Mar. 2, 2001)
IA010029 (Mar. 2, 2001)
IA010056 (Mar. 2, 2001)
IA010059 (Mar. 2, 2001)
IA010070 (Mar. 2, 2001)

Kansas
KS010007 (Mar. 2, 2001)
KS010008 (Mar. 2, 2001)
KS010009 (Mar. 2, 2001)
KS010013 (Mar. 2, 2001)
KS010015 (Mar. 2, 2001)
KS010016 (Mar. 2, 2001)
KS010017 (Mar. 2, 2001)
KS010019 (Mar. 2, 2001)
KS010020 (Mar. 2, 2001)
KS010021 (Mar. 2, 2001)
KS010022 (Mar. 2, 2001)
KS010023 (Mar. 2, 2001)
KS010025 (Mar. 2, 2001)
KS010026 (Mar. 2, 2001)
KS010029 (Mar. 2, 2001)
KS010061 (Mar. 2, 2001)
KS010069 (Mar. 2, 2001)
KS010070 (Mar. 2, 2001)

Nebraska
NE010003 (Mar. 2, 2001)
NE010007 (Mar. 2, 2001)
NE010009 (Mar. 2, 2001)
NE010010 (Mar. 2, 2001)
NE010011 (Mar. 2, 2001)

Oklahoma
OK010013 (Mar. 2, 2001)
OK010014 (Mar. 2, 2001)

Texas
TX010003 (Mar. 2, 2001)
TX010007 (Mar. 2, 2001)
TX010009 (Mar. 2, 2001)
TX010033 (Mar. 2, 2001)
TX010061 (Mar. 2, 2001)
TX010064 (Mar. 2, 2001)

Volume VI

Washington
WA010009 (Mar. 2, 2001)

Volume VII

California
CA010004 (Mar. 2, 2001)
CA010009 (Mar. 2, 2001)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.*

They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 29th day of November, 2001.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–30074 Filed 12–6–01; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Rochester Gas and Electric Corporation; Nine Mile Point Nuclear Station, Unit No. 2; Notice of Withdrawal of Application for Approval of Indirect Transfer of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) was considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating License No. NPF–69 for Nine Mile Nuclear Station, Unit No. 2 (NMP–2), to the extent held by Rochester Gas and Electric Corporation (RG&E). The indirect transfer would have resulted from the planned acquisition of RG&E's parent company, RGS Energy Group, Inc. (RGS), by Energy East Corporation (Energy East).

On November 7, 2001, the NMP–2 license, as held by RG&E and others, was transferred to Nine Mile Point Nuclear Station, LLC, as authorized by an NRC Order dated June 22, 2001, as modified by a Supplemental Order dated October 30, 2001. By letter dated November 14, 2001, RG&E withdrew its request for NRC approval of the indirect transfer of the NMP–2 license since RG&E no longer holds the NMP–2 license. The NRC has permitted the withdrawal.

The Commission previously published a Notice of Consideration of Approval of Application Regarding Proposed Merger and Opportunity for a Hearing (66 FR 42687, dated August 14, 2001). No hearing requests or written comments were filed.

For further details with respect to this withdrawal, see RG&E's letter dated June 22, and November 14, 2001, available for public inspection at the Commission's Public Document Room (PDR), 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 System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site (*http://www.nrc.gov/ADAMS/index.htm*). If you do not have access to ADAMS or if there are problems accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 30th day of November 2001.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–30343 Filed 12–6–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Vermont Yankee Nuclear Power Station; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DPR–28 currently held by Vermont Yankee Nuclear Power Corporation (VYNPC), as owner and licensed operator of Vermont Yankee Nuclear Power Station (VYNPS). The transfer would be to Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY), the proposed owner of VYNPS, and to Entergy Nuclear Operations, Inc. (ENO), the proposed entity to operate VYNPS. The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by VYNPC, Entergy Nuclear VY, and ENO, Entergy Nuclear VY would assume title to the facility following approval of the proposed license transfer, and ENO would operate and maintain VYNPS. VYNPC will transfer all decommissioning trust funds to a decommissioning trust established by Entergy Nuclear VY. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendment would replace references to VYNPC in the license with references to Entergy Nuclear VY and/or ENO, as appropriate, and make other necessary administrative changes to reflect the proposed transfer.

Entergy Nuclear VY, a Delaware limited liability company, is an indirect wholly owned subsidiary of Entergy Corporation, and an indirect wholly owned subsidiary of Entergy Nuclear Holding Company #3.

ENO, a Delaware corporation, is an indirect wholly owned subsidiary of Entergy Corporation, and a direct wholly owned subsidiary of Entergy Nuclear Holdings Company #2.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming 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.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By December 27, 2001, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon David R. Lewis, Esq., Shaw, Pittman, LLP, 2300 N Street, NW., Washington, DC 20037–1128, Phone: (202) 663–8474, Fax: (202) 663–8007, e-mail: *david.lewis@shawpittman.com;* and Douglas Levanway, Esq., Wise Carter Child & Caraway, 600 Heritage Building, 401 East Capitol Street, P.O. Box 651, Jackson, MS 39201–5519, Phone: (601) 968–5524, Fax: (601) 968–5519, e-mail: *del@wisecarter.com;* the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *ogclt@nrc.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by January 7, 2002, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

Further details with respect to this action, see the initial application dated October 5, 2001, and supplements dated November 7 and November 8, 2001, 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/ADAMS/index.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 3rd day of December 2001.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–30342 Filed 12–6–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Energy Company; Big Rock Point Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of a request to dispose of demolition debris in accordance with Title 10 of the Code of Federal Regulations (10 CFR) section 20.2002 for Facility Operating License No. DPR–6, issued to Consumers Energy Company, (the licensee), for the possession of the Big Rock Point (BRP) Plant, located in Charlevoix County, Michigan. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would approve the disposal of BRP Plant demolition debris that could contain trace quantities of licensed materials in a State of Michigan landfill. The debris would consist of flooring materials, concrete, rebar, roofing materials, structural steel, soils associated with digging up foundations, and concrete and/or asphalt pavement or other similar solid materials originating from decommissioning activities. A radiological survey process would be used to determine if the debris is acceptable for landfill disposal. The request for approval is submitted pursuant to 10 CFR 20.2002 due to the potential presence of licensed material in the debris.

The proposed action is in accordance with the licensee's application requesting approval dated March 14, 2001, as supplemented by letters dated May 18 and June 20, 2001.

The Need for the Proposed Action

The proposed action is needed to dispose of demolition debris that may contain trace quantities of licensed material in a State of Michigan landfill prior to license termination as opposed to (1) terminating the license with the material remaining onsite (either with structures intact or demolished) in accordance with 10 CFR 20, subpart E, or (2) handling the debris as low level radioactive waste and shipping it to a low level waste facility. As stated in the proposal, the licensee does not intend to make this submittal for intentional disposal of radioactive waste, but recognizes that a potential exists for trace quantities of licensed material to be present at levels below instrument detection capabilities. Disposal of the demolition debris in the manner proposed is protective of public health and safety, is consistent with as low as reasonably achievable, and is the most cost-effective alternative.

Environmental Impacts of the Proposed

The NRC has completed its evaluation of the proposed action and concludes that the environmental impacts of processing the total waste projected for BRP (635,100 cubic feet), which includes the 563,000 cubic feet of demolition debris proposed to be sent to a State of Michigan landfill, are bounded by the NUREG–0586, ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities,'' (GEIS) evaluation of 18,975 cubic meters (670,096 cubic feet) of waste disposal for a generic boiling water reactor. Adherence to the radiological survey process would ensure that the potential radiological dose posed by the demolition debris to a transport worker, a landfill worker, or a member of the public is conservatively estimated at a maximum of 1.0 millirem/year.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in (1) terminating the license for unrestricted use in accordance with 10 CFR part 20, subpart E, with the demolition debris remaining onsite (either with structures intact or demolished), or (2) handling the debris as low level radioactive waste and shipping it to a low level waste facility. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in BRP's Environmental Report for Decommissioning, dated February 27, 1995, or in the GEIS.

Agencies and Persons Consulted

On May 22, 2001, the staff consulted with the Michigan State official, Mr. David W. Minnaar of the Michigan Department of Environmental Quality, Drinking Water and Radiological Protection Division, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 14, 2001, as supplemented by letters dated May 18 and June 20, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), 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 System's (ADAMS) Public

Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 3rd day of December, 2001.

David J. Wrona,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–30344 Filed 12–6–01; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of the collection of information under its regulation on Payment of Premiums (29 CFR part 4007), including Form 1–ES, Form 1–EZ, Form 1, and Schedule A to Form 1, and related instructions (OMB control number 1212–0009). The collection of information also includes a certification (on Form 1–EZ and on Schedule A) of compliance with requirements to provide certain notices to participants under the PBGC's regulation on Disclosure to Participants (29 CFR part 4011). This notice informs the public of the request for OMB approval and solicits public comment on the collection of information.

DATES: Comments should be submitted by January 7, 2002.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. The request for extension (including the collection of information) will be available for public inspection at the Communications and Public Affairs Department of the Pension Benefit Guaranty Corporation, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9 a.m. and 4 p.m. on business days.

Copies of the request for extension (including the collection of information) may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202–326–4040. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4040.) The premium payment regulation can be accessed on the PBGC's Web site at *www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 (''ERISA'') requires the Pension Benefit Guaranty Corporation (''PBGC'') to collect premiums from pension plans covered under Title IV pension insurance programs. Pursuant to ERISA section 4007, the PBGC has issued its regulation on Payment of Premiums (29 CFR part 4007). Section 4007.3 of the premium payment regulation requires plans, in connection with the payment of premiums, to file certain forms prescribed by the PBGC, and section 4007.10 requires plans to retain and make available to the PBGC records supporting or validating the computation of premiums paid.

The forms prescribed are PBGC Form 1–ES, Form 1–EZ, and Form 1 and (for single-employer plans only) Schedule A to Form 1. Form 1–ES is issued, with instructions, in the PBGC's Estimated Premium Payment Package. Form 1–EZ, Form 1 and Schedule A are issued, with instructions, in the PBGC's Annual Premium Payment Package.

The premium forms are needed to determine the amount and record the payment of PBGC premiums, and the submission of forms and retention and submission of records are needed to enable the PBGC to perform premium audits. The plan administrator of each pension plan covered by Title IV of ERISA is required to file one or more of the premium payment forms each year. The PBGC uses the information on the premium payment forms to identify the plans paying premiums and to verify whether plans are paying the correct amounts. That information and the retained records are used for audit purposes.

In addition, section 4011 of ERISA and the PBGC's regulation on Disclosure to Participants (29 CFR part 4011) require plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plans' funding status and the limits on the Pension Benefit Guaranty Corporation's guarantee of plan benefits. The participant notice requirement only applies (subject to certain exemptions) to plans that must pay a variable rate premium. In order to monitor compliance with Part 4011, plan administrators must indicate on Form 1–EZ or Schedule A to Form 1 that the participant notice requirements have been complied with.

The collection of information under the regulation on Payment of Premiums, including Form 1–ES, Form 1–EZ, Form 1, and Schedule A to Form 1, and related instructions has been approved by OMB under control number 1212–0009. This collection of information also includes the certification of compliance with the participant notice requirements (but not the participant notices themselves). The PBGC is revising the forms and instructions to clarify them and make them easier to use. The PBGC is requesting that OMB extend its approval of this collection of information, as revised, for three years from the date of approval. (The participant notices constitute a different collection of information that has been separately approved by OMB.) An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it receives responses annually from about 37,700 plan administrators and that the total annual burden of the collection of information is about 2,540 hours and $9,657,780.

Issued in Washington, DC, this 4th day of December, 2001.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 01–30382 Filed 12–6–01; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27471]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

November 30, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 26, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 26, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–9897)

Allegheny Energy, Inc. (''Allegheny''), a registered holding company; Allegheny Ventures, Inc. (''Ventures''), a direct wholly owned nonutility subsidiary company of Allegheny, both located at 10435 Downsville Pike, Hagerstown, Maryland 21740; Allegheny Energy Supply Company, L.L.C. (''AE Supply''), 4350 Northern Pike, Monroeville, Pennsylvania 15146–2841, a direct wholly owned generating subsidiary company of Allegheny; and Allegheny Energy Global Markets, L.L.C. (''AE Global''), 10435 Downsville Pike, Hagerstown, Maryland 21740, a direct wholly owned subsidiary of AE Supply that will cease to exist upon completion of the requested transactions, (''Applicants''), have filed an application-declaration (''Application'') under sections 3(a)(2), 6(a), 7, 9(a), 10, 12(b), 12(c), 12(d), 32 and 33 of the Act, and rules 43, 44, 45, 46, 53, 54, 90 and 91 under the Act.

I. Background

A. Summary

Applicants request financing authority and request authority to increase its investment in exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''). In addition, Applicants seek authority to restructure AE Supply, which includes among other things: reincorporating AE Supply in Maryland; merging AE Global,[1] an energy trading subsidiary formed under rule 58, into the restructured AE Supply (''New AE Supply''); and transferring some of Allegheny's membership interests in generation to New AE Supply. New AE Supply also seeks a section 3(a)(2) exemption from registration.

B. The Allegheny System

Allegheny is a diversified energy company. The Allegheny companies consist of three regulated electric public utility companies, West Penn Power Company (''West Penn''), Monongahela Power Company (''Monongahela Power'') and The Potomac Edison Company (''Potomac Edison''), and a regulated public utility natural gas company, Mountaineer Gas Company, which is a wholly owned subsidiary of Monongahela Power (collectively, ''Operating Companies and d/b/a, ''Allegheny Power''). The subsidiaries of Allegheny, other than the Operating Companies and AE Supply are referred to as (''Other Subsidiaries'').

AE Supply is an electric generating company for the Allegheny system. AE Supply is a public utility company within the meaning of the Act. AE Supply is not a utility for purposes of state regulation nor is it subject to regulation as an electric public utility in any of the states in which it operates. It also manages and operates electric generation owned by the regulated utilities d/b/a Allegheny Power. AE Supply owns, operates, and markets competitive retail and wholesale electric generation.

Allegheny Ventures, a nonutility subsidiary of Allegheny, actively invests in and develops energy-related projects through its wholly owned subsidiary Allegheny Energy Solutions. Allegheny Ventures also invests in and develops telecommunications projects through Allegheny Communications Connect, Inc., an exempt telecommunications company (''ETC'') under section 34 of the Act.

C. Existing Financing Authority

Under a series of orders (''Money Pool and Financing Orders''),[2] the Allegheny system companies were authorized to engage in certain financing transactions and to establish and participate in a money pool, among other things. Also, by order dated April 20, 2001, HCAR No. 27383, the Commission authorized Allegheny and/or AE Supply to issue to unaffiliated third parties guarantees, short-term debt, and long-term debt through July 31, 2005, up to an aggregate amount of $430 million.

II. Requested Financing Authority

A. Summary

Applicants state that increased financing authority is needed to build new electric generation facilities and to purchase existing generation facilities. Allegheny states that its plans to acquire and/or build additional generating facilities, if consummated, would bring Allegheny's aggregate investment in EWGs and FUCOs in excess of 50% of its consolidated retained earnings.

Through July 31, 2005 (''Authorization Period''), Applicants seek authority for: Allegheny to issue up to $1 billion in equity securities; Allegheny and AE Supply to issue short-term debt and long-term debt in an aggregate amount up to $4 billion; and Allegheny and/or its subsidiaries to issue up to $3 billion in guarantees. The total debt and equity authorization requested is $4 billion with the option to utilize up to $1 billion for equity issuance. Also, Applicants request authorization to form capital investment subsidiaries (''Capital Corps''), and for Applicants to engage in intrasystem financings with each other, with the Other Subsidiaries, and between the Other Subsidiaries in an aggregate amount not to exceed $4 billion outstanding during the Authorization Period (''Intrasystem Financing Limit''). The aggregate amount of financing obtained by Allegheny during the Authorization Period from issuance and sale of preferred securities, when combined with the amount of common stock, short-term debt, long-term debt, and guarantees, issued and then outstanding, shall not exceed $7 billion (''Aggregate Financing Limit'').

[1] AE Supply formed AE Global to acquire Global Energy markets from Merrill Lynch in S.E.C. File No. 70–9833.

[2] HCAR No. 25462 (January 29, 1992); HCAR No. 25481 (February 28, 1992); HCAR No. 25581 (July 14, 1992); HCAR No. 25919 (November 5, 1993); HCAR No. 26418 (November 28, 1995); HCAR No. 26506 (April 18, 1996); HCAR No. 26804 (December 23, 1997); HCAR No. 27030 (May 19, 1999); HCAR No. 27084 (October 8, 1999); and HCAR No. 27199 (July 14, 2001).

The proceeds will be used for general corporate purposes, including: (1) Payments, redemptions, acquisitions and refinancing of outstanding securities issued by Applicants; (2) acquisitions of and investments in EWGs and FUCOs, provided that Allegheny's aggregate investment in these projects does not exceed the requested limit;[3] (3) loans to, and investments in, other system companies; and (4) other lawful corporate purposes permitted under the Act. Proceeds may also be used to invest in, or acquire interests under rule 58 to the extent permitted by rule 58 (''Rule 58 Companies'').

B. Financing Parameters

Financings by the Applicants will be subject to the following conditions (''Financing Conditions''): (1) During the Authorization Period, the common stock equity of Allegheny, on a consolidated basis, and of each of the Operating Companies, individually, will not fall below 30% of its total capitalization; (2) Allegheny will maintain its senior unsecured long-term debt rating at investment grade level, as established by a nationally recognized statistical rating organization; (3) the effective cost of money on long-term debt borrowings will not exceed the greater of (a) 400 basis points over comparable term U.S. Treasury securities and (b) the gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies; (4) the effective cost of money on short-term debt borrowings will not exceed the greater of (a) 300 basis points over the comparable term London Interbank Offered Rate (''LIBOR'') and (b) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies; (5) the dividend rate on any series of preferred securities will not exceed the greater of (a) 500 basis points over the yield to maturity of a comparable term U.S. Treasury security and (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies; (6) the underwriting fees, commissions, and other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security will not exceed 5% of the principal or total amount of the security being issued; (7) the maturity of long-term debt will be not less than one year and not exceed thirty years; and (8) short-term debt will have a maturity of not less than one day and not more than 364 days.

C. Short-Term and Long-Term Debt

Allegheny and AE Supply request authorization, through the Authorization Period, to issue and sell an aggregate of up to $4 billion of short-term debt and/or long-term debt at any time outstanding to non-associate banks and/or other parties. Debt of AE Supply may be nonrecourse to Allegheny. Also, through the Authorization Period, Allegheny seeks authorization to transfer some or all of the debt proceeds into AE Supply in the form of contributions or interest-bearing loan(s).

D. Common and Preferred Stock

Allegheny proposes to issue, through the Authorization Period, up to $1 billion at any time outstanding of equity securities. Allegheny may issue common stock or options, warrants or other stock purchase rights exercisable for common stock in public or privately negotiated transactions for cash or as consideration for the equity securities or assets of other companies, provided that the acquisition of any such equity securities or assets has been authorized in this proceeding or in a separate proceeding or is exempt under the Act or the rules under the Act. Allegheny common stock issued in connection with acquisitions of companies shall be valued, for purposes of determining compliance with the Aggregate Financing Limit, at its market value as of the date of issuance (or if appropriate at the date of a binding contract providing for the issuance).

Allegheny seeks to have the flexibility to issue its authorized preferred stock or other types of preferred securities (including, without limitation, trust preferred securities or monthly income preferred securities) directly or indirectly through one or more special-purpose financing subsidiaries organized by Allegheny. Preferred stock or other types of preferred securities may be issued in one or more series with such rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by Allegheny's board of directors. Dividends or distributions on preferred securities will be made periodically and to the extent funds are legally available for this purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Preferred securities may be convertible or exchangeable into shares of Allegheny common stock or unsecured indebtedness.

Stock financings may be affected in accordance with underwriting agreements of a type generally standard in the industry. Public distributions may be made through private negotiation with underwriters, dealers or agents or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

E. Guarantees

Allegheny proposes to enter into Guarantees from time to time with respect to the obligations of the Operating Companies, AE Supply and the Other Subsidiaries of Allegheny (''Allegheny Guarantees'') during the Authorization Period in an aggregate principal amount, together with the Subsidiary Guarantees (as defined below), not to exceed $3 billion (''Aggregate Guarantee Limitation''), based on the amount at risk, outstanding at any one time, exclusive of (1) any guarantees or credit support arrangements authorized by the Commission in separate proceedings and (2) any guarantees exempt under rule 45(b). Allegheny seeks to provide credit support in connection with AE Supply's purchase and operation of generation assets and in connection with the trading by AE Global in the ordinary course of AE Global's energy marketing and trading activities and for other purposes.

In addition, the Applicants request authorization for AE Supply and the Other Subsidiaries to enter into Guarantees from time to time, with respect to the obligations of any of the Other Subsidiaries, as may be appropriate, to enable AE Supply and/or the Other Subsidiaries to carry on their respective businesses (''Subsidiary Guarantees'') in an aggregate principal amount, together with the Allegheny Guarantees, not to exceed the Aggregate Guarantee Limitation, based on the amount at risk, outstanding at any one time. The Aggregate Guarantee Limitation excludes: (1) Any such guarantees or credit support arrangements authorized by the Commission in separate proceedings and (2) any such guarantees exempt under rule 45(b).

[3] Allegheny seeks authority to apply the proceeds of equity issuances, short-term debt, long-term debt and guarantees to increase its ''aggregate investment'' in EWGs and FUCOs up to $2.0 billion, or 207% of its consolidated retained earnings. Applicants state that Allegheny's aggregate investment in EWGs and FUCOs as of March 31, 2001 was approximately $462 million, or 49% of its consolidated retained earnings.

Allegheny, AE Supply, or the Other Subsidiaries which issues a guarantee may charge a fee for each guarantee it provides, which fee will not exceed the cost of obtaining the liquidity necessary to perform the guarantee.

F. Capital Corporations

Applicants seek authorization to form one or more Capital Corps as direct or indirect subsidiaries. Capital Corps will be limited liability companies, corporations, trusts, partnerships or other entities formed to engage in tax efficient and financially efficient transactions with Applicants or any of their respective subsidiaries for the acquisition of EWGs and FUCOs, Rule 58 Companies, and other general corporate purposes permitted under the Act.

Applicants seek authorization through the Authorization Period to: (1) Make capital contributions to the Capital Corps in exchange for equity ownership; (2) have Capital Corps make interest-bearing loan(s) of up to $4 billion to AE Supply evidenced by note(s); and (3) permit Capital Corps, as the loan(s) are repaid, to make additional borrowings available to AE Supply and its subsidiaries from the interest and principal payments it receives. Any intrasystem loans will count against the Intrasystem Financing Limit. These borrowings will be used for authorized acquisitions, EWGs and FUCOs, Rule 58 Companies, or other corporate purposes. The Applicants state that the loans will not affect Applicants' debt-equity ratio and will provide for a tax efficient capital structure.

Applicants also request authorization for Capital Corps to serve as financing entities and to issue debt and equity securities, including trust preferred securities, to third parties in the event the issuances are not exempt under rule 52. Specifically, Applicants request authorization to: (1) Issue debentures or other evidences of indebtedness to financing entities in return for the proceeds of the financing; (2) acquire voting interests or equity securities issued by the financing entities to establish ownership of the financing entities; and (3) guarantee financing entities' obligations.

Applicants and the Other Subsidiaries may enter into expense agreements with their respective financing entity, and they would agree to pay all expenses of the financing entity.

Any amounts issued by the financing entities to third parties under these authorizations will count against the Aggregate Financing Limit. However, the underlying intrasystem mirror debt and guarantee will not count against any applicable Intrasystem Financing Limit or the separate guarantee limits applicable to Allegheny or the subsidiary.

G. Intrasystem Financings

Applicants request authorization to engage in intrasystem financings with each other, with the Other Subsidiaries, and between the Other Subsidiaries in an aggregate amount not to exceed $4 billion outstanding during the Authorization Period. Financings will be in the form of cash capital contributions, open account advances and/or loans. The interest rate on intrasystem loans payable by a borrowing company will parallel the cost of capital of the lending company. This request excludes: (1) Financings that are exempt under rules 45(b) and 52, as applicable; and (2) amounts outstanding from time to time under the Money Pool and Financing Orders. Loans made by the Capital Corps to AE Supply and its subsidiaries will count against this Intrasystem Financing Limit to the extent described.

H. Interest Rate and Currency Risk Management

Applicants request authority to enter into, perform, purchase and sell financial instruments intended to manage the volatility of interest rates and currency exchange rates, including but not limited to interest rate and currency swaps, caps, floors, collars and forward agreements or any other similar agreements (''Instruments'') in connection with the issuance and sale of the short-term debt and long-term debt described. Applicants will employ Instruments as a means of prudently managing the interest rate and currency risks associated with any of their outstanding debt issued under this Application or an applicable exemption by, in effect, synthetically (1) Converting variable rate debt to fixed rate debt, (2) converting fixed rate debt to variable rate debt, (3) limiting the impact of changes in interest rates resulting from variable rate debt; and (4) hedging currency exposures of foreign currency denominated debt. In addition, Applicants may utilize Instruments for planned issuances of debt securities in order to lock-in current interest rates and or to manage interest rate and currency risks in future periods. The notional amount of any Instruments will not exceed that of the underlying debt instrument. Applicants will not engage in ''speculative'' transactions, and agree to only enter into Instruments with counterparties which have, or whose obligations are guaranteed by a party with, senior debt ratings, as published by Standard & Poor's, that are greater than or equal to ''BBB+,'' or an equivalent rating from Moody's Investors Service, Inc. or Fitch IBCA, Inc. Applicants represent that the Instruments to be entered into will qualify for hedge accounting treatment under GAAP. Allegheny will comply with the financial disclosure requirements of the Financial Accounting Standards Board.

I. Payment of Dividends

Applicants request authorization for AE Supply and the Other Subsidiaries to pay dividends, from time to time through the Authorization Period, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law. Applicants anticipate that there will be situations in which one or more of their respective direct or indirect subsidiaries will have unrestricted cash available for distribution in excess of any such company's current and retained earnings. In such situations, the declaration and payment of a dividend would have to be charged, in whole or in part, to capital or unearned surplus.

III. Request To Reorganize AE Supply

Applicants seek authority to restructure AE Supply (''Restructuring''). First, AE Supply will be reincorporated in Maryland by forming a new corporation in Maryland (''New AE Supply'') and then merging AE Supply with and into New AE Supply. New AE Supply is the surviving entity.

In addition, the proposed Restructuring, will include: (a) The transfer from Allegheny to New AE Supply of, and the reorganization of, Allegheny Energy Supply Hunlock Creek, LLC (''Hunlock Creek'') [4] and Green Valley Hydro, LLC (''Green Valley''); [5] (b) the reorganization of Allegheny Energy Supply Conemaugh, LLC (''Conemaugh'') [6] and Allegheny

[4] The transfer of Hunlock Creek will be made as a capital contribution in the amount of the book value of approximately $21 million. New AE Supply will form a new single-member Delaware limited liability company to be referred to as Hunlock Creek II. New AE Supply proposes to merge Hunlock Creek with and into Hunlock Creek II, with Hunlock Creek II as the surviving entity.

[5] The transfer of Green Valley will be made as a capital contribution in the amount of the book value of approximately $2 million. New AE Supply will form a new single-member Virginia limited liability company to be referred to as Green Valley II. New AE Supply proposes to merge Green Valley with and into Green Valley II, with Green Valley II as the surviving entity.

[6] New AE Supply will form a single-member Delaware limited liability company, to be referred to as Conemaugh II. New AE Supply proposes to

Continued

Generating Company (''AGC'');[7] and (c) the merger of AE Global with and into New AE Supply.

New AE Supply seeks a section 3(a)(2) exemption from registration under the Act. As a Maryland corporation, New AE Supply will be predominantly a public utility company whose operations do not extend beyond the state of organization and states contiguous thereto. New AE Supply will operate in Maryland, its state of incorporation, and in Virginia, West Virginia, and Pennsylvania, which are all contiguous to Maryland.

New AE Supply will be a holding company solely through its ownership of the following public utility companies: (a) Conemaugh; (b) Green Valley; and (c) AGC. Each of these entities was formed under the laws of Delaware and is exclusively engaged in selling power at wholesale.[8]

As part of the restructuring, Allegheny Energy Service Corporation (''AESC'') proposes to expand the scope of services to be provided to New AE Supply to include energy trading activities. AESC will engage in the trading activities solely as agent on behalf of New AE Supply. All trades will be booked at New AE Supply, and will not affect the financial condition or operations of AESC or the Operating Companies. AESC and New AE Supply, as successor to AE Supply, request authority to revise the service agreement to provide for AESC to effect trading transactions for and on behalf of New AE Supply involving electricity and other types of energy commodities, and hedging and/or financial transactions, including derivatives, future contracts, options and swaps, including, without limitation, electric power, oil, natural and manufactured gas, emission allowances, coal, refined petroleum products and natural gas liquids and to provide incidental related services, such as fuel management, storage and procurement services. All services will be provided by AESC at cost computed in accordance with rules 90 and 91 under the Act.

merge Conemaugh with and into Conemaugh II, with Conemaugh II as the surviving entity.

[7] New AE Supply will form a single-member Virginia limited liability company, to be referred to as AGC, LLC. New AE Supply proposes to merge AGC with and into AGC, LLC, with AGC, LLC as the surviving entity. The purpose of the reorganization of AGC is to effect a ''liquidation'' of AGC for tax purposes, which may enhance the tax treatment to Allegheny in the future, while maintaining AGC, LLC as a separate legal entity.

[8] At an appropriate time, AE Supply will seek to certify each entity as an EWG under section 32 of the Act. In the interim, they will remain public utility companies under the Act.

Alabama Power Company (70–9955)

Alabama Power Company (''Alabama Power''), 600 North 18th Street, Birmingham, Alabama 35291, a wholly owned public utility subsidiary of The Southern Company, a registered holding company, has filed a declaration under section 12(d) of the Act, and rules 44 and 54 under the Act.

Alabama Power proposes to sell, from time to time prior to December 31, 2006, distribution line poles located in Alabama to non-affiliated telephone and other non-electric utility companies (''Purchasers''). Alabama Power would convey the poles to the Purchasers by a bill of sale for a negotiated cash sale price that would exceed Alabama Power's average book value for the number of distribution poles of each class being sold, and the aggregate price of the sales would not exceed $30 million. The conveyance would include a release of the poles from Alabama's first mortgage indenture lien. The $30 million authority requested is in addition to any exceptions otherwise provided by rules under the Act relating to sales of utility securities or assets.

Alabama Power and each Purchaser have or will have entered into a joint use agreement under which each party may attach facilities to poles belonging to the other party, with each party obligated to the other for rental of space on poles owned by the other party. The proposed sale of poles is for the purpose of equalizing the rental payments under those joint use agreements, and it is anticipated that there will be no substantial change in the use of the poles.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30324 Filed 12–6–01; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25305; File No. 812–12544]

Touchstone Variable Series Trust, *et al.*

December 3, 2001.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order of exemption pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2 and 6e–3(T) thereunder.

Applicants: Touchstone Variable Series Trust and Touchstone Advisors, Inc. (collectively, ''Applicants'').

Summary of Application: Applicants seek an order of exemption from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit shares of any current or future series of Touchstone Variable Series Trust (''TVST'') and shares of any other investment company that is offered as a funding medium for insurance products and for which Touchstone Advisors, Inc. (''Touchstone Advisors'' or the ''Manager'') or any affiliates thereof may now or in the future serve as manager, investment adviser, sub-adviser, administrator, principal underwriter or sponsor (TVST and such future investment companies are collectively referred to herein as the ''Trusts'' and individually as a ''Trust''; the current and future series of the Trusts are collectively referred to herein as the ''Funds'' and individually as a ''Fund'') to be sold and held by: (1) Variable annuity and variable life insurance separate accounts (''Participating Separate Accounts'') of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); (2) qualified pension and retirement plans (''Participating Plans'') outside the separate account context; and (3) the Manager and any other affiliated and unaffiliated registered investment advisor (each, a ''Subadvisor'') retained by the Manager to manager the portfolio securities of a Touchstone Fund, and any affiliate of the Manager and affiliates of the Subadvisors (collectively, the ''Participating Investors'').

Filing Date: The original application was filed on June 5, 2001. An amended and restated application was filed on November 28, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 28, 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 writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a

hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202, Attention: Karen M. McLaughlin, Esq. or Kevin L. Cooney, Esq.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna Macleod, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC, 20549–0102 (202–942–8090).

Applicants' Representations

1. TVST is a Massachusetts business trust that is registered under the 1940 Act as an open-end diversified management investment company. TVST currently consists of, and offers shares of beneficial interests in, separate portfolios (each a ''Touchstone Fund'' and collectively the ''Touchstone Funds''), each of which has its own investment objectives and policies. TVST may in the future issue shares of additional portfolios.

2. Touchstone Advisors is registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and is the investment adviser for each Touchstone Fund. Touchstone Advisors in turn has retained Subadvisors to manage the portfolio securities of each Touchstone Fund.

3. Shares of the Funds will be offered to Participating Separate Accounts of Participating Insurance Companies to serve as investment vehicles for various types of insurance products, which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, modified single premium variable life insurance policies and flexible premium variable life insurance contracts.

4. Each Participating Insurance Company will have the legal obligation to satisfy all requirements applicable to it under both state and federal securities laws in connection with any variable contract issued by such company. Each Participating Insurance Company will enter into a fund participation agreement with the applicable Trust on behalf of the Fund in which the Participating Insurance Company invests. With respect to the Participating Insurance Companies, the role of the funds, insofar as the federal securities laws are applicable, will be limited to offering shares to Participating Separate Accounts and fulfilling any conditions the Commission may impose upon granting the order requested by this Application.

5. Shares of the Funds will also be offered to Participating Plans. It is anticipated that Participating Plans may choose a Fund (or any one or more series thereof) as the sole investment under the Participating Plan or as one of several investments. Participating Plan participants may or may not be given an investment choice among investment alternatives, depending on the plan itself. Shares of the Funds sold to Participating Plans would be held by the trustee(s) of these plans as mandated by Section 403(a) of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). With respect to the Participating Plans, insofar as federal securities laws are applicable, the role of the Funds will be limited to offering shares to Participating Plans and fulfilling any conditions the Commission may impose upon granting the order requested by this Application.

6. Shares of each Fund also may be offered to the Participating Investors. When the Participating Investors invest in the Funds, they will have the legal obligation of satisfying all applicable requirements under the federal securities laws and other applicable laws. With respect to the Participating Investors, insofar as the federal securities laws are applicable, the role of the Funds will be limited to offering shares to the Participating Investors and fulfilling any conditions the Commission may impose upon granting the order requested by this Application.

Applicants' Legal Analysis

1. Applicants request an order of the Commission pursuant to Section 6(c) of the 1940 Act exempting the Participating Separate Accounts of Participating Insurance Companies (and, to the extent necessary, any investment adviser, sub-adviser, principal underwriter, manager, administrator or sponsor of a Fund) from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (and any permanent rule comparable to Rule 6e–3(T)), to the extent necessary to permit shares of the Funds to be offered and sold to, and held by: (a) Variable annuity separate accounts and variable life insurance separate accounts (including both scheduled and flexible premium variable life insurance separate accounts) of the same life insurance company or of affiliated life insurance companies; (b) separate accounts of unaffiliated life insurance companies (including both variable annuity separate accounts and variable life insurance separate accounts); (c) trustees of qualified pension or retirement plans; and (d) the Participating Investors.

2. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction from the provisions of the 1940 Act and rules promulgated thereunder, if and to the extent that, such exemption is necessary or appropriate in the public interest or for the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to disqualification enumerated in Section 9(a)(1) or (2) of the 1940 Act. Rules 6e–2(b)(15)(i) and (ii) provide partial exemptions from Section 9(a). Rule 6e–2(b)(15)(iii) provides a partial exemption from Sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares.

4. The exemptions granted by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies that offer their shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company * * *.'' Therefore the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management company that also offers its shares to a flexible premium variable life insurance or variable annuity separate account of the same insurance company or any other insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or

of any affiliated life insurance company is referred to as ''mixed funding.''

5. In addition, applicants assert that the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common management company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to as ''shared funding.''

6. Moreover, although the relief granted by Rule 6e–2(b)(15) is not affected by the purchase of shares of the Funds by Participating Plans and the Participating Investors, because the relief granted by Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Funds are also sold to Participating Plans or to the Participating Investors.

7. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares. In addition, Rule 6e–3(T)(b)(15) provides a partial exemption from Section 9(a) to the extent that such section would render a company ineligible to serve as an investment adviser or principal underwriter of any registered open-end management investment company, where an officer, director, employee or affiliated person of such company is subject to a disqualification enumerated in Section 9(a), but the individual subject to such disqualification does not participate directly in the management or administration of the underlying management investment company.

8. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Therefore, Rule 6e–3(T)(b)(15) grants the exemptions if the underlying fund engages in mixed funding for a flexible premium variable life insurance separate account, subject to certain conditions, but does not permit shared funding.

9. Applicants asset that the relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Funds by Participating Plans or by the Participating Investors. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional relief may be necessary if shares of the Funds are also sold to Participating Plans or to the Participating Investors.

10. Applicants assert that if the Funds were to sell their shares only to Participating Plans or to the Participating Investors, no exemptive relief would be necessary. None of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans or to the Participating Investors. Exemptive relief in connection with the sale of shares of the Funds to Participating Plans or the Participating Investors is requested only because Applicants are seeking relief under Rules 6e–2 and 6e–3(T) and do not wish to be denied such relief if the Funds sell shares to Participating Plans or to the Participating Investors.

11. Applicants state that the current tax law permits the Funds to sell their shares to the Participating Plans and to the Participating Investors. Section 817(h) of the Internal Revenue Code (the ''Code'') imposes certain diversification requirements on the underlying assets of variable contracts. The Code provides that variable contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) in which the underlying assets are not adequately diversified as prescribed by the U.S. Department of the Treasury (the ''Treasury Department''). The Treasury Department has issued regulations (Treas. Reg. 1.817–5) (the ''Treasury Regulations'') which establish diversification requirements for investment portfolios underlying variable contracts. To meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations, however, do contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustees of a pension or retirement plan as well as segregated asset accounts of insurance companies in connection with their variable contracts. (*See* Treas. Reg. § 1.817–5(f)(3)(iii)). Applicants assert that another exception allows shares in an investment company to be held by the investment manager of the investment company and certain companies related to the investment manager as well as the segregated asset accounts of insurance companies (Treas. Reg. § 1.817–5(f)(3)(ii)).

12. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury Regulations, and that it is possible for shares of an investment company to be held by the trustee of a qualified pension or retirement plan or the investment company's investment manager and certain related companies without adversely affecting the ability of shares in the same investment company to be held by the separate accounts of insurance companies in connection with their variable contracts. Given the then-current tax law, the sale of shares of the same investment company to separate accounts of insurance companies, trustees of qualified plans or the investment company's investment manager and companies related to the investment manager could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

13. In general, Section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from acting or serving in various capacities with respect to a registered investment company. Section 9(a) provides that it is unlawful for any company to serve as investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly

participate in the management of the underlying management company.

14. Applicants state that the relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) under the 1940 act permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund.

15. Applicants assert that the relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) under the 1940 Act permits a life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the underlying fund.

16. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. The rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to many individuals in a typical insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply Section 9(a) to the many individuals employed by Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) who do not participate in the administration or management of the Funds.

17. The Applicants state that there is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed and shared funding or sales to Participating Plans. Participating Insurance Companies and Participating Plans are not expected to play any role in the management or administration of the Funds. It is expected that those individuals who participate in the management or administration of the Funds will remain the same regardless of which separate accounts, insurance companies or qualified plans use the Funds. Therefore, applying the monitoring requirements of Section 9(a) because of investments by Participating Insurance Companies or Participating Plans would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and plan participants.

18. Moreover, Applicants assert that the relief requested should not be affected by the sale of shares of the Funds to the Participating Investors. The eligibility restrictions of Section 9(a) will still apply to any officers, directors or employees of the Participating Investors who participate directly in the management or administration of the Funds.

19. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Participating Insurance Companies will provide pass-through voting privileges to variable contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for variable contract owners. However, if the limitations on mixed funding and shared funding are observed, Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirements with respect to several significant matters.

20. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(*1*) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules).

21. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that, with respect to registered management investment companies whose shares are held by a separate account of an insurance company, the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such company's investment objectives or any principal underwriter or investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of Rules 6e–2 and 6e–3(T)).

22. Applicants state that in the case of a proposed change in the underlying fund's investment policies, the insurance company, in order to disregard contact owner voting instructions, must make a good faith determination that such a change either would: (a) Violate state law; or (b) result in investments that either (i) would not be consistent with the investment objectives of the separate account or (ii) would vary from the general quality and nature of investments and investments techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives.

23. Applicants state that in the case of a change in an investment adviser or principal underwriter, the insurance company, in order to disregard contract owners' voting instructions, must make a good faith determination that either: (a) The proposed advisory fees would exceed the maximum rate that may be charged against the separate account's assets; or (b) the proposed adviser may be expected (i) to employ investment techniques that would vary from the general techniques used by the current adviser, or (ii) to manage the investments in a manner that either would be inconsistent with the investment objectives of the separate account or would result in investments that vary from certain standards.

24. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed exemptions from the pass-through voting requirements necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of Rule 6e–3(T), which apply to flexible premium insurance contracts and permit mixed funding, were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

25. Applicants assert that the considerations that prompted the

Commission to include exemptions from pass-through voting requirements in both Rules 6e–2 and 6e–3(T) are no less important and necessary when an insurance company funds its separate accounts with underlying funds engaged in mixed funding and shared funding. Such funding does not compromise the goals of the insurance regulatory authorities or the Commission. In connection with mixed funding, the Commission may have wished to reserve wide latitude with respect to the once unfamiliar variable annuity product, but that product is now familiar, and there appears to be no reason for the maintenance of prohibitions against mixed funding arrangements.

26. Applicants note that when the Commission amended Rule 6e–3(T) in 1985, it considered the appropriateness of extending the partial exemptions from the pass-through voting requirements to separate accounts that invest in underlying funds offering their shares to variable contract separate accounts of both affiliated and unaffiliated life insurance companies (*i.e.,* shared funding). At that time, the Commission stated that shared funding was a new and somewhat complicated area from a regulatory perspective and reiterated its concerns about voting arrangements and irreconcilable conflicts in the area of mixed and shared funding. The Applicants believe that the Commission's concerns about voting arrangements and material irreconcilable conflicts are not warranted in the context of shared funding because offering shares of an underlying fund to separate accounts of unaffiliated life insurance companies does not increase the risk of material irreconcilable conflicts among shareholders of the Funds. Furthermore, the Commission's application experience over the past 15 years in crafting appropriate safeguards to deal with potential conflicts of interest arising from shared funding arrangements is reflected in the conditions proposed by the Applicants.

27. Applicants further assert that the offer and sale of shares of the Funds to Participating Plans or to the Participating Investors will not have any impact on the relief requested with respect to pass-through voting. Shares of the Funds sold to Participating Plans will be held by the trustees or custodians of the Participating Plans as required by Section 403(a) of ERISA or applicable provisions of the Code. The exercise of voting rights by Participating Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Participating Plans, does not present the type of issues with respect to voting rights that are presented by variable life separate accounts. ERISA does not require pass-through voting to participants in qualified pension or retirement plans that are not registered as investment companies under the 1940 Act.

28. Applicants submit that Section 403(a) of ERISA provides that the trustee(s) must have exclusive authority and discretion to manage and control the investments of the Participating Plans with two exceptions: (a) When a Participating Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, plan trustees have the exclusive authority and responsibility for voting proxies. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Accordingly, unlike the case with insurance company separate accounts, issues related to pass-through voting rights and potential material irreconcilable differences are not present with respect to Participating Plans that do not provide pass-through voting privileges to their participants.

29. Applicants note that some plans may provide participants with the right to give voting instructions. However, there is no reason to believe that participants in plans generally, or those in a particular plan, either as a single group or in combination with other plans, would vote in a manner that would disadvantage variable contract owners. Therefore, the purchase of shares of the Funds by Participating Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed funding and shared funding.

30. Applicants further assert that certain complications are not present with respect to these Participating Plans because insurance regulations would not be applicable to the plans and the insurance company could not disregard votes cast by a plan trustee, even if the votes were based on plan participant instructions. Moreover, the conditions proposed by the Applicants, which are based on those imposed by the Commission in numerous exemptive orders related to sales to qualified retirement and pension plans, will provide the appropriate safeguards for dealing with such conflicts of interest.

31. Moreover, Applicants assert that the Participating Investors are not subject to any pass-through voting requirements. Accordingly, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to the Participating Investors.

32. Applicants assert that the Commission's primary concern with respect to mixed and shared funding issues is that of potential conflicts of interest. Therefore the prohibitions on mixed and shared funding might reflect some concern with possible divergent interests among different classes of investors. When Rule 6e–2 was adopted, variable annuity separate accounts could (and some did) invest in mutual funds whose shares were also offered to the general public. Therefore, at the time of the adoption of Rule 6e–2, the Commission staff contemplated underlying funds with public shareholders and with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with a state insurance regulatory authority having the authority to affect the operations of a publicly available mutual fund, and hence, affect the investment decisions of public shareholders.

33. Applicants note that, for reasons unrelated to the 1940 Act, Internal Revenue Service Ruling 81–225 (Sept. 25, 1981) effectively deprived variable annuities funded by publicly available mutual funds of their tax-benefited status. Applicants state that the Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment medium for variable contracts (including variable life contracts). Applicants further state that Section 817(h) of the Code, in effect, requires that the investments made by variable annuity and variable life insurance separate accounts be ''adequately diversified.'' If a separate account is registered as a unit investment trust that invests in a single fund or series, Applicants maintain that Section 817(h) and the Treasury Regulations provide, in effect, that the diversification test will be applied at the underlying fund level rather than at the separate account

level, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *'' Applicants state that, accordingly, a unit investment trust separate account that invests solely in a publicly available mutual fund would not be adequately diversified. In addition, Applicants state that any underlying fund, including any fund that sells its shares to separate accounts, in effect, would be precluded from selling its shares to the public. Consequently, there will be no public shareholders of the Funds.

34. Moreover, Applicants assert that the National Association of Insurance Commissioners Variable Insurance Model Regulation (the ''NAIC Model Regulation'') reflects the Commission's apparent confidence that mixed and shared funding is appropriate and that state insurance regulators can adequately protect the interests of all contract owners. The NAIC Model Regulation suggests that it is unlikely that insurance regulators would find an investment policy, principal underwriter or investment adviser inappropriate for one insurance product, but not for another insurance product. Applicants note that the NAIC Model Regulation, at Article VI, Section 1.9, as amended, removes a previous requirement that variable life insurance separate accounts not be used for variable annuity contracts. The NAIC Model Regulation has long permitted the use of a single underlying fund for different separate accounts. The NAIC Model Regulation, at Article VI, Section 3, as amended, eliminates a previous prohibition on one separate account investing in a separate account of another insurance company. As between scheduled premium and flexible premium variable life insurance policies, Applicants note that the NAIC Model Regulation draws no distinction.

35. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. If insurers are domiciled in different states, it is possible that the particular state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators of other states in which other insurance companies are domiciled. The fact that different Participating Insurance Companies are domiciled in different states does not create a significantly different or enlarged problem.

36. Applicants assert that shared funding by unaffiliated insurers does not present any issues that do not already exist where the same investment company serves as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Applicants submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions proposed below, which are adopted from the conditions included in Rule 6e–3(T)(b)(15) and which are virtually identical to the conditions imposed in other mixed and shared funding orders granted by the Commission, are designed to safeguard against, and provide procedures for, resolving any adverse effects that differences among state regulatory requirements may produce. For example, if a particular state insurance regulatory decision conflicts with the majority of other states regulators, then the affected Participating Insurance Company will be required to withdraw its separate account's investment in the Fund. This requirement will be included in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the Funds.

37. Shared funding does not present any issues that do not already exist when a life insurer disregards contract owner voting instructions. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer may disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

Nevertheless, a particular insurer's disregard of voting instructions could conflict with the voting instructions of a majority of contract owners. One insurer might determine to disregard voting instructions when all or some of the other insurers (including affiliated insurers) determine to follow the voting instructions of contract owners. If the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at the relevant Fund's election, to withdraw its separate account's investment in the Fund. No charge or penalty will be imposed as a result of such withdrawal. The participation agreements executed by the Participating Insurance Companies will contain these provisions.

38. Applicants submit that investment by the Participating Plans and the Participating Investors in any of the Funds will similarly present no additional conflict. The likelihood that voting instructions of variable contract owners will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any plans choosing to invest in a Fund. Moreover, Applicants state that even if a material irreconcilable conflict involving a Participating Plan or the Participating Investors arises, the Participating Plan or the Participating Investors may simply redeem its Fund shares and make alternative investments.

39. Applicants state that there is no reason why the investment policies of a Fund when it engages in sales to Participating Plans would or should be materially different from the investment policies of the Fund when it supports only variable annuity separate accounts or variable life insurance separate accounts, whether flexible premium or scheduled premium contracts. Each type of insurance product is designed as a long-term investment program. The investment objective of a qualified pension or retirement plan should coincide with a long-term investment program and should not increase the potential for conflicts.

40. Each Fund will be managed to attempt to achieve the investment objective or objectives of the Fund, and not to favor or disfavor any particular Participating Insurance Company or Participating Plan, the Participating Investors or any particular type of insurance product or plan. There is no reason to believe that the different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain variable life insurance and variable annuity contracts, will lead to different investment policies for different types of variable contracts. First, minimum death benefit guarantees generally are specifically provided for by particular charges, and always are supported by general account reserves as required by state insurance law. Second, certain variable annuity contracts also have minimum death benefit guarantees. To

the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the differing insurance charges imposed, in effect, adjust any such differences and equalize the insurer's exposure in either case. Third, the sale, persistency and ultimate success of all variable insurance products depend, at least in part, on satisfactory investment performance, which provides an incentive for the insurer to optimize investment performance. Fourth, under existing statutes and regulations, an insurance company and its affiliates can offer a variety of variable annuity and life insurance contracts, some with death benefit guarantees of different types and significance (and different degrees of risk for the insurer), some without death benefit guarantees, all funded by a single mutual fund.

41. Applicants note that no one investment strategy can be identified as appropriate to a particular insurance product or to a particular pension or retirement plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance needs, and investment goals. Likewise participants in a particular pension or retirement plan differ in financial status, age and investment goals. A Fund supporting even one type of insurance product or one type of pension or retirement plan must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting sales to Participating Plans will provide economic support for the continuation of the Funds. In addition, the broader base of contract owners and participants can be expected to provide economic support for the creation of additional Funds with a greater variety of investment objectives and policies.

42. In connection with the proposed sale of shares of the Funds to Participating Plans or to the Participating Investors, Applicants submit that either there are no conflicts of interest or there exists the ability by the affected parties to resolve any such conflicts without harm to the contract owners in the Participating Separate Accounts or to participants under the Participating Plans. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. In addition, Treasury Reg. 1.817–5(f)(3)(ii) permits the Participating Investors to invest in the same underlying investment company. Applicants assert, therefore, that neither the Code, nor the Treasury Regulations, nor the revenue rulings thereunder recognize any inherent conflicts of interests if Participating Plans, Participating Separate Accounts and the Participating Investors all invest in the same management investment company.

43. Although there may be differences in the manner in which distributions from variable annuity contracts, variable life insurance contracts and qualified pension and retirement plans are taxed, Applicants state that the tax consequences do not raise any conflicts of interest with respect to use of the Funds. When distributions are to be made, and a Participating Separate Account or a Participating Plan cannot net purchase payments to make the distributions, the Participating Separate Account or the Participating Plan will redeem shares of the Fund at their net asset value. The Participating Plan will then make distributions in accordance with the terms of the plan, and the Participating Insurance Company will make distributions in accordance with the terms of the variable contract.

44. Applicants state that it is possible to provide an equitable means of giving voting rights to separate account contract owners and to Participating Plans and the Participating Investors. Applicants represent that each Fund will inform each shareholder, including each Participating Separate Account, each Participating Plan and the Participating Investors, of its respective share of ownership in the Funds. Each Participating Insurance Company then will solicit voting instructions in accordance with the applicable ''pass-through'' voting requirement.

45. Applicants submit that the ability of a Fund to sell its shares directly to Participating Plans or the Participating Investors does not create a ''senior security'' with respect to any variable contract owner as opposed to a participant in a Participating Plan or the Participating Investors. The term ''senior security'' is defined under Section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' Regardless of the rights and benefits of participants under the Participating Plans, or contract owners under variable contracts, Participating Plans, Participating Separate Accounts and the Participating Investors have rights only with respect to their respective shares of a Fund. They can only redeem such shares at their net asset value. No shareholder of any of the Funds will have any preference over any other shareholder with respect to distribution of assets or payment of dividends.

46. Applicants assert that there are no conflicts between the variable contract owners of the Participating Separate Accounts and the participants under the Participating Plans or the Participating Investor with respect to the state insurance commissioners' veto powers (direct with respect to variable life and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is not all shareholders may agree with a particular proposal. This does not mean that there are any inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one investment company and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, trustees of qualified plans can redeem their shares from an investment company and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that even if issues arise where the interests of variable contract owners and the interests of Participating Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans, on their own, can redeem their shares from an investment company and reinvest in another funding vehicle at any time.

47. The Applicants assert that permitting the sale of a Fund's shares to the Participating Investor in compliance with Treasury Reg. 1.817–5 will enhance Fund management without raising significant concerns regarding material irreconcilable conflicts. Section 14(a) of the 1940 Act generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares. Initial capital is also required in connection with the creation of new series and the voting of initial shares of such series on matters requiring the approval of shareholders. A potential source of initial capital for a new Trust or a new Fund is the Manager or its affiliates or a Participating Insurance Company. Any of these parties may have an interest in

making the capital expenditure, and in participating with the new Trust or the new Fund in its organization. However, provision of seed capital or the purchase of Fund shares by the Participating Investor or by a Participating Insurance Company may be deemed to violate the exclusivity requirement of Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(1) under the 1940 Act.

48. Applicants anticipate that such investment by the Participating Investor or by a Participating Insurance Company will be made in compliance with Treasury Reg. 1.817–5(f)(3). Given the conditions of Treasury Reg. 1.817–5(f)(3) under the Code and the harmony of interest between a Fund, on the one hand, and the Participating Investors or a Participating Insurance Company, on the other, the Applicants assert that little incentive for overreaching exists. Furthermore, such investment should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, permitting investments by the Participating Investor or a Participating Insurance Company will permit the orderly and efficient creation and operation of the Funds.

49. Applicants state that various factors have limited the number of insurance companies offering variable annuity and variable life insurance contracts. Applicants state that these factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain insurers as investment professionals. In particular, some small life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own.

50. Applicants argue that use of the Funds as common investment mediums for variable contracts, as well as for qualified plans, could ameliorate these concerns for insurance companies that decide to participate in the Funds. Applicants also submit that mixed and shared funding should provide a benefit to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies should also benefit from the investment and administrative expertise of Touchstone Advisors and Western-Southern, or any other investment adviser or sub-adviser to a fund, and the cost efficiencies and investment flexibility afforded by a larger pool of assets. Therefore, making the Funds available for shared funding should encourage more insurance companies to offer variable contracts and result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

51. The Applicants further assert that sale of shares of the Funds to Participating Plans should further increase the amount of assets available for investment by the Funds. This larger asset base should benefit variable contract owners and plan participants by promoting economies of scale, by permitting greater diversification, and by making the addition of new Funds more feasible. In connection with the proposed sale of shares of the Funds to Participating Plans, Applicants further submit that the intended use of the Funds with Participating Plans is not dissimilar from the intended use of the Funds with variable contracts in that Participating Plans, like variable contracts, are generally long-term retirement vehicles. The Applicants further submit that the sale of shares of the Funds to Participating Plans does not increase the risk of material irreconcilable conflicts to such Funds or to the Participating Separate Accounts.

52. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Applicants also note that the Commission has granted numerous applications for orders permitting mixed and shared funding with respect to both scheduled and flexible premiums, including where sales are made to qualified pension and retirement plans. Applicants further note there is ample precedent for extending exemptive relief to members of a class or classes of persons, not currently identified, that may be similarly situated in the future. Such relief has been granted in various contexts and from a wide variety of the 1940 Act's provisions, including class exemption in the context of mixed and shared funding. Applicants assert that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

Applicants have consented to the following conditions if the order requested in its application is granted:

1. A majority of the Board of Trustees of each Fund (a ''Board'') will consist of persons who are not ''interested persons'' of that Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission. However, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the remaining trustees;

(b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Funds for the existence of any material irreconcilable conflict among the interests of the variable contract owners of the Participating Separate Accounts, participants under the Participating Plans and the Participating Investor investing in the Fund, and the Board will determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, plan trustees or plan participants; (f) a decision by an insurer to disregard the voting instructions of variable contract owners; or (g) if applicable, a decision by a Participating Plan to disregard voting instructions of its participants.

3. Any Participating Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the issued and outstanding shares of the Fund (a ''Reporting Plan''), Participating Insurance Companies, and the Participating Investor investing in a Fund (collectively, the ''Reporting Entities'') will report any potential or existing conflicts to the relevant Board and will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. These responsibilities include, but are not limited to, (a) an obligation by each Participating Insurance Company to inform the Board whenever it has determined to disregard voting instructions of variable contract

owners, and (b) if pass-through voting is applicable, an obligation by each Reporting Plan to inform the relevant Board whenever it has determined to disregard its participants' voting instructions. The responsibility to report such information and conflicts and to assist the relevant Board will be contractual obligations of all Participating Insurance Companies and Reporting Plans under their agreements governing participation in the Funds, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of the variable contract owners and plan participants, as applicable.

4. If it is determined by a majority of the Board of a Trust, or by a majority of its disinterested trustees, as appropriate, that a material irreconcilable conflict exists with respect to a Fund, the relevant Participating Insurance Companies and Relevant Participating Plans, at their own expense (or at the discretion of a Manager of the Fund, at that Manager's expense), will take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict to the extent reasonably practicable (as determined by a majority of the disinterested trustees). These steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts of the Participating Insurance Companies from the Fund and reinvesting such assets in a different investment medium, including another Fund, (b) submitting the question as to whether such segregation should be implemented to a vote of all affected variable contract owners and, as appropriate, segregating the assets of any appropriate group that votes in favor of such segregation, (c) offering to the affected variable contract owners the option of making such a change; (d) withdrawing the assets allocable to some or all of the Participating Plans from the Fund and reinvesting such assets in a different investment medium; or (e) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, or, if applicable, a decision by a trustee of a Participating Plan to disregard participant voting instructions, and that decision represents a minority position or would preclude a majority vote, then that insurer or plan, as applicable, may be required, at the Fund's election, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Reporting Plans under their agreements governing participation in the Funds, and these responsibilities will be carried out with a view only to the interests of variable contract owners and plan participants, as applicable.

5. For purposes of Condition 4, a majority of the disinterested trustees of the relevant Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Trust or the Participating Investor be required to establish a new funding medium for any variable contract or qualified plan. No Participating Insurance Company will be required by Condition 4 to establish a new funding medium for any variable contract if a majority of the variable contract owners materially and adversely affected by the material irreconcilable conflict vote to decline such offer. Furthermore, no Participating Plan will be required by Condition 4 to establish a new funding medium for such plan if (a) A majority of plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing documents and applicable law, the Participating Plan makes such decision without plan participant vote.

6. The affected Reporting Entities will be informed promptly in writing of a Board's determination of the existence of a material irreconcilable conflict and its implications.

7. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, each Participating Insurance Company will vote shares of a Fund held in its Participating Separate Accounts in a manner consistent with voting instructions timely received from variable contract owners. Each Participating Insurance Company also will vote shares of the Fund held in its Participating Separate Accounts for which it has not received timely voting instructions from contract owners, as well as shares of the Fund that the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from contract owners are timely received. Each Participating Insurance Company will be responsible for assuring that each of its Participating Separate Accounts investing in a Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies investing in the Fund. The obligation to vote the Fund shares and to calculate voting privileges in a manner consistent with all other Participating Separate Accounts investing in a Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in that Fund. Each Participating Plan will vote as required by applicable law and governing plan documents.

8. All reports of potential or existing conflicts received by the Board, and all Board actions with regard to determining the existence of a conflict, notifying affected Reporting Entities of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

9. Each Fund will notify all Participating Insurance Companies and all Participating Plans that disclosure regarding potential risks of mixed and shared funding may be appropriate in separate account prospectuses or plan documents. Each Fund will disclose in its prospectus that: (a) The Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies and for qualified pension and retirement plans; (b) due to differences of tax treatment and other considerations, the interests of various variable contract owners participating in the Fund and the interests of Participating Plans investing in the Fund may conflict, and (c) the relevant Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. Each Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Fund). In particular, each Trust will either provide for annual shareholder meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trusts are not the type of trust described in

Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

11. So long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Participating Investor will vote their shares in the same proportion as all contract owners having voting rights with respect to the relevant Funds; provided, however, that the Participating Investor shall vote their shares in such other manner as may be required by the Commission or its staff.

12. If and to the extent that Rules 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed funding or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Trusts and/or Participating Insurance Companies, as appropriate, will take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent that such rules are applicable.

13. The Reporting Entities, at least annually, will submit to the relevant Board such reports, materials, or data as the Board may reasonably request so that the Board may fully carry out the obligations imposed upon it by the conditions contained in this Application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and the Reporting Plans to provide these reports, materials, and data to the Board will be a contractual obligation under their agreements governing participation in the Funds.

14. If a Participating Plan should ever become a holder of ten percent or more of the issued and outstanding shares of a Fund, such plan will execute a participation agreement with the Fund, which will include the conditions set forth herein to the extent applicable. A Participating Plan will execute a document containing an acknowledgement of this condition upon such plan's initial purchase of the shares of any Fund.

15. Any shares of a Fund purchased by the Manager or its affiliates will be automatically redeemed if and when the Manager's investment management agreement terminates, and to the extent required by the applicable Treasury Regulations. No Participating Investor will sell such shares of the Funds to the public.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30325 Filed 12–6–01; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45118; File No. SR–NYSE–2001–34]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 103A To Delete an Unused Measure of Specialist Performance

November 29, 2001.

On August 29, 2001, 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 NYSE Rule 103A (Specialist Stock Reallocation and Member Education and Performance) to delete an unused measure of specialist performance.

Currently, NYSE Rule 103A provides authority for the Market Performance Committee (''MPC'') to establish and administer measures of specialist performance, conduct performance improvement actions where a specialist unit does not meet the performance standards in the Rule, and reallocate stocks if a unit does not achieve its specified goals when subject to a performance improvement action. The performance standards in the Rule include the Specialist Performance Evaluation Questionnaire, timeliness of stock openings, SuperDot order turnaround, administrative message responses and market share. This latter provision refers to a significant decline in market share, as measured by share volume, in two consecutive quarters where the decline is determined to be attributable to factors within the control of the specialist unit.

At the time the Exchange adopted the market share measure, it was intended that the Exchange would develop criteria as to what constitutes ''significant decline'' before the market share performance standard could be enforced. However, criteria were never developed, and the MPC has never used the market share standard as a performance measure.

The proposed rule change was published for comment in the **Federal Register** on October 26, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of section 6 of the Act.[5] The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange promote just and equitable principles of trade and in general to protect investors and the public interest. The Commission believes that the remaining measurements of specialist performance set forth in NYSE Rule 103A should be sufficient to assist the Exchange in ensuring a certain level of market quality and performance in Exchange listed securities is maintained. The Exchange should continue to review its standards for measuring specialist performance and ensure that there are adequate, objective measures to assess such performance.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–2001–34) be, and it hereby is, approved.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44961 (October 19, 2001), 66 FR 54316.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30323 Filed 12–6–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before January 7, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Lender Transcript of Account.

No.: SBA Form 1149.

Frequency: On Occasion.

Description of Respondents: Lenders requesting SBA to provide the Agency with breakdown of payments.

Annual Responses: 5,000.

Annual Burden: 5,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–30311 Filed 12–6–01; 8:45 am]

BILLING CODE 8025–01–P

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 187: Mode Select Beacon and Data Link System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 187 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 187: Mode Select Beacon and Data Link System.

DATES: The meeting will be held December 18, 2001, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 187 meeting. The agenda will include:

- December 18:
  - Opening Session (Chairman's Introductory Remarks, Review and Approve Agenda)
  - Review and Approve Proposed Change 1 to RTCA DO–181C, RTCA Paper No. 368–01/SC187–042, *Addition of Hijack Mode Operations*
  - Closing Session (Other Business, Date and Time of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 27, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–30361 Filed 12–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration and Federal Railroad Administration

Environmental Impacts Statement: New York/New Jersey

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA).

ACTION: Notice of meeting.

SUMMARY: Notice of Public Scoping Meetings in Preparation of a Draft Environmental Impact Statement for the Cross Harbor Freight Movement Project.

The New York City Economic Development Corporation (NYCEDC), as project sponsor, in coordination with the Federal Highway Administration (FHWA) and the Federal Railroad Admininstration (FRA) as joint lead agencies, is preparing an Environmental Impact Statement (EIS) for the Cross Harbor Freight Movement Project. As part of the Cross Harbor Freight Movement Project, strategies for enhancing freight mobility within the New York City/northern New Jersey region are being evaluated. A Major Investment Study (MIS), completed in 2000, identified several strategies that satisfied established project goals and objectives. The purpose of the EIS is to examine the ability of the selected strategies to improve mobility of goods traffic, improve environmental quality, enhance the region's competitive position and provide flexibility to respond to possible service disruptions to the region's vital Hudson River Crossings.

NYCEDC will conduct seven (7) public scoping meetings to discuss the proposed draft scope of work for the Draft Environmental Impact Statement (DEIS), and will accept comments from the public. The draft scope of work is available for viewing on-line at *www.crossharborstudy.org.* One copy of the draft scope of work will also be available at the following libraries. Manhattan, New York Public Library at 188 Madison Ave.; Queens, Queens Borough Public Library at 89–11 Merrick Blvd.; Bronx, Bronx Borough Library at 2556 Bainbridge Ave.; Staten Island, SI Borough Library at 5 Central Avenue; Brooklyn, Brooklyn Public Library Sunset Park at 5108 4th Ave. (at 51st St.); Jersey City, Jersity City Public Library at 472 Jersey Ave.; Elizabeth, Elizabeth Public Library at 11 South Broad St.

DATES: The seven (7) meetings will be held at the following locations within the New York/New Jersey metropolitan area:

Tuesday, January 15, 2002, 11 am–3 pm NYCEDC, 110 William Street, 4th Floor, NY, NY 10038
Thursday, January 17, 2002, 5 pm–8 pm Snug Harbor Manor, Lower Great Hall Room, 1000 Richmond Terrace, Staten Island, NY 10301
Tuesday, January 22, 2002, 5 pm–8 pm Hostos College, Savoy Multi-Purpose Room, East 149th Street/ Walton Avenue, Bronx, NY 10451
Wednesday, January 23, 2002, 5 pm–8 pm PS 1, 309 47th Street, (b/w 3rd–4th Aves.), Brooklyn, NY 11220
Tuesday, January 29, 2002, 5 pm–8 pm LaGuardia College, 31–10 Thomson Avenue, L.I.C., NY 11101
Wednesday, January 30, 2002, 11 am–3 pm Jersey City City Hall, Council Chambers, 280 Grove Street, Jersey City, NJ 07302
Wednesday, January 30, 2002, 5 pm–8 pm Elizabeth High School, 600 Pearl Street, Elizabeth, New Jersey 07202

FOR FURTHER INFORMATION CONTACT:

Ms. Alice Cheng, Director, Intermodal Planning, a New Economic Development Corporation, 110 William Street, 6th floor, New York, NY 10038, telephone (212) 619–5000, e-mail ''acheng@nyedc.com''
or
Richard E. Backlund, Intermodal Transporation Coordinator, Federal Highway Administration, New York Division, One Bowling Green, Room 428, New York, NY 1004–1415, telephone (212) 668–2205, e-mail ''richard.backlund@fhwa.dot.gov''
or
Michael Saunders, Northeast Corridor Program Manager, Federal Railroad Administration, 628–2 Hebron Avenue, Suite 303, Glastonbury, Connecticut 06033–5007, telephone (860) 659–6714, e-mail ''michael.saunders@fhwa.dot.gov''

SUPPLEMENTARY INFORMATION:

Registration to speak will begin at the meeting start time and end one half-hour before the meeting end time. All registered speakers will be heard. The public will be able to present oral comments and can register one the day of the meeting or in advance by calling the project information line at 1–877–XHAR EIS (942–7347), or e-mailing the project at *crossharbor@astvinc.com.* Written comments can be presented at the meeteings, e-mailed to *crossharbor@stvinc.com* or mailed to Cross Harbor Freight Movement Project, 225 Park Avenue South, NY, NY 10003. the deadline for submitting comments is February 28, 2002. Due to heightened security, a photo ID is required to enter the above-mentioned locations. Please allow additional travel time to sign-in at the security desk.

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Dated: November 28, 2001.

Richard E. Backlund,

Intermodal Transportation Coordiantor.

[FR Doc. 01–30328 Filed 12–6–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Desha, Chicot, Ashley, Drew, Union, Bradley, Calhoun, Ouachita, and Columbia Counties, AR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Arkansas Counties of Desha, Chicot, Ashley, Drew, Union, Bradley, Calhoun, Ouachita, and Columbia.

FOR FURTHER INFORMATION CONTACT: Randal Looney, Environmental Specialist, Federal Highway Administration, Room 3130 Federal Building, Little Rock, Arkansas 72201–3298, telephone: (501) 324–6430; or Dale Loe, Consultant Coordinator, Assistant Chief Engineer, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, Arkansas 72203, telephone: (501) 569–2301.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arkansas State Highway and Transportation Department (AHTD), will prepare an Environmental Impact Statement (EIS) for a segment of the proposed Interstate 69 corridor in Arkansas.

This approximately 85-mile segment of I–69 will connect the Mississippi River crossing of I–69 to U.S. 167 near El Dorado and will improve regional travel, safety, intermodal connectivity and will enhance the economic vitality of the project area. This segment will accommodate the overall purpose of the national I–69 Corridor, a much larger transcontinental project identified as a ''high priority corridor'' on the National Highway System that would provide a North American Free Trade Agreement (NAFTA) transportation corridor of national significance from Canada to Mexico. I–69 is also a transportation recommendation of the Delta Initiative aimed at the revitalization and economic development of the Lower Mississippi Delta.

I–69 is proposed to be a fully controlled access facility located on a new alignment. Several alternatives and locations will be considered, including the ''no-action'' alternative. The western terminus of the project will connect to U.S. 167 near El Dorado, Arkansas and the eastern terminus will connect to U.S. 65 near McGehee, Arkansas.

The FHWA and AHTD are seeking input as part of the scoping process to assist in determining and clarifying important issues relative to this project. Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, state, and local agencies, Native American Tribes, and to private organizations and citizens who have previously expressed or are known to have an interest in this project. Formal scoping meetings with Federal, state, and local agencies, NativeAmerican Tribes, and other interested parties will be held in the near future. A series of public meetings will also be held in the study area beginning in early 2002, with on-going public involvement activities. The draft Environmental Impact Statement (EIS) will be available for public and agency review and comment prior to a formal public hearing. Public notice will be given of the time and place for all meetings and hearings.

To ensure that the full range of issues related to this project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Issued on: December 3, 2001.

Derrell Turner,

Assistant Division Administrator, FHWA, Little Rock, Arkansas.

[FR Doc. 01–30329 Filed 12–6–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–8842; Notice 2]

General Motors Corporation; Denial of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, has determined that child restraint lower anchorages in approximately 33,916 of its model year 2001 vehicles [1] fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 225, ''Child Restraint Anchorage Systems,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' GM has also petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301, ''Motor Vehicle Safety,'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

On February 20, 2001, NHTSA published a notice of receipt of the application in the **Federal Register** (66 FR 10948, Docket No. NHTSA–2001–8842; Notice 1) and requested comments by March 22, 2001.

Paragraphs S9.1.1 and S15.1.2.1 of FMVSS No. 225 specify that, for each child restraint anchorage system, the lower anchorages shall consist of two bars that are 6 mm ± 0.1 mm in diameter. The lower anchorages are designed to secure the child restraint system onto the vehicle rather than using the vehicle's belt system. Child restraints will have components that attach to the bars. NHTSA established the diameter specification of the anchorages to ensure compatibility between the child seat and the anchorages so that the components on child restraints can latch securely onto the bars and will remain attached in a crash.

On November 3, 2000, GM submitted a Part 573 Noncompliance Report advising NHTSA that 75,816 model year (MY) 2001 vehicles may not comply with FMVSS No. 225. Based on measurements taken from a sample of 32 seats in GMT250 (Azteks) and 52 seats in GM200 (U Vans) vehicles, GM believes that approximately 33,916 of these vehicles actually have anchors with diameters outside the range allowed by the standard. From the sampling data, the range of the diameter of the anchorages were estimated as 5.99 mm to 6.30 mm for the first group and 5.59 mm to 6.32 mm for the second group of vehicles. The compliance range allowed by FMVSS No. 225 is 5.9 mm to 6.1 mm. The 33,916 affected vehicles include 30% of 27,901 Chevrolet Ventures (8,370), 30% of 9,845 Oldsmobile Silhouettes (2,954), 30% of 17,383 Pontiac Montanas (5,215), and 84% of 20,687 Pontiac Azteks (17,377).

On November 29, 2000, GM submitted a petition for an exemption from the recall requirements of 49 U.S.C. Chapter 301 on the basis that the noncompliance is inconsequential to motor vehicle safety.

GM explained how the noncompliance happened. ''In the case of the Aztek, this condition was caused by the inadvertent release of component drawings that allowed the lower anchorage bar material to be supplied out of compliance. For the U vans and Azteks, it was not originally known that the coating process for the lower anchorage bar was not capable of holding the required tolerance. As a result, some of the lower anchorages of the subject vehicles do not meet the diameter specification.''

In summary, GM supported its petition for a determination of inconsequential noncompliance with the following:

1. ''Child restraint manufacturers currently offer to U.S. customers two child seats with LATCH attachment mechanisms: The Fisher Price Safe Embrace [2] and the Cosco Triad. Both of these child seats use a hook mechanism to attach to the lower anchorage bars * * * [T]he integrity and performance of the [hook] attachment will not be materially affected by the small deviations from the specification for the diameter of the lower anchor * * * GM is not aware of any proposed U.S. child seat latch mechanism that would not be compatible with the anchors on the subject vehicles.''

2. ''[A]ll the child seats, in addition to the requirements for a latch mechanism, must also be designed to work with the vehicle seat belt system. Therefore, each child seat, whether LATCH compatible or not, will be able to be safely secured to each of these vehicles.''

3. GM said they ''do not foresee any problem with future designs and the anchors that are below 5.9 mm.''

4. In the future, it is possible that a slotted attachment could be designed and that the slot might be too small to accept some of these anchors that exceed 6.1 mm. To address this situation, GM plans to send a letter to owners to advise them how to handle such a situation.'' (Use the vehicle belt system to attach the child seats.)

Based on the above arguments, GM stated that the noncompliance with FMVSS No. 225 is inconsequential to motor vehicle safety and requested that NHTSA grant the inconsequentiality petition.

The agency received two comments responding to NHTSA's February 2001 notice. They were from Britax Child Safety, Inc. (8842–2, dated March 21, 2001), and Advocates for Highway and Auto Safety (8842–3, dated March 22, 2001).

Britax (8842–2) stated that its ''designed LATCH compatible connectors will *not* fit onto lower anchorage bars having a diameter greater than the tolerances specified in Standard 225.'' Britax contacted GM about the potential problem but could not arrive at a mutually agreeable solution to the problem with GM. Britax worries that it may be wrongly and unfairly blamed if consumers encounter the potential incompatibility problem between its child restraints and the GM lower anchorages. Britax also worries that a partially engaged seat connector and oversized anchorage bar could fail in a crash, and that Britax could be blamed for a faulty seat design.

Advocates (8842–3) believes that the agency should deny GM's application based on various safety concerns, and that the denial would be consistent with the agency's previous ruling on denying a petition submitted by Suzuki for inconsequential noncompliance (65 FR 57649, September 25, 2000).

On May 7, 2001, GM submitted supplemental information (8842–4) ''to document the additional information discussed and GM's position.'' GM further estimated that among the 33,916 noncompliant vehicles, 19,610 vehicles (58%) may have an anchorage diameter over 6.1 mm. Therefore, the other 14,306 vehicles (42%) may have an anchorage diameter less than 5.9 mm. GM stated that the noncompliance problem was first discovered during an ISO Working Group meeting in Canada. A demonstration of a Britax prototype child seat with a LATCH ''hard connector'' design failed to fit onto the lower anchorages in a 2001 Pontiac Aztek vehicle. The diameters of the anchorages were measured as 6.18 mm to 6.23 mm in the middle, and 6.22 mm to 6.25 mm on the sides of the anchorage bars.

Although GM acknowledged the noncompliance of the anchorage bars in

[1] Noncompliant GM vehicles include approximately 17,377 Pontiac Azteks, 5,215 Pontiac Montanas, 8,370 Chevrolet Ventures, and 2,954 Oldsmobile Silhouettes (U-vans). These vehicles were built with lower anchorage bars that are either above or below the 6.0 ± 0.1 mm diameter requirement.

[2] Fisher Price has recently announced that it will cease the production of child restraints, including the Safe Embrace. [*Footnote added by NHTSA.*]

the Aztek vehicle, GM also complained that the opening of Britax's ''hard connector'' deviated too much from the 6.5 mm diameter designation for the Static Force Application Device 2 (SFAD 2), a test fixture used to test compliance with one aspect of FMVSS No. 225. The SFAD 2 is referenced in S9.4 and S15.3 of FMVSS No. 225 and is illustrated in Figures 17 and 18 of the standard.

GM had already orally presented these comments during a GM-requested meeting with NHTSA on April 25, 2001. A meeting record has been entered into the docket.

NHTSA has thoroughly evaluated the data GM provided, carefully considered its subsequent explanations about the data, and also considered the comments submitted by Britax and Advocates. We disagree with GM's position. We consider the incompatibility problem to be very much safety related. When a child seat fails to latch onto the lower anchorages, the entire latch system will not work, regardless of how well the components are designed.

GM has acknowledged that the lower anchorages do not comply with FMVSS No. 225, but also blamed the deviation of the opening of the ''hard connectors'' on the Britax child seat. However, GM has not shown, and cannot show, that the Britax seat has an improper connector design or dimensions, since the dimensions for the SFAD do not apply to child restraint systems.

Moreover, we disagree with each of the four ''reasons'' asserted by GM in support of the petition. First, we disagree with GM's assertion that there is no ''proposed U.S. child seat latch mechanism that would not be compatible with the anchors on the subject vehicles.'' As GM stated in its May 7, 2001 supplemental petition, the incompatibility problem was discovered when a demonstration of a Britax child seat with a LATCH ''hard connector'' failed to fit onto the lower anchorages in a 2001 Pontiac Aztek vehicle. Based on the Britax comments, it is certainly possible, if not likely, that such a mechanism would be used on child restraint systems sold in the U.S. In any case, such a mechanism is clearly legal, and the current market decisions of all child restraint manufacturers do not preclude future restraints with ''hard connectors.''

GM's argument that since every child restraint is designed to work with the vehicle belt system in addition to the latch system, the child restraint will be able to be safely secured to the vehicle regardless of whether the latch mechanism works or not misses the point. The primary basis for the adoption of the LATCH requirements is to enhance safety beyond the level provided by the vehicle belt systems. The May 7, 2001 GM supplement noted that ''[n]ational studies reflect an approximately 80% incorrect use rate. Many local checkups report misuse rate over 90%.'' (Attachment B, H.2., page C–5). Because of this high rate of misuse of the vehicle belt system, NHTSA adopted FMVSS No. 225 to make it easier to properly attach a child seat to the vehicle by means of the lower bar system. The requirement in FMVSS No. 213 that a child seat must be designed to be restrained by means of the vehicle belt system is not an alternative, equivalent means for restraining a child. This provision was kept in the standard to ensure that new child restraint systems equipped with a latch system can also be used in older motor vehicles that are not equipped with a latch system and in aircraft.

As to GM's statement that they ''do not foresee any problem with future designs and the anchors that are below 5.9 mm,'' neither we nor GM can predict future child restraint system designs. There may be a system that cannot properly attach to bars that are less than 5.9 mm in diameter, and remain engaged during a crash. The fact that a problem has not occurred does not mean that the problem will not occur in the future.

GM acknowledged in its petition that in the future, ''it is possible that a slotted attachment could be designed and that the slot might be too small to accept some of these anchors that exceed 6.1 mm.'' However, GM's proposal ''to address this situation'' by sending a letter to vehicle owners to advise them to ''use the vehicle belt system to attach the child seats'' would be inadequate for several reasons. First, for the reasons noted above, this would not provide an equivalent level of safety. Second, a consumer might fail to heed the warning against using the lower bars. Third, a consumer forced to use the vehicle belts might attach the seat incorrectly. And finally, such a letter would not warn subsequent owners of the vehicle.

For the reasons stated above, NHTSA has decided that GM has not met its burden of persuasion that the noncompliance described herein is inconsequential to motor vehicle safety, and the application is denied. Therefore, GM is required to provide notification of, and a remedy for, the noncompliance as required by 49 U.S.C. 30118–30120.

(49 U.S.C. 30118–30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 3, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–30357 Filed 12–6–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–41–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–41–93, (TD 8703), Automatic Extension of Time to File Partnership return of Income, Trust Income Tax Return, and U.S. Real Estate Mortgage Investment Conduit Income Tax Return (§ 1.6081–4).

DATES: Written comments should be received on or before February 5, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5575, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Automatic Extension of Time for Filing Individual Income Tax Returns; Automatic Extension of Time To File Partnership Return of Income, Trust Income Tax Return, and U.S. Real Estate Mortgage Investment Conduit Income Tax Return.

OMB Number: 1545–1479.

Regulation Project Number: IA–41–93.

Abstract: Internal Revenue Code section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return.

Under regulation section 1.6081–4, an individual required to file an income tax return is allowed an automatic 4-month extension of time to file if (a) an application is prepared on Form 4868, Application Extension of Time to File U.S. Individual Income Tax Return, or in such other manner as may be prescribed by the Internal Revenue Service, (b) the application is filed on or before the date the return is due, and (c) the application shows the full amount properly estimated as tax.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

The burden for the collection of information is reflected in the burden of Form 4868, Application for Automatic Extension of Time to File U.S. Individual Tax Return.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 28, 2001.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 01–30378 Filed 12–6–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the New York Metro Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the New York Metro Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Thursday, January 17, 2002.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Thursday, January 17, 2002, 6 p.m. to 9:20 p.m. at the Internal Revenue Service, 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555.

The public is invited to make oral comments from 9 p.m. to 9:20 p.m. on Thursday, January 17, 2002.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: Various IRS issues. Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 20, 2001.

John J. Mannion,

Director, Program Planning & Quality.

[FR Doc. 01–30379 Filed 12–6–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
December 7, 2001

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 70 and 88

Commercial Transportation of Equines to Slaughter; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 70 and 88

[Docket No. 98–074–2]

RIN 0579–AB06

Commercial Transportation of Equines to Slaughter

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing regulations pertaining to the commercial transportation of equines to slaughtering facilities. These regulations fulfill our responsibility under the 1996 Farm Bill to regulate the commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. The purpose of the regulations is to establish minimum standards to ensure the humane movement of equines to slaughtering facilities via commercial transportation. As directed by Congress, the regulations cover, among other things, the food, water, and rest provided to such equines. The regulations also require the owner/shipper of the equines to take certain actions in loading and transporting the equines and require that the owner/shipper of the equines certify that the commercial transportation meets certain requirements. In addition, the regulations prohibit the commercial transportation to slaughtering facilities of equines considered to be unfit for travel, the use of electric prods on equines in commercial transportation to slaughter, and, after 5 years, the use of double-deck trailers for commercial transportation of equines to slaughtering facilities.

EFFECTIVE DATE: February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Timothy Cordes, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–3279.

SUPPLEMENTARY INFORMATION:

Background

We are establishing regulations pertaining to the commercial transportation of equines to slaughtering facilities. We are taking this action to fulfill a responsibility given by Congress to the Secretary of Agriculture in the Federal Agriculture Improvement and Reform Act of 1996 (commonly referred to as ''the 1996 Farm Bill''). Congress added language to the 1996 Farm Bill concerning the commercial transportation of equines to slaughtering facilities after having determined that equines being transported to slaughter have unique and special needs.

Sections 901–905 of the 1996 Farm Bill (7 U.S.C. 1901 note, referred to below as ''the statute'') authorize the Secretary of Agriculture, subject to the availability of appropriations, to issue guidelines for the regulation of the commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. The Secretary is authorized to regulate the food, water, and rest provided to such equines in transit, to require the segregation of stallions from other equines during transit, and to review other related issues the Secretary considers appropriate. The Secretary is further authorized to require any person to maintain such records and reports as the Secretary considers necessary. The Secretary is also authorized to conduct such investigations and inspections as the Secretary considers necessary and to establish and enforce appropriate and effective civil penalties. In a final rule published in the **Federal Register** on December 30, 1996 (61 FR 68541–68542, Docket No. 96–058–1), the authority to carry out the statute was delegated from the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs (now the Under Secretary for Marketing and Regulatory Programs), and from that official to the Administrator of the Animal and Plant Health Inspection Service (APHIS), and from the APHIS Administrator to the Deputy Administrator for Veterinary Services.

To clarify its intentions, Congress set forth definitions in the statute. For purposes of interpreting the statute, ''commercial transportation'' is defined as ''the regular operation for profit of a transport business that uses trucks, tractors, trailers, or semitrailers, or any combination thereof, propelled or drawn by mechanical power on any highway or public road.'' ''Equine for slaughter'' means ''any member of the *Equidae* family being transferred to a slaughter facility, including an assembly point, feedlot, or stockyard.'' ''Person'' means ''any individual, partnership, corporation, or cooperative association that regularly engages in the commercial transportation of equine for slaughter'' but does not include any individual or other entity who ''occasionally transports equine for slaughter incidental to the principal activity of the individual or other entity in production agriculture.''

Congress further clarified its intentions with regard to the statute through a conference report. The conference report states that the object of any prospective regulation would be the individuals and companies that regularly engage in the commercial transport of equines to slaughter and not the individuals or others who periodically transport equines to slaughter outside of their regular activity. The conference report also states that the Secretary has not been given the authority to regulate the routine or regular transportation of equines to other than a slaughtering facility or to regulate the transportation of any other livestock, including poultry, to any destination. In addition, the conference report states that, to the extent possible, the Secretary is to employ performance-based standards rather than engineering-based standards when establishing regulations to carry out the statute and that the Secretary is not to inhibit the commercially viable transport of equines to slaughtering facilities.

On May 19, 1999, we published in the **Federal Register** (64 FR 27210–27221, Docket No. 98–074–1) a proposal to establish regulations pertaining to the commercial transportation of equines to slaughtering facilities in a new part of title 9 of the Code of Federal Regulations (CFR). The new regulations would be found at 9 CFR part 88. We proposed to divide part 88 into six sections: § 88.1—Definitions, § 88.2—General information, § 88.3—Standards for conveyances, § 88.4–Requirements for transport, § 88.5—Requirements at a slaughtering facility, and § 88.6—Violations and penalties. The proposed regulations pertained only to the actual transport of a shipment of equines from the point of being loaded on the conveyance to arrival at the slaughtering facility.

We solicited comments concerning our proposal for 60 days ending July 19, 1999. During the comment period, we received 276 comments. They were from animal humane associations, academia, slaughter plants, horse industry organizations, veterinary practitioners, a State government and a foreign government, the U.S. Congress, livestock industry organizations, livestock transporters, an organization representing veterinarians, and private citizens, among others.

The commenters expressed a variety of concerns that are discussed below by topic. Many commenters referred to ''horses'' rather than ''equines''; for consistency with the rule portion of this document, we will use the term

''equines,'' as appropriate, in discussing those comments.

Summary of Changes Made in Response to Comments

We are making the following changes in response to the comments we received.

1. *Definitions.* We have removed the separate definitions of *owner* and *shipper* and applied the definition of *shipper* to *owner/shipper.* As a result, all references to ''owner'' and ''shipper'' have been changed to ''owner/shipper.''

2. *General information.* Proposed § 88.2(b) provided that, to determine whether an individual or other entity transporting equines to a slaughtering facility is subject to the regulations, a USDA representative may request ''from any individual or other entity'' information regarding the business of the individual or other entity who transported the equines. We have amended that language in this final rule to clarify that a USDA representative may request that information ''from the individual or other entity who transported the equines.'' Also, proposed § 88.2(b) stated that, when such information is requested, the individual or other entity who transported the equines ''will'' provide the information within 30 days and in the format specified by the USDA representative. We have amended this provision to clarify that the individual or other entity ''must'' provide the information within 30 days and in the format specified.

3. *Requirements for transport.* Proposed § 88.4(a)(1) specified that, for a period of not less than 6 hours prior to the equines being loaded onto the conveyance, the owner or shipper must provide each equine appropriate food, potable water, and the opportunity to rest. This final rule clarifies that the 6 hours must be *immediately* prior to the equines being loaded. Proposed § 88.4(a)(3) listed information that must be included on the owner-shipper certificate for each equine being transported. This final rule adds the following information to that list: (1) The owner/shipper's telephone number; (2) the receiver's (destination) name, address, and telephone number; (3) if applicable, the name of the auction/market where the equine is loaded; (4) the breed of the equine; and (5) a description of any tattoos on the equine. This final rule also requires at § 88.4(a)(3) that information provided on the owner-shipper certificate be typed or legibly completed in ink. Proposed § 88.4(a)(3) required the owner-shipper certificate to contain a statement of the equine's fitness to travel. This final rule clarifies that we mean fitness to travel at the time of loading. Proposed § 88.4(a)(3) required a statement on the owner-shipper certificate about any unusual physical conditions and any special handling needs. We have reworded this provision to clarify that we mean any unusual physical conditions that may cause the equine to have special handling needs. Proposed § 88.4(b)(2) stated that ''veterinary assistance must be provided as soon as possible for any equines in obvious physical distress.'' This final rule adds that veterinary assistance must be provided by an equine veterinarian. In addition, § 88.4(b)(2) of this final rule adds that if an equine becomes nonambulatory en route, an owner/shipper must have the equine euthanized by an equine veterinarian. Further, § 88.4(b)(2) of this final rule specifies that, if an equine dies en route, the owner/shipper must contact the nearest APHIS office as soon as possible to allow an APHIS veterinarian to examine the equine, and if an APHIS veterinarian is not available, the owner/shipper must contact an equine veterinarian. Proposed § 88.4(e) required the shipper to secure the services of a veterinary professional to treat an equine, including performing euthanasia, if deemed necessary by the USDA representative. This final rule will require the veterinary professional to be an equine veterinarian.

4. *Requirements at a slaughtering facility.* Proposed § 88.5(b) stated that the shipper who transported the equines to the slaughtering facility must not leave the premises of the slaughtering facility until the equines have been examined by a USDA representative. Under this final rule, if an owner/shipper arrives at a slaughtering facility outside of the facility's normal business hours, the owner/shipper may leave the premises but must return to the premises of the slaughtering facility to meet the USDA representative upon his or her arrival.

Section 88.1—Definitions

Shipper and Owner

A number of commenters expressed concerns about the proposed definitions of *shipper* and *owner.*

We proposed to define *shipper* as ''Any individual, partnership, corporation, or cooperative association that engages in the commercial transportation of equines to slaughtering facilities more often than once a year, except any individual or other entity that transports equines to slaughtering facilities incidental to the principal activity of production agriculture.'' We proposed to define *owner* as ''Any individual, partnership, corporation, or cooperative association that purchases equines for the purpose of sale to a slaughtering facility.'' We stated that both owners and shippers would be subject to the regulations.

One commenter stated that exempting only those who ship equines once a year is too limiting and suggested allowing three shipments per year, which the commenter believed would allow the occasional transport of equines to slaughtering facilities by equine owners. One commenter stated that the definition of *shipper* should reflect both the frequency and number of equines transported. One commenter stated that an entity should have to adhere to the regulations if he or she transported more than 24 equines to slaughter per year.

Based on these comments and our experience with the equine industry, we have decided to apply the regulations to any individual, partnership, corporation, or cooperative association that engages in the commercial transportation of more than 20 equines per year to slaughtering facilities, except any individual or other entity who transports equines to slaughtering facilities incidental to his or her principal activity of production agriculture. We believe that those entities who transport more than 20 equines per year to slaughtering facilities, except those entities who transport equines to slaughtering facilities incidental to their principal activity of production agriculture, should be considered as regularly engaged in the commercial transportation of equines to slaughter.

Many commenters stated that replacing the term ''person'' in the statute with the terms ''owner'' and ''shipper'' exempts from the regulations horse owners who do not fit the definition of *owner*; and horse transporters who do not fit the definition of *shipper* and distorts Congress' intent. These commenters stated that Congress included in the definition of ''person'' any individual or entity that regularly engages in the transportation of equines for slaughter, exempting only those who occasionally transport equines to slaughter incidental to the principal activity of the same individual or other entity in production agriculture; however, the proposed definition of *owner* includes only an individual or entity that purchases equines for the purpose of sale to a slaughtering facility.

We agree that the definition of *owner* may be confusing and could be interpreted to mean that certain entities that did not purchase equines for the

purpose of sale to a slaughtering facility could be excluded from the requirements. Therefore, in this rule, we have removed the definition of *owner.* Instead, we will use the term *owner/shipper,* which we have defined as ''Any individual, partnership, corporation, or cooperative association that engages in the commercial transportation of more than 20 equines per year to slaughtering facilities, except any individual or other entity who transports equines to slaughtering facilities incidental to his or her principal activity of production agriculture.'' We believe that the definition of *owner/shipper* meets the intent of the definition of *person* in the statute.

Many commenters objected that our proposed definitions for *shipper* and *owner* narrowed the scope of the statute and would provide more exemptions from the regulations than intended by Congress. The issue that was mentioned most frequently was that our proposal would exclude persons in the premarin mare urine (PMU) industry. They said these persons would not be ''shippers'' because their principal activity would be considered production agriculture. Others stated that the premarin farmer would not be an ''owner'' because the farmer did not purchase the foals or any other equines for the purpose of sale to a slaughtering facility. For the purposes of these regulations, we consider ''production agriculture'' to mean food or fiber production. The principal activity of the PMU industry is the collection of urine from pregnant mares for use by the pharmaceutical industry, which is not production agriculture. Therefore, individuals or other entities in the PMU industry who transport equines to slaughter incidental to this business would be covered by our regulations unless they ship 20 or fewer equines per year. To clarify that we consider production agriculture to mean food or fiber production, the definition of *owner/shipper* in this final rule specifies that production agriculture means production of food or fiber.

In addition, we believe that the new definition of *owner/shipper*, as previously explained, provides clarification as to the entities that must comply with the regulations.

Some commenters appeared to believe that the term ''production agriculture'' includes professional horse breeders, those who sell riding or work horses, and persons who have riding stables or board horses. They expressed concern that these individuals or other entities would be exempt from the regulations if they transported unwanted foals or other equines to slaughter. Some commenters assumed that trucking companies would be exempt from the regulations if they moved equines to slaughter for a farmer whose principal activity was production agriculture. As explained above, we consider production agriculture to mean food or fiber production. None of the entities listed above are engaged in food or fiber production. Therefore, they would not be exempt from the regulations unless they ship 20 or fewer equines per year.

Some commenters objected to our exempting entities who transport equines to slaughtering facilities incidental to their principal activity of production agriculture. One commenter suggested that the definition of *shipper* exempt only those who transport fewer than 10 equines per year, and another commenter stated that we should exempt those who transport 50 or fewer equines per year instead of providing an exemption for those entities involved in production agriculture. One commenter objected that the proposed definition of *shipper* would allow a farmer or other entity that engages in production agriculture to ship any number of equines a year to slaughtering facilities without complying with the regulations. Another commenter stated that there is no legitimate reason for persons or entities who derive income from production agriculture to be excluded from the regulations, and that anyone who engages in commercial transportation should have to comply with the regulations.

As stated previously, this final rule uses the term *owner/shipper* and exempts only those entities who transport 20 or fewer equines to slaughtering facilities per year and entities who transport equines to slaughtering facilities incidental to their principal activity of production agriculture (food or fiber production). As noted earlier, Congress clarified its intentions concerning who should be covered by the regulations in its conference report. The conference report states, among other things, that the object of any prospective regulation would be the individuals and companies that regularly engage in the commercial transport of equines to slaughter and not the individuals or others who periodically transport equines for slaughter outside of their regular activity. In the definition of *person* in the statute, Congress specifically exempted any individual or entity that occasionally transports equines for slaughter incidental to the principal activity of the individual or other entity in production agriculture.

One commenter stated that the definitions of *owner* and *shipper* should be amended to exclude slaughtering facilities. We disagree. If a slaughtering facility possesses equines that will be transported to a slaughtering facility, including its own, from its own feedlot or other premises and the facility transports more than 20 equines a year, that slaughtering facility is an owner/shipper and must comply with the regulations.

Slaughtering Facility

We proposed to define *slaughtering facility* as ''A commercial establishment that slaughters equines for any purpose.''

Many commenters objected that the definition of *slaughtering facility* excludes facilities that were specifically intended by Congress to be covered by the regulations (i.e., assembly points, feedlots, and stockyards). Several commenters stated that auctions and sales should be added to the definition of *slaughtering facility*. One commenter stated that tracing a stolen equine would be easier if all locations intended by Congress were regulated by APHIS.

The statute gives the Secretary authority to regulate the commercial transportation of equines to slaughtering facilities, which the statute indicates include assembly points, feedlots, or stockyards. The Secretary may use his or her discretion within this authority. At this time, we are defining slaughtering facility to mean only those establishments where equines are slaughtered because (1) we believe that equines moved to these facilities are most at risk of being transported under inhumane conditions, and (2) USDA representatives are available at these facilities to help enforce the regulations. Equines moved to assembly points and stockyards are more likely to be taken better care of because the purpose of the movement is for sale. Also, equines may not be moved from these points to slaughter. Equines sent to feedlots are going there for the express purpose of gaining weight. Plus, we have no way currently to monitor movements from all points to these intermediate destinations.

Regarding lost or stolen equines, we believe that the use of the owner-shipper certificate will help ensure that there is documented identification for each equine that is transported to a slaughtering facility. To improve its usefulness for tracebacks, the owner-shipper certificate will provide for the identification of any auction/market where an equine is loaded. In addition, we plan to develop a database of the information provided on the owner-shipper certificates.

One commenter stated that the definition of *slaughtering facility* should exclude assembly points, feedlots, and stockyards to which the equines are transported for feeding or holding if the time at such a location is intended to exceed 14 days.

The definition of slaughtering facility in this rule excludes assembly points, feedlots, and stockyards regardless of the amount of time an equine spends there. However, equines moved *from* an assembly point, feedlot, or stockyard to a slaughtering facility must be transported in accordance with the regulations.

Commercial Transportation

We defined *commercial transportation* as ''The movement for profit via conveyance on any highway or public road.''

One commenter stated that the definition of *commercial transportation* should exempt transport by conveyances that are owned or leased by slaughtering facilities that deliver equines to their own slaughtering facilities.

As stated previously, if a slaughtering facility transports equines to a slaughtering facility, including its own, the equines must be transported in accordance with the regulations.

Euthanasia

We proposed to define *euthanasia* as ''The humane destruction of an animal by the use of an anesthetic agent or other means that causes painless loss of consciousness and subsequent death.''

One commenter stated that we should provide a list of acceptable anesthetic agents, such as pentobarbital, choral hydrate, pentobarbital combinations, and gunshot, and require them to be administered by a trained person. This commenter added that succinylcholine curariform drugs or other paralytic agents, cyanide, strychnine, ether, and carbon monoxide should be prohibited.

We do not believe that listing anesthetic agents (pharmaceuticals that provide a loss of sensation with or without loss of consciousness) or requiring them to be administered by a trained person is necessary. As explained later in this document, § 88.4(b)(2) of this final rule requires veterinary assistance to be provided by an equine veterinarian. In addition, as explained later in this document, § 88.4(b)(2) of this final rule provides that, if an equine becomes nonambulatory en route, the equine must be euthanized by an equine veterinarian. Also, § 88.4(e) of this final rule provides that, if deemed necessary at any time during transportation to a slaughtering facility, a USDA representative may direct an owner/shipper to take actions to alleviate the suffering of an equine and this could include obtaining the services of an equine veterinarian to treat an equine, including performing euthanasia if necessary. An equine veterinarian will be aware of and will use appropriate and humane anesthetic agents for equines.

As mentioned in the proposed rule, we will allocate funds for public information efforts and are developing educational materials about the humane transport of equines.[1] These materials will include a list of equine veterinarians within the United States and their telephone numbers.

Section 88.2 General information

Federal Preemption

Proposed § 88.2(a) stated that State governments may enact and enforce regulations that are consistent with or that are more stringent than the regulations.

Many commenters expressed concerns that the regulations could preempt State laws that may be more stringent. Some pointed out that in the preamble, under the heading ''Executive Order 12988,'' we stated that the regulations would preempt all State and local laws and regulations that are in conflict with the rule. Many commenters stated that the Federal regulations should not preempt State regulations unless compliance with the State regulations would make compliance with the Federal regulations impossible. In particular, many commenters expressed concern that the regulations would preempt existing State bans on transporting equines in double-deck trailers.

States may promulgate and enforce similar or even more stringent regulations to ensure the humane transport of equines to slaughtering facilities. State or local laws that are more stringent than the regulations will not necessarily conflict with the regulations. For example, the regulations would not preempt existing States' bans on transporting equines in double-deck trailers because double-deck trailers are not required by our regulations. The drivers of conveyances will be responsible for complying with any State laws that prohibit the use in a State of double-deck trailers for the transportation of equines to slaughter. State and local laws and regulations would be ''in conflict'' with the regulations established by this rule only if they made compliance with this rule impossible, just as some commenters suggested.

Collection of Information

Proposed § 88.2(b) stated that a USDA representative may request of any individual or other entity information regarding the business of the individual or other entity that transported the equines to determine whether that individual or other entity is subject to the regulations. The proposal further stated that the individual or other entity will provide the information within 30 days and in a format as specified by the USDA representative.

Several commenters stated that we should say ''must'' request information regarding the business of the individual or other entity that transported the equines and that we should state that the individual or other entity ''must provide'' in place of ''will provide.''

We believe that ''may'' is more appropriate in the first instance because the USDA representative may not need to request information at all times to make a determination of whether an individual or other entity that is transporting the equines to a slaughtering facility is subject to the regulations. However, as to using ''must provide,'' we agree with the commenters and have amended the rule accordingly.

One commenter stated that we should clarify in § 88.2(b) that a USDA representative may request information from the entity that actually transported the load of equines.

We agree. We have amended § 88.2(b) to read as follows: ''To determine whether an individual or other entity found to transport equines to a slaughtering facility is subject to the regulations in this part, a USDA representative may request from that individual or other entity information regarding the business of that individual or other entity. When such information is requested, the individual or other entity who transported the equines must provide the information within 30 days and in a format as may be specified by the USDA representative.''

Section 88.3 Standards for Conveyances

Cargo Space

Proposed § 88.3(a)(1) stated that the animal cargo space of conveyances used for the commercial transportation of equines to slaughtering facilities must be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the equines being transported (e.g., provides

[1] To obtain information about these educational materials, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

adequate ventilation, contains no sharp protrusions, etc.).

Many commenters stated that we should explain adequate ventilation, and some of these commenters stated that adequate ventilation cannot be provided in certain conveyances. Several commenters stated that the requirements should address protection from the elements and extremes of weather. One commenter suggested that trailers be modified to use air scoops to control air flow and stated that trailers that cannot be appropriately modified for operation in extreme weather conditions should not be used when adverse conditions are likely to exist. This commenter stated that a rating system could be used to rate trailers for their suitability for summer or winter conditions and could encourage transporters to invest in better-designed trailers.

As stated previously, the regulations are performance-based standards. If a conveyance does not provide adequate ventilation or other measures to protect the health and well-being of the equines in transit, it must not be used.

The educational materials we are developing about humane transport of equines will include information on ventilation and transport under various weather conditions.

Several commenters stated that our proposal did not address proper flooring in conveyances. Many commenters stated that the rule should require flooring within a conveyance to be of such material (rubber, neoprene, etc.) as to afford the animal secure footing at all times under all conditions. One commenter stated that welding ⅜-inch rods at 12-inch intervals to the deck could prevent slipping. Many commenters stated that ramps should also have nonslip (nonmetal, nonskid) flooring. Several commenters stated that wood shavings, sawdust, or sand could be used to provide secure footing.

There are many ways of providing secure footing and otherwise protecting the health and well-being of equines in transit. We do not believe it is necessary to specify how this must be done. Many of the shippers or owners who transport equines safely and correctly already use flooring that provides equines with secure footing. In addition, the regulations will require the use of an owner-shipper certificate that must describe any preexisting injury the equine has at loading. If an equine arrives at a slaughter facility with an injury that was not identified on the certificate, such as an injury from a fall due to insecure footing, the owner/shipper may be found in violation of the regulations and could be fined in accordance with § 88.6. Also, the educational program previously mentioned in this document will provide owners, shippers, and other stakeholders in the equine slaughtering industry with information regarding the safe transport of equines, including information on flooring.

One commenter objected that our proposal did not require conveyances to be cleaned of manure and urine. This commenter also stated that § 88.3(a)(1) should prohibit use of ropes, wires, or chains in animal cargo space because an equine could become entangled in or injured by them. This commenter further added that a conveyance that transports equines should not have openings in the walls or sides of the vehicle lower than 2 feet from the floor of the conveyance.

Under § 88.3(a)(1), the conveyance used for the commercial transportation of equines to slaughtering facilities must be maintained in a manner that at all times protects the health and well-being of the equines being transported. Maintenance of the conveyance would include the removal of manure and urine, when appropriate. Similarly, owners/shippers must ensure that the cargo space is free of any articles that may injure the equines. If a conveyance has openings in the walls or sides that cause harm to the equines, the conveyance must either be altered or not used for the transport of equines to slaughter. We do not believe that a comprehensive list of all articles or configurations that could injure an equine is necessary or appropriate.

Segregation of Aggressive Equines

Proposed § 88.3(a)(2) stated that the animal cargo space of conveyances used for the commercial transportation of equines to slaughtering facilities must include means of completely segregating each stallion and each aggressive equine on the conveyance so that no stallion or aggressive equine can come into contact with any of the other equines on the conveyance.

Many commenters stated that partitions or individual stalls should be required to segregate stallions and other aggressive equines, and one of these commenters stated that the partitions should be at least 6 feet high. Several commenters stated that partitions should be required for ''high strung'' equines. Several commenters stated that equines should be transported in trailers with separate individual compartments or haltered, and several commenters stated that equines could be tied to prevent injuries due to fighting if not partitioned. One commenter stated that tying equines will prevent rearing. One commenter stated that stallions can be muzzled and tied.

Under § 88.4(a)(4)(ii), stallions and aggressive equines are required to be completely segregated from other equines during transit. We do not believe that it is necessary to require owner/shippers to separate equines into individual compartments. However, because this is a performance-based standard, an owner/shipper could use a partition to separate aggressive equines from other equines. As to tying equines, we agree that tying an equine, in some cases, could prevent it from rearing; however, the equines could still kick. Also, haltering and tying an equine could pose a danger to the equine if it attempted to rear and lost its balance and fell. The equine could be stepped on by other equines or injure itself. As to the comment regarding muzzling the equines, we assume that this commenter recommended muzzling and tying stallions instead of segregating them. Tying up or muzzling an equine is not practical for all equines going to slaughter because some are not halter-broken. We believe the owner/shipper should have some discretion in determining how to achieve segregation of stallions and aggressive equines.

Interior Height

Proposed § 88.3(a)(3) stated that the animal cargo space of conveyances used for the commercial transportation of equines to slaughtering facilities must have sufficient interior height to allow each equine on the conveyance to stand with its head extended to the fullest normal postural height.

Several commenters stated that the performance specifications were too vague and could be subject to interpretation. One commenter suggested that § 88.3(a)(3) state, ''Have sufficient height to allow each equine on the conveyance to stand in a normal relaxed posture with its feet on the floor, without its head or any part of its body contacting the ceiling of the conveyance. There must be sufficient clearance to prevent injury or abrasions to the withers and the top of the rump. Horses which arrive at their destination with reddened abrasions or fresh injuries on the withers or the top of the rump would be in violation.'' One commenter suggested ''* * * extended up to the highest normal postural height so that its withers and top of its rump will not come into contact with the ceiling, but in any case the ceiling must be no less than 7 feet from the floor.'' Many commenters stated that the hauling area of vehicles used to transport equines should be a minimum of 7 feet high from the highest point

used by the animals for footing, to the lowest point in the ceiling, not having a strut or brace, and no less than 6 feet 6 inches from the highest point used by the animals for footing to the lowest point having a strut or brace. Some commenters provided ranges of 6 feet 6 inches to 7 feet for the minimum heights in the hauling area of conveyances, and several commenters stated that the height should be adequate for equines to stand upright and provide for safe loading and unloading. Many commenters stated that the intent of the statute was to require a conveyance to have a ceiling height of no less than 6 feet 6 inches. One commenter stated that § 88.4(a)(3) should state that, if equines arrive at their destination with injuries indicative of transport, the owner/shipper could be found in violation of the regulations.

We believe that the performance-based standards in this rule fulfill the intent of Congress under the statute to help ensure the humane movement of equines in commercial transit to slaughtering facilities. We have left the owner/shipper with the responsibility of ensuring that the design, construction, and maintenance of the conveyance used are adequate to ensure that the conveyance can safely and humanely transport equines. If an equine arrives at its destination with an injury, and the injury was caused by a violation of the regulations, the owner/shipper may be assessed civil penalties of up to $5,000 per violation for each equine injured. Accountability for injuries that occur during transport due to violations is the reason the owner-shipper certificate requires the documentation of any preexisting injuries that are present prior to loading.

Doors and Ramps

Proposed § 88.3(a)(4) stated that the animal cargo space of conveyances used for the commercial transportation of equines to slaughtering facilities must be equipped with doors and ramps of sufficient size and location to provide for safe loading and unloading.

Many commenters stated that we should provide engineering-based standards for doors and ramps. One commenter stated that ramps should have sides, and another commenter stated that rails should be required. One commenter stated that we could require commercial semi-trailers to travel with their own external ramps. One commenter stated that conveyances should be equipped with doorways and ramps of sufficient height and width and location to provide for safe loading and unloading, including in an emergency. One commenter suggested that conveyances be equipped with ramps and floors which provide nonslip footing and doors of sufficient width and height so that a horse that is walking off the conveyance will not sustain visible external injuries such as abrasions and lacerations. Another commenter stated that we should require ramps, rails, and flooring to be maintained in a good state of repair; fittings to be designed for quick and easy operation and maintained in good working order; ramps and floors to be covered with a nonmetal, nonskid surface; and flooring to be free of rust and rot and designed to allow for appropriate drainage. This commenter further stated that vehicles should be fitted with a ramp not to exceed 25 degrees in slope and be of sufficient width and equipped with solid sides of sufficient strength and height to prevent equines from falling off, and that all portable or adjustable ramps should be equipped with anchoring devices. This commenter also stated that vehicles must be equipped with an additional exit ramp suitable for use in emergencies and that conveyances should be equipped to provide for the safest and least stressful loading and unloading. One commenter stated that equines should be loaded in as quiet a situation as possible and that the area surrounding the ramp should also be nonslip.

We believe the performance-based standards in this rule provide clear guidance on what we mean by humane transport. Owner/shippers will have to ensure the safe loading and offloading of equines because, if equines sustain injuries while loading, in transit, or while offloading, due to violations of the regulations, the owner/shipper may be assessed civil penalties as set forth in § 88.6.

Double-Deck Trailers

Proposed § 88.3(b) stated that equines in commercial transportation to slaughtering facilities must not be transported in any conveyance that has the animal cargo space divided into two or more stacked levels, except that conveyances lacking the capability to convert from two or more stacked levels to one level may be used until a date 5 years from the date of publication of the final rule. The proposal also stated that conveyances with collapsible floors (also known as ''floating decks'') must be configured to transport equines on one level only.

Many commenters opposed the continued use of double-deck trailers. Many of them stated that the original intent of the statute was to ban the use of double-deck trailers for the transport of equines.

The statute does not prohibit the use of double-deck trailers or any other conveyance; however, it requires the commercial transport of equines to slaughter by humane methods.

Many commenters stated that continued use of double-deck trailers is inconsistent with providing for the safe and humane transport of equines to slaughter. Many commenters stated that our rule is inconsistent with the State of New York's ban on the use of double-deck trailers for the transport of horses. Several commenters stated that APHIS should provide a shorter grace period for the use of double-deck trailers, and some of these commenters suggested grace periods ranging from 30 days to 2 years. One commenter suggested that, rather than allow an across-the-board 5-year ''grandfather clause,'' APHIS should require entities to show that they cannot practicably comply with an immediate ban. This commenter stated that this requirement would require the shipper to demonstrate how soon he or she could switch to a single-deck trailer. Many commenters expressed concern that, with the 5-year exception, a shipper could begin to use a new double-deck trailer or a double-deck trailer previously used to transport nonequine livestock at any time during the 5-year period. Several commenters stated that vehicles designed for horses should be required.

We believe that the grace period of 5 years is fair and reasonable. As stated in the proposal, we arrived at a time period of 5 years after discussions with interested parties, including representatives of the trucking and equine industries, at two meetings hosted by humane organizations. We believe that many of the double-deck trailers currently used to transport equines will need to be replaced in approximately 5 to 7 years.

We acknowledge that some double-deck trailers are likely to cause injuries and trauma to equines; however, we are allowing their continued use for the next 5 years in order to minimize economic losses to those dependent on the use of double-deck trailers. Nevertheless, we will hold owners and shippers responsible for any injuries that occur during transport. If equines are injured during transport to slaughtering facilities, even if that transport is in double-deck trailers still allowed under the regulations, the owner/shipper could be in violation of the regulations for each equine that is injured and be assessed civil penalties as set forth in § 88.6. Furthermore, although our rule may not mirror

regulations that were promulgated by certain States, this rule will not preempt State regulations that have bans on the use of double-deck trailers.

One commenter stated that the regulations are not clear as to whether the 5-year grace period means that no violations can be written for transporting tall equines in a double-deck trailer for 5 years. As stated above, we will hold owners and shippers responsible for any injuries that occur during transport if the injuries are due to violations of the regulations.

One commenter stated that the use of double-deck trailers will lead to a violation of § 88.4 regarding the observation of equines every 6 hours and offloading every 28 hours because shippers will have little incentive to comply with unloading requirements given the intrinsic hazards to handlers and equines.

In the proposal, we stated that equines frequently sustain injuries from being forced up or down the steep inclines of double-deck loading ramps. However, if an owner/shipper continues to use a double-deck trailer, he or she must take proper precautions to protect equines from injury during loading and offloading while using ramps. In addition, the owner/shipper must adhere to the prescribed observation period and offloading times provided in § 88.4(b)(2) and 88.4(b)(3), respectively. The grace period for double-deck trailers is strictly a phase-out period for the use of double-deck trailers and does not provide protection from the regulations for owners or shippers for injuries incurred by equines due to their transport in double-deck trailers. Therefore, if equines are injured during transport to slaughtering facilities, the owner/shipper may be found in violation of the regulations for each equine that is injured and may be assessed civil penalties as set forth in § 88.6 even if the transport was performed using a double-deck trailer.

One commenter stated that the regulations are not clear as to whether double-deck trailers will be banned as of the date of the final rule.

As of the effective date of this rule, conveyances with collapsible floors (also known as ''floating decks'') must be configured to transport equines on one level only and will not be prohibited. In addition, if a conveyance is converted from two or more stacked levels to one level, the conveyance will not be prohibited. Conveyances that lack the capability to convert from two or more stacked levels to one level may be used until 5 years from the date of publication of this rule.

Many commenters stated that double-deck trailers can jeopardize public safety and, therefore, should not be allowed.

We agree that if drivers operate double-deck trailers in an unsafe manner, the trailers can pose a danger to humans, just as any vehicle that is operated in an unsafe manner. In § 88.4, paragraph (b) states that during transit to the slaughtering facility, the owner/shipper must drive in a manner to avoid causing injury to the equines. This is a performance-based standard that is meant to protect the equines from injury caused by poor driving habits and should help ensure that double-deck trailers are driven in a safe manner. Our educational program regarding the humane transport of equines will include safe driving procedures.

Several commenters stated double-deck trailers should not be prohibited after 5 years if they can be altered to accommodate equines or converted to single level.

Double-deck trailers do not provide adequate headroom for equines, with the possible exception of foals and yearlings. We do not believe that trailers that have two or more permanent levels that are not collapsible can be adequately altered to accommodate adult equines, especially tall equines. A tall equine can be 8 feet tall to the top of its head when standing on all four legs and close to 12 feet tall when rearing. As stated in the proposal, the overpasses on most U.S. interstate highways are between 14- and 16-feet high. We are not prohibiting, either immediately or after 5 years, the use of double-deck trailers that can be converted to a single level.

Several commenters said that if equines are sorted by size, double-deck trailers could continue to be used. Other commenters stated that we should require only that ceilings be of adequate height, which one commenter maintained would prohibit only unusually tall equines from the double-deck portion of the trailers. One commenter stated that § 88.3(b) should require only that conveyances be of sufficient interior height to allow each equine to stand with its head extended to the fullest normal postural height.

Again, we do not believe that double-deck trailers provide sufficient headroom for horses other than foals and yearlings.

Two commenters stated that research has shown that stress levels and physiological factors are improved on double-deck trailers versus single-deck trailers.

Upon completion of the USDA research, we determined that rubber padding used in the single-deck trailers may have caused physiological differences between horses transported in double-deck trailers and horses transported in single-deck trailers. The rubber padding lined the interior walls of the single-deck trailer and limited the ventilation capacity within the conveyance. However, this discovery may support the use of rubber padding to decrease the exposure of equines to extremely low temperatures during their transport in the winter.

Several commenters opposed the prohibition on double-deck trailers because single deck, or ''straight-floor,'' trailers do not hold as many horses. Several commenters stated that they now use the double-deck trailers for horses and other livestock and that going to a single deck, or ''straight-floor,'' trailer would not be economical for them because they hold fewer animals. Thus, our rule would cause them economic hardship. One commenter stated that, since it will still be legal to transport livestock other than equines in double-deck trailers, and to transport equines to destinations other than slaughtering facilities in double-deck trailers, shippers will have no economic incentive to trade in double-deck trailers for single-deck trailers. The commenter maintained that the rule will, therefore, impede the transport of equines to slaughter by reducing the number of vehicles available for this transport and increasing the costs of transporting equines to slaughter.

We acknowledge that double-deck trailers can carry more equines and other livestock than single-deck trailers. We are allowing the continued use of double-deck trailers for the next 5 years in order to minimize economic losses to those dependent on the use of double-deck trailers. We do not believe that equines can be safely and humanely transported on a conveyance that has an animal cargo space divided into two or more stacked levels. As stated in the proposal, double-deck trailers can continue to be used to transport other commodities, including produce and livestock other than equines. Also, owners can sell their serviceable trailers at fair market value to transporters of commodities other than equines.

Section 88.4 Requirements for Transport

Food and Water Prior to Transport

Proposed § 88.4(a)(1) stated that, prior to the commercial transportation of equines to a slaughtering facility, the shipper or owner must, for a period of not less than 6 consecutive hours prior to the equines being loaded on the

conveyance, provide each equine appropriate food (*i.e.,* hay, grass, or other food that would allow an equine in transit to maintain well-being), potable water, and the opportunity to rest.

Several commenters expressed concern that the proposed rule would not require the 6-hour period of feed, water, and rest to occur immediately preceding loading for transport. One commenter suggested saying ''not more than 6 consecutive hours prior to the equines being loaded.'' One commenter suggested inserting the words ''for a period of at least 6 consecutive hours immediately. * * *''

It was our intent in § 88.4(a)(1) to require a 6-hour time period immediately preceding the loading of the equines. To make that clearer, we have added the word ''immediately'' before the word ''prior'' in the rule portion of this document.

Several commenters stated that the proposed provisions for access to food and water were too vague. One commenter objected to the lack of specific information regarding the quality or quantity of food and water to be provided. Two commenters stated that equines should be grouped appropriately to ensure that all of them have uninhibited access to food and water, and that water should be *ad libitum,* and one other commenter stated that the equines should have unimpeded access. One commenter suggested that we require ''free access to potable water *ad libitum.*''

The rule requires that each equine be provided appropriate food and potable water. This means that each equine must have access to the food and water. Also, the rule requires ''appropriate'' food. We do not believe that it is necessary to prescribe the quality or quantity of food that must be provided or to require grouping of animals. We believe that the owner/shipper can determine the quality and quantity of food and water that should be provided to equines and the best methods to ensure that all equines have access to food and water.

One commenter stated that requiring owners or shippers to provide equines with access to feed within 6 hours of transport could be a potential problem due to the possibility of impaction. This commenter stated that there are anecdotal accounts linking impaction to feed and dehydration and that requiring feed may need more study.

We are aware that impaction can occur under certain circumstances; however, impaction has been associated with inadequate intake of water. (Impaction is the blockage of a portion of the digestive system formed by digested material.) However, we believe that allowing equines access to appropriate food and potable water for 6 hours immediately prior to loading is unlikely to result in impaction and is essential to ensure that the equines do not undergo serious physiological distress during transit.

One commenter stated that the minimum rest period prior to loading should be 16 hours with unlimited access to water, good quality hay, and shelter, and another commenter stated that water should be provided within 12 hours of transport.

Based on one of the USDA-commissioned research studies, we found that equines that were provided water for 6 hours immediately before transport did better than those that were provided water for more than 6 hours.

One commenter stated that feedlots practice dry lotting, which means that equines are not fed immediately prior to slaughter, and the regulations are not clear as to whether the practice will be prohibited when the rule is finalized. One commenter stated that providing food and water is not necessary if equines are going directly to processing from the truck.

The regulations at § 88.4(a)(1) require that equines be provided food and water prior to loading for transport to slaughter, and § 88.5 requires that equines be given access to food and water after being unloaded at the slaughtering facility. As a consequence, dry lotting will be prohibited.

One commenter stated that equines purchased at sale barns may have already been deprived of water for quite some time. This commenter stated that the regulations are not clear as to how USDA representatives will verify that each equine has received the required 6-hour access to food and water and whether USDA representatives will examine equines for evidence that they received preloading services upon arrival at the slaughtering facility. One commenter stated that we should not trust the owner-shipper statement that claims an equine was provided access to appropriate food, potable water, and rest prior to loading.

Owners/shippers are responsible for ensuring that equines have access to food, water, and rest for 6 hours immediately prior to loading on a conveyance for transport to a slaughtering facility. In accordance with § 88.4(a)(3), the owner/shipper must certify on the owner-shipper certificate for each equine being transported that the equine had access to food, water, and rest for the 6 hours immediately prior to loading into the conveyance. In addition, in accordance with § 88.5(a)(3), a USDA representative must be given access to the equines upon arrival at the slaughtering facility. If the USDA representative suspects that the equines are suffering from the effects of a lack of food, water, or rest, he or she can question the owner/shipper regarding the care the equines received prior to and during transport. If we determine that an owner/shipper did not comply with any requirement, the owner/shipper may be subject to civil penalties of up to $5,000 per violation per equine as set forth in § 88.6. In addition, if we determine that the owner/shipper falsified the form, the owner/shipper could be subject to a fine of not more than $10,000 or imprisonment for not more than 5 years or both. (The penalty for falsification of the owner-shipper certificate is stated on the owner-shipper certificate (18 U.S.C. 1001).)

USDA Backtag

Proposed § 88.4(a)(2) stated that, prior to the commercial transportation of equines to a slaughtering facility, the shipper or owner must apply a USDA backtag to each equine in the shipment.

One commenter stated that we should remove the requirement for a backtag and require each equine to be marked in a manner that provides a unique identification of the animal.

Backtags provide a unique identification for each animal. They are easy to apply and easy to read. We believe that requiring their use will facilitate identification of equines during loading, unloading, and in spaces where they are congregated. If an equine has a unique identifying mark such as a brand or tattoo, the owner-shipper must record the identifying mark on the owner-shipper certificate along with the USDA backtag number.

One commenter stated that an identification tag should be attached to each equine and that the tag should provide the identification of the owner/shipper and the license plate number of the conveyance.

A USDA backtag will be applied to each equine and the number will be recorded on the owner-shipper certificate for each equine. The owner-shipper certificate will contain the name, address, and telephone number of the owner/shipper. In addition, the vehicle license number or registration number of the conveyance will be recorded on the owner-shipper certificate. Because the USDA backtag provides a unique identification for each animal, the backtag will allow us to determine the identification of the

owner/shipper should that become necessary.

Owner-Shipper Certificate

Proposed § 88.4(a)(3) stated that, prior to the commercial transportation of equines to a slaughtering facility, the shipper or owner must complete and sign an owner-shipper certificate for each equine being transported. The proposal also stated that the owner-shipper certificate for each equine must accompany the equine throughout transit to the slaughtering facility and must include specified information, including, under § 88.4(a)(3)(v) (redesignated as § 88.4(a)(3)(vii) in this final rule), a statement of the equine's fitness to travel (a statement that the equine is able to bear weight on all four limbs, is able to walk unassisted, is not blind in both eyes, is older than 6 months of age, and is not likely to give birth during the trip).

One commenter maintained that an owner-shipper certificate is unnecessary paperwork, because, upon arrival at the slaughtering facility, the USDA representative can check the equines and conveyance and address any problems noted with the owner of the equines.

As explained in our proposal, we have several reasons for requiring the owner-shipper certificate. They make the owner/shipper responsible for ensuring that the equines are fit to travel and have had adequate food, water, and rest prior to transport; provide a way for the USDA representative at slaughtering facilities to determine whether an injury occurred en route; assist in the prosecution of persons found to be in violation of the regulations; and facilitate the traceback of any stolen equines.

Owner-Shipper Certificate; Who Signs

Many commenters expressed concern about an owner or shipper preparing the certificate for movement. In particular, with respect to the statement of fitness for travel, they stated that the owner or shipper may have an economic incentive to certify the equines fit to travel. Many commenters stated that a professional should certify an equine's fitness to travel prior to the transport to ensure the equine is in a reasonable state of health at the beginning of the trip. (Some of these commenters listed people such as a licensed veterinarian, accredited veterinarian, USDA representative, or licensed veterinary technician. One commenter added certified humane officers and brand inspectors.) Many commenters stated that the fitness to travel should be certified by a veterinarian because an owner/shipper could ship a lame equine without identifying the injury on the certificate and state that injury occurred en route if lameness is noted as the equine is unloaded at the slaughtering facility. Several commenters stated that a lack of veterinary certification could mean that the USDA representative at the slaughtering facility would be unable to determine whether the injuries were preexisting or a result of transportation. One commenter stated that without medical or veterinary knowledge or training, there may be mistakes or inaccurate entries on the owner-shipper certificate. One commenter stated that the owner-shipper certificate requires subjective determinations that cannot be made by nonveterinary personnel. Many commenters stated that the original intent of the statute was to ban the shipment of sick and injured horses by having a veterinarian inspect the horses, rather than the owner, who stands to lose money if the horse is not shipped.

We considered requiring a veterinarian to certify each equine's fitness to travel. However, in most cases, because of the lack of a client-patient relationship, the veterinarian would not have liability coverage. We also determined that use of accredited veterinarians would be inappropriate because, as provided in 9 CFR part 161, they perform functions required by cooperative State-Federal disease control and eradication programs. We also decided, however, that a veterinarian was not needed to provide the information we require on the owner-shipper certificate. This information could be provided by any person who makes careful observation of an equine. However, if an owner/shipper wishes to have a veterinarian examine an equine prior to loading the equine for slaughter, the owner/shipper may make those arrangements.

If an equine arrives at a slaughtering facility with an injury that should have prevented the equine from being transported (e.g., if the equine cannot walk unassisted), the owner/shipper may be found in violation of the regulations and could be subject to civil penalties as set forth in § 88.6. In addition, if an equine arrives at a slaughtering facility with an injury that was not identified on the owner-shipper certificate, the USDA representative, who in most cases will be a veterinarian, will make a professional judgment as to the length of time an equine suffered the lameness or the age of a wound and its possible cause. If the USDA representative determines that the injury occurred en route or was present prior to loading the equine on the conveyance, the owner/shipper may be found in violation of the regulations and subject to civil penalties as set forth in § 88.6. Any owner/shipper found to have falsified a certificate could also be subject to a fine of not more than $10,000 or imprisonment for not more than 5 years or both, in accordance with 18 U.S.C. 1001.

A few commenters stated that allowing owners or shippers to complete the owner-shipper certificate is inconsistent with other regulations that require an accredited veterinarian to sign a certificate or that require a health certificate for the interstate movement of equines.

Other Federal regulations regarding the interstate movement of equines, for example, those for equine infectious anemia (9 CFR part 75), are intended to prevent the interstate spread of communicable diseases of equines. This rule does not pertain to a disease control or eradication program, and veterinary medical training is not required to complete the owner-shipper certificate.

One commenter asked if there would be a penalty for the owner or shipper if he or she is mistaken about an equine's fitness to travel. One commenter stated that an owner or shipper should not be found in violation of the regulations if he or she makes a mistake on the owner-shipper certificate or neglects to mark a box, such as the sex of the equine.

If an owner/shipper is unsure about an equine's fitness to travel, he or she should seek the proper guidance from a veterinarian or other qualified individual. If an owner/shipper makes a mistake on the owner-shipper certificate or fails to accurately complete the certificate, APHIS will attempt to determine whether the mistake or failure to accurately complete the certificate was inadvertent or an attempt to circumvent the regulations. We understand that, at times, someone who fills out a certificate may make a minor error, and we do not intend to bring a case against someone solely because he or she made a minor clerical error. However, falsification of the owner-shipper certificate is a criminal offense that may result in a fine of not more than $10,000 or imprisonment for not more than 5 years or both because the owner-shipper certificate is a Federal document.

In the proposal, § 88.4(a)(3)(iii) (redesignated as § 88.4(a)(3)(v) in this final rule) required that the owner-shipper certificate provide a description of the equine's physical characteristics, including such information as sex, coloring, distinguishing markings, permanent brands, and electronic means of identification.

Several commenters stated that, at the point of loading, a USDA representative should inspect the equines to verify the description of the equine on each owner-shipper certificate.

Shippers and owners are responsible for the accuracy of the information on the owner-shipper certificate for each equine being transported. We believe that shippers and owners are capable of providing an accurate description of an equine's physical characteristics. If we find that an owner/shipper has provided false information on an owner-shipper certificate, the owner/shipper may be found in violation of the regulations and be assessed civil penalties for each equine as provided in § 88.6. In addition, if an owner/shipper provides false information, the owner/shipper could be subject to criminal charges that may result in a fine of not more than $10,000 or imprisonment for not more than 5 years or both, under 18 U.S.C. 1001.

Owner-Shipper Certificate; When Signed

One commenter stated that fitness to travel should not be determined more than 48 hours prior to loading.

We agree that if an equine's fitness to travel is assessed too far in advance, there is a chance that an equine that becomes ill or injured would not be noted. The fitness to travel should be determined during the period prior to the loading of equines into the conveyance. Ideally, this determination should be made when equines are provided appropriate food, potable water, and rest in accordance with § 88.4(a)(1). In this final rule, we have reworded the provision concerning an equine's ''fitness to travel'' to clarify that we mean at the time of loading (see § 88.4(a)(3)(vii)).

Owner-Shipper Certificate; Identification of Owner, Shipper, Consignee, Vehicle

Under proposed § 88.4(a)(3), the shipper's name and address, and, if the shipper is not the owner of the equines, the owner's name and address, and a description of the conveyance, including the license plate number, must be included on the owner-shipper certificate.

One commenter stated that we should require the owner-shipper certificate to state the ultimate destination (city, State, and name of business) as well as any anticipated intermediate stopping points to allow USDA and law enforcement personnel to intercept a conveyance en route to a slaughtering facility. This commenter also suggested that the expected driving route should be filed with a copy of the owner-shipper certificate at the point of sale and departure.

We agree that the destination of each equine should be required on the owner-shipper certificate and our certificate includes fields for that information. We have added a requirement to § 88.4(a)(3) that the owner-shipper certificate provide the name, address (street address, city, and State), and telephone number of the receiver (destination). We do not believe that listing intermediate stopping points on the owner-shipper certificate is necessary, however. There are only a few slaughtering establishments for equines. Most drivers follow a set route to the slaughtering facility to which they transport equines and, as a result, USDA representatives or other law enforcement officials will be able to locate the conveyance.

Several commenters stated that it is unnecessary to require a separate owner-shipper certificate for each equine in a shipment or to require a new owner-shipper certificate for each segment of the trip. They stated that, in the case of equines that are unloaded en route, information about the equines' fitness to travel and other required information could be added to the original certificate if the certificate was designed to accommodate more than one trip segment.

We do not believe that there would be circumstances that an owner/shipper certificate would unload equines except in an emergency or as required in § 88.4(b)(3) for equines that have been on a conveyance for 28 hours. Under these circumstances, we would want the owner/shipper to reassess each equine's fitness to travel prior to reloading onto the conveyance.

We require an owner-shipper certificate for each equine on the conveyance because the certificate provides a description of the equine. These descriptions can help us trace lost or stolen equines.

One commenter stated that the owner-shipper certificate should include the telephone number of the consignor (shipper) and consignee's (receiver/destination) businesses.

We agree. There is a field for this information on the certificate, and we have added that requirement to § 88.4(a)(3).

Owner-Shipper Certificate; Description of the Equine

As noted earlier, proposed § 88.4(a)(3)(ii) required the owner-shipper certificate to include a description of the equine's physical characteristics, including such information as sex, coloring, distinguishing markings, permanent brands, and electronic devices that could be used to identify the equines.

One commenter stated that the owner-shipper certificate should include additional identifying information, including the breed or type of equine, color combinations, and the location and relative size of any markings, brands, tattoos, or scars, as well as the approximate age of the equine. The commenter stated that this information could assist individuals who are tracing missing or stolen animals. One commenter stated that a description of any physical preconditions should be included on the owner-shipper certificate. One commenter stated that we should require tattoos, especially lip tattoos, to be identified on the certificate.

The owner-shipper certificate contains fields for the owner/shipper to indicate the breed and color of the equine. If a specific breed or color is not indicated on the certificate, there is a field marked ''Other'' that should be completed. Also, on the owner-shipper certificate, the field for identifying marks specifies ''brands, tattoos, and scars.'' In this final rule, § 88.4(a)(3) specifies that the owner-shipper certificate should include the breed of the equine and any tattoos that are present. We believe that most people who are familiar with handling equines will also add any facial or leg markings, as appropriate; however, we have added ''facial or leg markings'' to the field for ''Identifying Marks'' on the owner-shipper certificate. The certificate also provides space for recording any preconditions. We are not requiring an age to be indicated because an owner/shipper may have to guess the age of the equine. People use the teeth of an equine to determine its age, but, in most cases, there are many variables such as teeth grinding and diet that can affect the accuracy of the assessment.

Who Determines Fitness To Travel

One commenter stated that studies have shown that the majority of injuries to equines do not occur during transport or marketing but occur at the point of origin, prior to transport, due to either neglect or abuse. Several commenters provided examples of injuries that equines exhibited upon their arrival at a slaughtering facility that were determined to have occurred at the point of origin. These examples included equines that were emaciated, had severe founder, broken legs, deformities, etc. Several commenters provided examples of injuries, such as illness and broken limbs, that equines

exhibited at sales or auctions and that were caused by owners. The commenters stated that the equines were shipped even though they were unfit to travel. One commenter provided examples of people who have a history of transporting injured equines, transporting equines without water, or transporting equines in conveyances that are unsafe. A number of commenters suggested that APHIS should regulate the care of equines prior to loading.

This rule prohibits the commercial transport to slaughter of equines that are not found fit to travel under § 88.4(a)(3)(vii). This rule also requires that the equines be provided food, water, and rest for the 6 hours immediately prior to transport under § 88.4(a)(1). We believe that these regulations will prevent most animals with point-of-origin injuries from being moved to slaughtering facilities via commercial transportation.

Criteria for Fitness To Travel

As noted above, we proposed to require a statement of the equine's fitness to travel on the owner-shipper certificate for each equine. Proposed § 88.4(a)(3)(v) (redesignated as paragraph (a)(3)(vii) in this final rule) stated that equines must be able to bear weight on all four limbs, be able to walk unassisted, have sight in at least one eye, be older than 6 months of age, and not be likely to give birth during the trip.

One commenter suggested that we remove the reference to a ''statement of fitness to travel'' because that language implies that we are requiring untrained people to make a subjective determination.

We agree that, by itself, that phrase is subjective. However, the criteria for making that determination are objective. The phrase simply states the purpose of the criteria that the owner/shipper must consider prior to loading equines on a conveyance.

Several commenters objected to, or suggested changes to, the criteria. Some stated that the proposed regulations would allow the shipment of blind animals that are unable to defend themselves, board a conveyance, or travel without injury, as well as allow the transport of equines that are extremely ill, diseased, injured, incapacitated, or not physically fit. One commenter stated that equines that exhibit obvious disease, injuries, or similar indications of ill health should not be transported unless they are being removed from a facility for humane destruction due to the disease or injury as determined by a certified veterinarian. One commenter stated that we should prohibit the transport of any equine with a known physical problem likely to cause collapse and that animals that are in immediate and severe distress and determined unfit to travel by an accredited veterinarian should be immediately and humanely euthanized. One commenter stated that, at minimum, the regulations should require that an equine bear weight evenly on all four limbs as determined by a veterinarian.

In § 88.4, paragraph (a)(3)(vii) prohibits the transport of equines that are blind in both eyes. However, equines that are blind in one eye can be transported safely and humanely when correctly loaded and placed on the conveyance. In addition, paragraph (a)(3)(vii) requires that equines be able to bear weight on all four limbs, be able to walk unassisted, be older than 6 months of age, and not be likely to give birth during the trip. These requirements will, in most cases, prohibit the transport of equines that are extremely ill or diseased, injured, or incapacitated.

Two commenters stated that, to ensure that equines are fit for travel, the owner-shipper certificate should be modified to state, ''Horse is able to walk unassisted without physical prodding or marked difficulty.'' The commenters stated that equines are often forced to walk onto vehicles through the use of whips, hard slaps, kicks, or other devices and that ''unassisted'' is not defined and could be interpreted to allow the use of whips, hard slaps, etc. One commenter stated that an equine that cannot enter a conveyance under its own power should not be loaded.

In § 88.4, paragraph (a)(3)(vii) states that the equine must be able to bear weight on all four limbs and be able to walk unassisted. Unassisted means that the equine must be capable of climbing a ramp or entering a conveyance with ease and under its own power. In addition, § 88.4(c) states that the equines must be handled in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma.

One commenter stated that the owner-shipper certificate should use language similar to performance-based standards, i.e., require that the equine arrive in a condition that meets the requirements of animal cruelty laws.

We believe that a reference to animal cruelty laws would not specifically address the needs of equines being transported to slaughter. We believe that our requirements are clear.

Many commenters stated that pregnant mares, late-term pregnant mares, foals of varying ages (up to 1 year), and foals less than 600 pounds should not be transported to slaughtering facilities.

Equines that are likely to give birth during transport can develop serious complications if they foal during transport. In addition, the mare's and the foal's well-being could be in danger. Among other things, § 88.4(a)(3)(vii) states that an equine cannot be transported if it is likely to give birth during the trip. If an owner/shipper thinks it's possible that a mare is close to delivering, the owner/shipper should not put the mare on the conveyance. If an owner/shipper transports a late-term pregnant mare that gives birth during transport, the owner/shipper may be found in violation of the regulations. In addition, the owner/shipper could be found to have falsified the owner-shipper certificate. We believe that, as long as the mare is not likely to give birth during transport, it can be safely transported.

As to the transport of foals to slaughtering facilities, § 88.4(a)(3)(vii) prohibits, among other things, the transport of equines less than 6 months of age to a slaughter facility. We believe that foals older than 6 months of age, including those that weigh less than 600 pounds, can be transported safely and humanely if the foals are loaded in a proper manner.

One commenter stated that mares should not be taken from their foals and shipped to slaughter if their foals are under 4 months of age.

We do not believe that it is necessary to prohibit the shipment of mares that will leave 4-month-old foals on the premises of origin. Foals are weaned from 1 to 9 months of age, depending on the standard practice of the premises of operation. Weaning is extremely traumatic at any age and could be in direct proportion to the time the mare and foal spend together. From this standpoint, separating a mare from its foal at 4 months may be less stressful for the mare and the foal than when the foal is older.

Several commenters expressed concern that shoed equines, especially equines with shoes on their hind feet, could injure other equines and said they should not be transported.

We are aware that equines can be injured when kicked by other equines that are wearing shoes. In addition, shoes can be slippery in a conveyance if the proper flooring is not provided. As stated previously, these regulations are performance-based standards. We believe that shoed equines may be transported safely if the owner/shipper takes proper precautions and, therefore,

will not prohibit the transport of shoed equines. However, the owner/shipper must ensure that equines are not injured during transport. Any injuries that an equine incurs during transport may result in the owner/shipper being found in violation of the regulations and subject to civil penalties as provided in § 88.6.

One commenter stated that the regulations will require owners to keep lame and debilitated equines or pay for euthanasia rather than sell the equines to slaughter to salvage some value.

The regulations pertain to those individuals who meet the definition of *owner/shipper*. An individual or entity is exempt from these regulations if the individual or entity transports 20 or fewer equines to slaughtering facilities or transports equines to slaughtering facilities incidental to his or her principal activity of production agriculture.

Owner-Shipper Certificate; Identification of Special Handling Needs

Proposed § 88.4(a)(3)(vi) (redesignated as § 88.4(a)(3)(viii) in this final rule) stated that the owner-shipper certificate should include a description of anything unusual with regard to the physical condition of the equine, such as a wound or blindness in one eye, and any special handling needs.

One commenter stated that special handling needs means taping and wiring horses mouths for the entire journey, which are practices that should be prohibited. Many commenters stated that taping shut the mouths and/or eyes of aggressive horses is inhumane and should be prohibited. One added that taping the nostrils of equines should be banned. One commenter stated that the meaning of special handling is not clear and that we should remove those words from § 88.4(a)(3)(vi). This commenter questioned whether a determination by APHIS that an equine required special handling would override a different opinion expressed on an owner-shipper certificate.

By special handling needs, we meant that an owner/shipper should provide any information that should be taken into account to ensure the safe and humane transport of the equine. For example, an owner/shipper could use this space to indicate that an equine is blind in one eye, which would alert those handling the equine to be cautious when handling the horse. We have slightly reworded the provision concerning special handling needs in this final rule to clarify what we mean. Special handling needs should in no way be interpreted to mean instructions for taping or wiring the mouths or taping the eyes or nostrils of equines. We do not condone such practices. In fact, § 88.4(c) of the regulations requires the handling of equines in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma to the equines. The educational program that we are developing will explain appropriate techniques for the humane transport of equines to slaughtering facilities.

Owner-Shipper Certificate; Date, Time, and Place of Loading

Proposed § 88.4(a)(3)(vii) (redesignated as § 88.4(a)(3)(ix) in this final rule) stated that the shipper or owner must indicate on the certificate the date, time, and place the equines were loaded.

Two commenters stated that the departure time should be noted and one commenter stated that a third party should verify the exact time and location of loading.

We believe that the time each equine was loaded onto the conveyance is more essential than the time of departure because, based on § 88.4 (b)(2), any equine that has been on the conveyance for 28 consecutive hours, whether the conveyance was in motion or not, must be offloaded and provided appropriate food, potable water, and the opportunity to rest for 6 consecutive hours.

We do not believe that a third party should be required to verify the time and location of loading. If an owner/shipper falsifies the owner-shipper certificate, the falsification may be a criminal offense that could result in a fine of not more than $10,000 or imprisonment for not more than 5 years or both.

Owner-Shipper Certificate; Other Comments

One commenter stated that APHIS should require the owner-shipper certificate to be legibly filled out in ink or typed and should prohibit script writing other than for the signature. One commenter stated that the departure time should be written in ink.

We agree that the owner-shipper certificate must be legibly completed. We are amending § 88.4(a)(3) to require the owner/shipper to type or legibly provide in ink the information required on the owner-shipper certificate. If the owner-shipper certificate is not legibly completed, the owner/shipper may be assessed a civil penalty.

One commenter wanted the certificate to state that the equine was loaded under the supervision of the owner/shipper. The commenter also requested that the certificate include a statement that the horse's condition, gender, and size were taken into account in positioning it in the vehicle.

We do not believe it is necessary to require a statement that the equine was loaded under the supervision of the owner/shipper. The owner/shipper must complete and sign the owner-shipper certificate, so he or she must be present. We do not believe that adding a qualifying statement that the equine's condition, gender, and size were taken into account when loading is necessary. However, our educational program will include instruction on the proper loading and offloading of equines, as well as how to position animals so that smaller or thin equines or ponies are not harmed by larger equines.

Another commenter also stated that the owner-shipper certificate should include the name and address of the shipper and the owner if the owner is not the shipper.

We do not believe that the owner has to be identified on the certificate if he or she is not the shipper. In most cases where the owner is not the shipper, the shipper will have purchased the equines from an auction/market. The records maintained at most auction/markets include the identification and address of the owner of the equines should it become necessary to trace the owner.

One commenter stated that funds should be set aside for a pamphlet with clear instructions on the proper handling of equines and completion of the owner-shipper certificate.

The educational program we are developing in conjunction with this rule will provide guidelines for the humane transport of equines to slaughtering facilities, including instructions for completion of an owner-shipper certificate.

Segregation of Stallions and Aggressive Equines

Proposed § 88.4(a)(4)(ii) required that each stallion and any aggressive equines be segregated on the conveyance to prevent them from having contact with any other equine on the conveyance.

Many commenters expressed concern that our requirement for the segregation of stallions would encourage point-of-sale castration. They recommended that our rule be amended in some way to discourage point-of-sale castration. One commenter stated that the regulations should not allow a stallion to be gelded within 2 weeks preceding transport unless it is segregated and accompanied by a signed and dated veterinary certificate.

We do not believe that the regulations need to address point-of-sale castration. A recovery period of 21 days or more is

necessary for the site of castration to heal. If an equine arrives at slaughter with a fresh and open wound, the equine's value will decline, and the owner/shipper will lose money. The healthier an equine is upon arrival at the slaughtering facility, the more that equine is worth. In addition, stallions retain their aggressive behavior for a period of at least 30 days after castration. Therefore, an owner/shipper could not circumvent the requirement for segregating a stallion by performing a point-of-sale castration because the equine would still be aggressive, and aggressive equines must be segregated from other equines in the conveyance.

Many commenters stated that equines should be segregated by size and/or sex, several commenters added age, and one commenter added height and weight. One commenter stated that all equines 14.2 hands or less should be shipped on separate conveyances from larger equines. One commenter stated that thin, weak, and old horses should be separated.

As stated previously, we designed performance-based standards to ensure that equines have sufficient space and are protected from injury during transport. We do not believe it is necessary to spell out in the regulations exactly how this must be accomplished. However, the educational program we are developing will show appropriate ways to transport equines and will address loading by size. It is worth noting that, if an equine is extremely thin, weak, or old, the equine may not be fit to travel as required by § 88.4(a)(3)(vii).

Some commenters stated that we should not require segregation of aggressive equines. One commenter stated that we may have gone beyond our authority under the statute to require the segregation of aggressive equines, along with stallions. Several comments stated that it was unclear what we meant by ''aggressive'' or how aggressiveness would be determined. One commenter stated that it was not clear who would be responsible for determining whether an equine is aggressive. Two commenters expressed concern that an equine may not be aggressive during observation prior to transport but may become aggressive during transport. One commenter suggested that we require segregation of any equine ''that has been observed to display aggressiveness toward other horses,'' to give the shipper some direction and protection if an equine that did not show aggressive behavior becomes aggressive when transport begins.

The statute directs the Secretary to review, among other things, the segregation of stallions from other equines and such other issues as the Secretary considers appropriate. The main purpose for separating stallions (uncastrated male equines that are 1 year of age or older) is that stallions are known to be aggressive animals that are easily provoked into attacking other equines. In line with protecting equines from aggressive behavior by stallions, we believe that any aggressive equine should be separated from the other equines as set forth in § 88.3(a)(2). In fact, one of the USDA-commissioned studies observed that the segregation of stallions did not solve the entire aggression problem. The study determined that aggressive geldings and mares had to be separated in the same manner as stallions.

The use of ''aggressive'' in the regulations is in accordance with the definition of the term ''aggressive'' found in various dictionaries. If an equine attacks another equine for no apparent reason or kicks or bites another equine without provocation, for example, we believe that equine should be considered aggressive. The educational program we are developing will provide guidance concerning aggressive equines. However, USDA representatives will be aware that some equines that have not exhibited aggressive behavior on previous occasions may do so under certain conditions, and they will take into consideration that the owner/shipper may not have had prior knowledge of the equines' aggressive tendencies.

Some commenters stated that mares with foals should be segregated from other equines during transport. We believe that mares with foals may be transported safely with other equines if the owner/shipper takes proper precautions and, therefore, we will not require the segregation of mares with foal. The educational program that we are developing will show owners, shippers, and other stakeholders in the equine slaughtering industry appropriate loading procedures and placement of equines in the conveyance.

Several commenters stated that equines with shoes on their hind feet should be segregated.

As stated previously, these regulations are performance-based standards. We believe that shoed equines may be transported safely with other equines if the owner/shipper takes proper precautions and, therefore, we will not require the segregation of shoed equines. However, the owner/shipper must ensure that equines are not injured during transport. Any injuries that an equine incurs during transport may result in the owner/shipper being found in violation of the regulations and subject to civil penalties as provided in § 88.6.

Floor Space

Proposed § 88.4(a)(4)(i) stated that equines on the conveyance must be loaded so that each equine has enough floor space to ensure that no equine is crowded in a way likely to cause injury or discomfort.

Several commenters stated that this requirement is vague and that specifications for floor space should be included in the regulations. One commenter stated that the number of equines carried should be equal to the length of the compartment in feet divided by 4. One commenter suggested a standard of 1.75m^2/equine or approximately 18 square feet per equine. Some commenters provided further suggestions based on transit time, and/or the number, ages, and size of the equines. One commenter stated that a numerical density specification should be provided and should be based on scientific studies and practical experience. One commenter stated that we should determine an average numerical figure that is safe and acceptable for each vehicle type based on research and require each vehicle to have a permanent tag affixed that specifies the range or the number of equines/ponies that are acceptable to be transported in the vehicle at one time. One commenter stated that we should determine the appropriate density of equines for each vehicle-type, based on studies conducted by Texas A&M and Colorado State University. Several commenters stated that horse industry standard for trailers is 8 to 15 horses and not the 40 to 45 that would be permitted for slaughter transport. One commenter suggested a system in which equines may be transported at higher densities during shorter trips, but at lower densities for longer trips. This commenter stated that his studies and experience indicate that slaughter-type horses that are transported for 28 hours should be transported at a much lower density than the industry average (13 to 14 square feet per horse).

We were directed by Congress to draft performance-based regulations wherever possible. Owner/shippers will have to load equines in a manner that will avoid injury to the equines. Overcrowding in a conveyance can cause animals to bruise and sustain other injuries. This could result in the owner/shipper being found in violation of the regulations and being assessed a civil penalty. Owner/shippers also have some market-based

incentive to prevent injury to equines during transport because bruised carcasses command lower market values. Our educational program will help owner/shippers comply with the performance-based standards. The educational program will address many issues, including loading density and floor space. The educational program will be directed towards owners, shippers, and other stakeholders in the equine slaughtering industry.

Observation of Equines During Transport

Proposed § 88.4(b)(2) stated that, during transit to the slaughtering facility, the shipper must observe the equines as frequently as circumstances allow, but not less than once every 6 hours, to check the physical condition of the equines and ensure that the regulations are being followed. Proposed § 88.4(b)(2) also stated that veterinary assistance must be provided as soon as possible for any equines in obvious physical distress.

Many commenters stated that observation of the equines every 6 hours is insufficient. Some of these commenters provided observation ranges of every 2, 3, and 4 hours. One commenter stated that equines should be observed the first hour and every 6 hours after. One commenter stated that equines should be observed each time the conveyance stops for a break or refueling, but not less than once every 6 hours, and that the equines must be allowed to rest for no less than 30 minutes while the vehicle remains stopped. One commenter stated that the phrase ''not less than once every 6 hours'' is misleading and that we should replace it with the phrase ''at least once every 6 hours.''

We believe that the requirement conveys the meaning that the equines are to be observed once every 6 hours or more often. We provided a maximum time of every 6 hours because we believe that this is the maximum amount of time that equines should go without observation to ensure that none have fallen or have become otherwise physically distressed en route. However, § 88.4(b)(2) requires shippers or owners to observe the equines as frequently as circumstances allow during transport, which would include during breaks from driving and refueling.

One commenter stated that we should clarify whether adequate observation includes stopping the truck and climbing on the trailer in any weather and lighting conditions to examine the equines.

Observation of the equines by the owner/shipper means that the owner/shipper must stop the conveyance and observe each equine at least once every 6 hours. The owner/shipper has the responsibility of locating an area where observation of the equines can be performed safely and completely.

One commenter stated that § 88.4(b)(2) should require veterinary assistance as soon as ''reasonably'' possible.

We believe that § 88.4(b)(2), as worded, conveys an appropriate sense of urgency and does not require an owner/shipper to do anything unreasonable. Veterinary assistance must be provided as soon as possible to ensure the safe and humane transport of equines in the conveyance. Also, in this final rule, § 88.4(b)(2) requires owner/shippers to obtain the services of an *equine veterinarian* for veterinary assistance. We believe that an equine veterinarian will be better equipped than most other veterinarians to handle equines. The educational program we are developing in conjunction with this regulation will provide participants with a list of equine veterinarians within the United States and their telephone numbers.

One commenter stated that the regulations should specify how equines that die in transit should be handled.

Our regulations are intended to ensure that equines transported to slaughtering facilities are fit to travel and, therefore, not likely to die in transit. However, in this final rule, § 88.4(b)(2) states that if an equine dies in transit, the driver of the conveyance must contact the nearest APHIS office as soon as possible and allow an APHIS veterinarian to examine the equine, and, if an APHIS veterinarian is not available, the owner/shipper must contact an equine veterinarian.

Offloading of Equines After 28 Hours

Proposed § 88.4(b)(3) stated that during transit to the slaughtering facility, the shipper must offload from the conveyance any equine that has been on the conveyance for 28 consecutive hours and provide the equine appropriate food, potable water, and the opportunity to rest for at least 6 consecutive hours. In addition, proposed § 88.4(b)(3) stated that, if such offloading is required en route to the slaughtering facility, the shipper must prepare another owner-shipper certificate and record the date, time, and location where the offloading occurred. Both owner-shipper certificates would then need to accompany the equine to the slaughtering facility. In this final rule, the requirement for completing a new certificate if equines are unloaded is at § 88.4(a)(4).

Many commenters opposed allowing 28 hours without water, and many opposed allowing the transport of horses for 28 hours without food, water, or rest. Most of these commenters stated that equines must be provided water, food, and/or rest, and unloaded at times ranging from every 4 to 24 hours or reasonable intervals, and some added that the time for water, food, and rest should be whether the vehicle is in transit or stationary. Many commenters stated that equines should not be without water, and some added food, for time periods ranging 3 to 12 hours, and some added that water could be provided during the observation period. Several commenters stated that studies have shown that equines suffer serious and traumatic health problems from travel for periods under 28 hours, and several commenters referenced 24 hours. One commenter stated that the amount of time that equines are deprived of water, food, and rest should be reviewed by a qualified veterinarian to establish that fewer hours should be specified. Several commenters stated that the standard of 28 hours was determined primarily using young, healthy horses, and that equines going to slaughter are not young or healthy. Several commenters stated that the USDA-commissioned studies did not take into account such variables as the age and condition of the equines, the density of equines on the truck, and temperature or other conditions. Some commenters, apparently thinking the 6-hour period of food, water, and rest prior to loading could occur at *any* time prior to loading, expressed concern that equines could be without water for more than 28 hours if transport took 28 hours. Several commenters stated that we should recommend a rest period of 8 hours that is not included in the transit length.

In accordance with § 88.4(a)(1), an owner/shipper must provide equines appropriate food, potable water, and an opportunity to rest for a period of not less than 6 consecutive hours immediately prior to the equines being loaded on the conveyance. Therefore, 28 hours would be the longest an equine could go without being offered food and water during transport to a slaughtering facility in the United States.

We based the requirements in § 88.4(b)(3) on the conclusions of the USDA-commissioned research, which was performed by veterinarians. In addition, various times that horses could be without water were reviewed by a panel of qualified veterinarians who established that the research was valid. At least half of the USDA-commissioned research involved

slaughter horses for comparison. In fact, one of the studies involved 306 horses that ranged from 1 to 30 years of age, and 33 percent of the horses were 16 years of age or older.

Further, some of the research simulated transport to slaughter under varying situations. For instance, straight-deck trucks were divided into compartments with four levels of density, and the equines were transported during the hottest part of the day during the summer. The research also showed that frequent loading and unloading caused more distress to equines than allowing the equines to remain on the conveyance.

One commenter stated that the USDA-commissioned research performed in 1998 by Drs. Carolyn Stull, Ted Friend, and Temple Grandin was developed to deny that water, food, and rest are basic needs. Several commenters stated that the research was biased and flawed and that some of the researchers contradicted their findings in previously published studies and findings. One commenter cited a study by Dr. Stull that recommended water every 6 to 8 hours, if possible. Many commenters stated that the USDA-commissioned study performed by Dr. Stull concluded that trips longer than 27 hours showed effects in equines that were considered to be reliable stress indices and that injuries increased with travel times over 27 hours. These commenters added that Dr. Stull performed a study that concluded that transportation in hot, humid conditions should attempt to minimize thermal stress by frequently offering (every 4 to 6 hours) water to horses and limiting the duration of the trip. These commenters and several others stated that Dr. Friend performed a study that concluded that tame horses in good condition could be transported for up to 24 hours before dehydration and fatigue became severe; however, they stated that the study was terminated after 24 hours because 3 of the 30 horses were deemed unable to continue and concluded that if horses must be transported more than 24 hours, the truck must be equipped with a watering device. One commenter stated that the study performed by Dr. Stull was biased because she used horses in the study that were identified by cooperating brokers and transport drivers who had an interest in the outcome of the study. Another commenter also stated that people associated with the auction facility and slaughtering facility used for Dr. Grandin's study were made aware of the study ahead of time.

We commissioned the performance of research to identify appropriate timeframes in which food, water, and rest should be provided to ensure that the last trip for equines being transported to slaughter was a tolerable one. The research was performed to address the transport of equines to slaughtering facilities. Our results were based on the most recent research, which may have shown different results than previous research by the same researchers. We based the requirements for food, water, and rest on the conclusions of the research. The study performed by Dr. Stull that was cited by the commenters regarding the transportation of equines in hot and humid conditions was performed to determine the optimal conditions for the transport of performance horses.

It is true that Dr. Stull's USDA-commissioned research study concluded that trips longer than 27 hours could cause distress to equines; however, as stated in the proposal, we believe that 28 hours will allow for realistic travel times from most points of the United States to equine slaughtering facilities without the equines undergoing serious physiological distress. In most cases, we believe equines will be transported from the point of loading to the slaughtering facility within 24 hours.

It is true that the equines used in Dr. Stull's study were identified by cooperating brokers and transport drivers. Dr. Stull's study required a large number of equines that were destined for transport to slaughtering facilities. We believe that the identification of equines by brokers and drivers did not have a significant impact on the results of the study.

The nature of the research performed by Dr. Grandin required her to have access to the equines for examination. The premises were privately-owned and, as a consequence, there had to be a certain level of cooperation with the owners or management of the premises. However, we do not believe that the level of cooperation affected the results of the study.

Several commenters suggested that providing water to equines en route, via an onboard watering system, might be preferable to unloading equines after 28 hours because unloading and loading equines from a conveyance causes stress. One commenter suggested that loading equines at a reduced density and watering enroute should be an alternative to unloading. One commenter stated that each conveyance should contain at least 10 gallons of water for every 20 equines for emergencies, in addition to the equine's regular water supply.

We believe that unloading after 28 hours to provided food, water, and rest is appropriate based on the findings of the USDA-commissioned research.

Several commenters stated that APHIS is not following the findings of the USDA-commissioned research because APHIS indicated that equines do not experience serious physiological distress for 30 hours without water if they have had access to water during the 6-hour period prior to deprivation.

It is true that we stated in the proposed rule that the USDA-commissioned studies showed that equines that had access to water in the 6-hour period before deprivation occurred did not experience serious physiological distress for up to 30 hours without further access to water. However, we believe that a 28-hour maximum allowable timeframe for deprivation of food, water, and rest during transport to slaughter will allow for realistic travel times from most points of the United States to the equine slaughtering facilities and ensure that the equines will not undergo serious physiological distress.

One commenter stated that adequate water, ventilation, and feed must be provided because equines are often sold by the pound, and loss of weight during transport reduces revenue for the seller.

In accordance with § 88.4(b)(3), the owner/shipper must offload from the conveyance any equine that has been on the conveyance for 28 consecutive hours and provide the equine appropriate food, potable water, and the opportunity to rest for at least 6 consecutive hours. However, the owner/shipper may provide appropriate food, potable water, and rest to equines at any point during transit that it is safe to do so.

One commenter stated that we should recommend the offloading of equines every 10 hours when drivers are required to stop and rest because drivers are not allowed to drive for 28 hours straight. One commenter stated that equines should be provided water, food, and rest at each rest stop.

It is not clear whether the commenter was referring to each rest area long the interstate or each time the driver stops for a rest. In some areas, rest stops can be with 30 to 60 minutes of each other, which could be an unnecessary burden on the owner/shipper. Further, we do not believe that it is necessary to require the owner/shipper to provide the equines with food, potable water, and rest at every rest stop for the driver. Drivers must stop periodically for personal and safety reasons. The timing of these stops has nothing to do with the well-being of the equines.

One commenter stated that equines should be offloaded at weigh and check stations when crossing a State or Federal boundary so that the equines can be inspected for injuries because visibility is better compared to observing the equines while they are in the conveyance.

Offloading equines at weigh and check stations could be a safety hazard for the equines due to the presence of other commercial vehicles that are not involved with the transport of equines. In addition, weigh and check stations would have to be equipped with facilities that could provide food, water, and containment of equines.

One commenter stated that the regulations are not clear whether the 28-hour rule includes the amount of time an APHIS official may spend examining the equines. One commenter stated that § 88.4(b)(3) should exempt time required for inspection by USDA, State or Federal law enforcement officials, or any other delay in the direct transport of the equines due to governmental or law enforcement interference with movement of the conveyance.

Section 88.4, paragraph (b)(3), requires any equine that has been on a conveyance for 28 consecutive hours to be offloaded and provided appropriate food, potable water, and the opportunity to rest for at least 6 consecutive hours. We do not believe that amending § 88.4(b)(3) to address delays due to law enforcement officials is appropriate. Equines that have been on a conveyance for 28 hours need to be offloaded and provided food, rest, and, most importantly, potable water, regardless of the reason that they were on the conveyance for 28 hours.

Handling of Equines

Proposed § 88.4(c) required the handling of all equines in commercial transportation to a slaughtering facility to be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma. Proposed § 88.4(c) also prohibited use of electric prods on equines in commercial transportation to a slaughtering facility for any purpose, including loading or offloading on the conveyance, except when human safety is threatened.

Many commenters stated that any use of electric prods should be banned or prohibited, and some of these commenters stated that other equipment is readily available if human safety is threatened. One commenter stated that we should provide clarification as to who determines when human safety is threatened. One commenter stated that use of an electric prod can elicit unpredictable movement in horses. One commenter stated that the loading of equines should be monitored to ensure that prods are not used.

One of the purposes of the regulations is to ensure that equines are transported without unnecessary discomfort, stress, physical harm, or trauma. Therefore, the regulations prohibit the use of electric prods, except in cases when human safety is threatened. We limited the use of electric prods to situations in which human safety is threatened to decrease the potential that prods could be used in abusive situations. We agree that there may be other equipment that can be used; however, they may not elicit a response quickly enough in a life or death situation. The owner/shipper is the entity who must make the determination of whether human safety is threatened. A USDA representative cannot be present in all areas that equines may be loaded for transport to slaughtering facilities; however, if an owner/shipper uses an electric prod when human safety is not threatened and evidence of that abuse is found, that person may be found in violation of the regulations.

Many commenters stated that metal pipes and sharp or pointed objects capable of piercing the skin should be banned. Many commenters stated that no implement, device, contrivance, mechanism, apparatus, appliance, contraption, instrument, tool, or utensil should be allowed to be used, including for the control or restraint of the equines, that was not expressly and specifically designed for use on equines and generally recognized as such. In addition, several commenters stated that only restraints considered humane should be used. Two commenters stated that, in addition to electric prods, whips or any other object that could cause injury or pain should be prohibited except when human safety is directly threatened by an equine.

We cannot provide a list of all implements that have been or could be used on equines because of the number of possibilities; however, the use of any implement that does not provide equines with the care described in § 88.4(c) should not be used and could be a violation of the regulations.

Examination of Equines at Any Point

Proposed § 88.4(d) stated that at any point during the commercial transportation of equines to a slaughtering facility, a USDA representative may examine the equines, inspect the conveyance, or review the owner-shipper certificates required by § 88.4(a)(3).

Several commenters stated that § 88.4(d) should state ''must'' rather than ''may.''

We use ''may'' in § 88.4(d) because a USDA representative may not be able to examine all equines, inspect all conveyances, or review all of the owner-shipper certificates. However, USDA representatives are authorized by § 88.4(d) to inspect the equines and conveyances as the need arises, and USDA representatives will collect all of the owner-shipper certificates at slaughtering facilities.

One commenter stated that § 88.4(d) should require a USDA representative, his or her designee, a weigh station or agricultural check point employee, or other law enforcement personnel to enforce the requirements of the regulations during transit as well as upon arrival at the slaughter facility. One commenter stated that we should clarify whether law enforcement officials can perform duties such as inspect vehicles, conduct investigations, examine the animals and seize and impound the animals, if necessary. Some commenters stated that there should be a provision that allows law enforcement officials, State or Federal employees, or inspectors to ensure an owner or shipper's compliance with the regulations.

In a State that has its own regulations regarding the transport of equines to slaughter, that State's police or law enforcement personnel can enforce the State's regulations. The statute does not provide for Federal enforcement actions by State and local law enforcement personnel in State and local courts.

One commenter stated that equines should be shipped directly and expeditiously from the point of loading to the slaughtering facility without stopping between the points for USDA representatives to conduct examinations, which the commenter stated could be potentially harmful and cause stress to the animals. This commenter stated that the manner at which the equines arrive at the slaughtering facility should be sufficient.

We believe that we need to be able to check conveyances, equines, and paperwork if we have any concerns that equines may be being transported in violation of the regulations. Every transport will not be subject to such an examination; however, if an examination has to be conducted, the USDA representative will consider the welfare of the equines in the conveyance and will not take more time than necessary to perform his or her duties.

Direction to the Owner/Shipper To Take Action

Proposed § 88.4(e) stated that, at any time during the commercial transportation of equines to a slaughtering facility, a USDA representative may direct the shipper to take appropriate actions to alleviate the suffering of any equine. Proposed § 88.4(e) also stated that, if deemed necessary by the USDA representative, such actions could include securing the services of a veterinary professional to treat an equine, including performing euthanasia if necessary.

Several commenters stated that § 88.4(e) should state that a USDA representative ''must,'' ''shall,'' or ''should'' direct the shipper to take appropriate actions, and that such actions ''must'' include securing the services of a veterinary professional.

We use ''may'' in § 88.4(e) because this provision authorizes a USDA representative to direct the owner/shipper to take appropriate actions to alleviate the suffering of any equine based on the representative's assessment of the equine's condition. ''Must'' would imply that such direction will be necessary in all cases. Similarly, we say that such action ''could'' include securing the services of a veterinary professional because those services will not always be necessary.

One commenter stated that § 88.4(e) should state that the services of a veterinary professional will be secured if ''reasonably'' available.

We believe that if a USDA representative directs the owner/shipper, as provided in § 88.4(e), to secure the services of a veterinary professional to treat an equine, the veterinary professional should be secured as soon as possible.

One commenter stated that § 88.4(e) should refer to a USDA representative ''or his or her designee.'' In addition, this commenter stated that the veterinary professional should be an equine veterinary professional.

We do not believe that § 88.4(e) needs to indicate ''his or her designee'' because we define *USDA representative* as any USDA employee authorized by the Deputy Administrator, Veterinary Services, APHIS, to enforce the regulations. However, we agree with the commenter that § 88.4(e) should specify that the veterinary professional must be an equine veterinarian. We have amended § 88.4(e) to require the veterinary professional to be an equine veterinarian.

Retention of the Owner-Shipper Certificate for 1 Year

Proposed § 88.4(f) stated that the individual or other entity who signs the owner-shipper certificate must maintain a copy of the owner-shipper certificate for 1 year following the date of signature.

Several commenters stated that the owner or shipper should retain a copy of the owner-shipper certificate for a minimum of 2 years, and some of these commenters stated that we should retain a copy so that information is readily accessible to those who are attempting to trace lost or stolen equines. One commenter stated that there should be provisions for law enforcement and State agencies to have access to the owner-shipper certificates for identifying and locating stolen or missing horses.

We believe that requiring a 1-year retention of the owner-shipper certificates is adequate. If someone is attempting to trace a lost or stolen equine, the investigation will more than likely take place within a few months of the disappearance of the equine. However, to improve the capability of tracing lost or stolen equines, APHIS plans to develop a database of the information provided on the owner-shipper certificates. If necessary, information from the database could be supplied to law enforcement or State agencies, when requested.

Section 88.5 Requirements at a Slaughtering Facility

Access to Food and Water After Unloading

Proposed § 88.5(a)(1) stated that, upon arrival at a slaughtering facility, the shipper must ensure that each equine has access to appropriate food and potable water after being offloaded.

Two commenters stated that the shipper should not be responsible for providing food and water to equines at the slaughtering facility. Both commenters stated that the slaughtering facility should be the responsible party. One of these commenters stated that the shipper would not know the conditions at destination and, in most cases, would not be the owner of the equines.

We believe that the requirement in § 88.5(a)(1) will ensure that the owner/shipper notifies the proper officials of his or her arrival at the slaughtering facility, and that the equines are offloaded into an area where the slaughtering facility can provide food and potable water.

One commenter stated that § 88.5(a)(1) should state that the management of the slaughtering facility must provide consent to the shipper to provide each equine access to appropriate potable water after being offloaded, but not food.

We believe that equines should be allowed access to both food and potable water to maintain their well-being after being transported without access to food and water, sometimes over great distances. The requirement in § 88.5(a)(1) is to ensure that the owner/shipper notifies the proper officials of his or her arrival at the slaughtering facility. We believe that most shippers and owners will appropriately communicate with the proper personnel at the slaughtering facility without the inclusion of the word ''consent'' in the regulation.

One commenter stated that equines should be provided water every 4–6 hours where they are housed before slaughter.

The statute only allows us to regulate the transport of equines to a slaughtering facility. Once the equines arrive at the slaughtering facility and are provided food, potable water after being offloaded in accordance with § 88.5(a)(1), the equines are subject to the facility's feed and water schedule.

One commenter stated that § 88.5(a) should require the arrival of a conveyance during regular business hours of the slaughtering facility and to require the shipper to ''immediately'' abide by the requirements set forth in § 88.5(a).

We do not believe that requiring shipments of equines to arrive at slaughtering facilities during normal business hours would always be in the best interests of the equines. It could, for instance, result in the equines being kept on the conveyance for a longer time than might otherwise be necessary.

We do not believe that adding ''immediately'' is necessary because, in most cases, the owner/shipper will offload the equines and discharge his or her responsibilities as soon as possible after arrival.

Access to the Equines

Proposed § 88.5(a)(3) stated that, upon arrival at a slaughtering facility, the shipper must allow a USDA representative access to the equines for the purpose of examination.

Several commenters pointed out that USDA representatives are not available at slaughtering facilities on all days of the week or at all hours. One commenter stated that § 88.5(a)(3) should state that management of the slaughtering facility must provide consent to a USDA representative to have access to the equines for the purpose of examination. The commenter also stated that

§ 88.5(a)(3) should state that the absence or delay in arrival of the USDA representative will not prohibit the slaughtering facility from proceeding with the slaughter of the equines during its normal course of business. One commenter stated that if a USDA representative is not available prior to slaughter, an examination of carcasses for bruising or abrasions during inspection could be used to assess injuries incurred during transport to the slaughtering facility. One commenter asked who a USDA representative is. One commenter asked if full-time veterinarians would be assigned to the slaughtering facilities to enforce the regulations.

A USDA representative will be available during normal business hours of the slaughtering facility to examine the equines. This requirement, therefore, should not cause any significant delays in slaughter operations. Also, most equines are delivered during the hours of operation of the slaughtering facility. Regardless of when the equines arrive, we believe a USDA representative must be given access to the equines prior to slaughter for the purpose of examination.

A USDA representative may be any employee of the USDA who is authorized by the Deputy Administrator, Veterinary Services, APHIS, to enforce the regulations. The employee could be an APHIS veterinarian, a Food Safety and Inspection Service (FSIS) employee, or any other USDA employee so authorized.

One commenter stated that § 88.5(a)(3) should require equines to be inspected when they reach their destination.

In accordance with § 88.5(a)(3), a USDA representative must be given access to the equines for the purpose of examination; however, the USDA representative will use his or her discretion in determining which equines to inspect and the extent of any examination.

Access to the Animal Cargo Area

Proposed § 88.5(a)(4) stated that, upon arrival at a slaughtering facility, the shipper must allow a USDA representative access to the animal cargo area of the conveyance for the purpose of inspection.

One commenter stated that § 88.5(a)(4) should require inspection of the animal cargo area.

Inspection of the animal cargo area may not be necessary in all cases. This requirement in § 88.5(a)(4) alerts owner/shippers that the animal cargo area of their conveyances may be inspected by a USDA representative.

Owner/Shipper Remaining on Premises

Proposed § 88.5(b) stated that the shipper must not leave the premises of a slaughtering facility until the equines have been examined by a USDA representative.

One commenter stated that equine slaughtering facilities should not have their slaughter schedules dictated by APHIS. This commenter stated that § 88.5(b) should allow the shipper to leave the premises of the slaughtering facility if a USDA representative does not appear to examine the equines within 3 hours after they are offloaded from the conveyance. One commenter stated that drivers should not have to wait for the USDA representative and should be allowed to leave the premises if an employee of the slaughtering facility is there to allow the USDA representative access to the equines.

A USDA representative will be available for the examination of the equines and conveyances during normal business hours, and we believe it is important for the owner/shipper to be present during these activities. However, we agree that a driver who arrives at a slaughtering facility outside of normal business hours should be able to leave the premises to eat or rest. Therefore, § 88.5(b) of this final rule states that the owner/shipper must not leave the premises of a slaughtering facility until the equines have been examined by a USDA representative if the owner/shipper arrives during normal business hours; however, if the owner/shipper arrives outside of normal business hours, the owner/shipper may leave the premises but must return to the premises of the slaughtering facility to meet the USDA representative upon his or her arrival.

One commenter stated that § 88.5(a) should provide that all equines that are nonambulatory upon arrival should be euthanized on the vehicle after all other equines have been unloaded and that euthanasia should be performed by a licensed and accredited veterinarian in an approved manner. The commenter stated further that if arrival of a veterinarian would cause time delays and suffering to the equine, the regulations should provide that euthanasia could be performed by a trained individual using approved methods. In addition, the commenter maintained that the regulations should provide that seriously injured or downed animals may not be dragged, hoisted, thrown, or left alone without medical intervention.

Any equine that is seriously injured or nonambulatory upon arrival must be provided veterinary assistance and may not be mistreated or left unattended. A USDA representative will be available to examine the equines upon their arrival at the slaughtering facility during normal business hours. In most cases, the USDA representative will be a veterinarian; therefore, the USDA representative will be able to perform euthanasia, if necessary. If an equine is nonambulatory, is seriously injured, or is otherwise in obvious physical distress upon arrival and a USDA representative is not available (i.e., because of arrival of the equines at the slaughtering facility outside of normal business hours), § 88.4(b)(2) requires the owner/shipper to obtain veterinary assistance as soon as possible. We agree that equines that become nonambulatory should be euthanized. In this final rule, § 88.4(b)(2) provides that equines that become nonambulatory en route to a slaughtering facility must be euthanized by an equine veterinarian. Since we are requiring that euthanasia be performed by an equine veterinarian, we do not believe that it is necessary to add that euthanasia be performed in an approved manner.

Transport of Equines Outside the United States

Proposed § 88.5(c) stated that any shipper transporting equines to slaughtering facilities outside the United States must present the owner-shipper certificate to USDA representatives at the border.

One commenter stated that § 88.5(c) does not state that a USDA inspector will inspect the equines to determine whether they are fit to travel or whether the description on the owner-shipper certificate matches the equines in the conveyance.

A USDA representative at the border will inspect conveyances carrying equines destined for slaughter outside the United States when he or she deems it necessary.

Section 88.6 Violations and Penalties

Proposed § 88.6(a) stated that the Secretary is authorized to assess civil penalties of up to $5,000 per violation of any of the regulations in part 88, and proposed § 88.6(b) stated that each equine transported in violation of the regulations would be considered a separate violation.

Many commenters stated that penalties for violation of the regulations should be criminal instead of civil; otherwise, law enforcement personnel will not be able to enforce them. Some commenters stated that laws must be

enforced at auctions and feedlots, prior to loading. One commenter stated that § 88.6 should provide that a person who knowingly violates the regulations shall, upon conviction, be subject to imprisonment for not more than 1 year or a fine of $5,000, or both, and on conviction of a second or subsequent offense, the person shall be subject to imprisonment for not more than 3 years or to a fine of $8,000, or both.

The statute does not allow the Secretary to establish criminal penalties for violations of the regulations. The statute allows the Secretary to establish and enforce appropriate and effective civil penalties only. As previously explained, the regulations pertain to equines transported to slaughter from any point of loading, including auctions/markets and feedlots.

One commenter stated that shippers should be subject to penalties as prescribed by county, State, or Federal statutes or regulations.

The regulations do not prohibit counties or States from applying penalties in accordance with their regulations if an owner/shipper violates their regulations even if the amount of the penalty is more than that provided in § 88.6(a).

One commenter stated that civil penalties of up to $10,000 rather than $5,000 should be assessed. One commenter stated that if a conveyance carrying a load of equines is found to have a sharp protrusion, a fine of $5,000 per equine in the conveyance seems excessive, especially if an equine that is being transported caused the protrusion by kicking the walls of the conveyance. This commenter stated that a sliding scale should be used that increases the amount of the fine proportional to the seriousness of the violation. This commenter further stated that a sliding scale would help the shipper know exactly what is expected of him/her, ensure that USDA representatives levy the same fines for the same offense, and provide credibility to the USDA during any appeals process. One commenter stated that § 88.6 should provide that civil penalties will be progressive, with the first offense receiving a written warning; the second offense a fine up to $500 per violation; the third offense a fine up to $2,500 per violation; and the fourth or subsequent offense a fine up to the jurisdictional limit. One commenter suggested that we provide for a minimum fine of $500. One commenter suggested that each day a violation occurs should be considered a separate violation.

In § 88.6(a), we state that the Secretary is authorized to assess civil penalties of up to $5,000 per violation. We proposed assessing civil penalties of up to $5,000 per violation based on the legislative history of the statute and our experience as a Federal regulatory agency. We believe that a civil penalty of up to $5,000 per violation is appropriate and will be effective in deterring noncompliance with the regulations. Among other things, this belief is based on our experience in enforcing the Animal Welfare Act as amended (7 U.S.C. 2131 *et seq.*) and the Horse Protection Act, as amended (15 U.S.C. 1821–1831), two other statutes whose purpose is ensuring the humane treatment of animals. The statement concerning each equine transported in violation of the regulations being a separate violation also derives from the statute's legislative history and our experience as a regulatory agency.

We do not believe that we need to include a sliding scale or a minimum fine. The amount of the civil penalty will be determined based on the severity of the violation and the history of the owner/shipper's compliance with the regulations. Procedures will be in place to ensure consistent application of civil penalties. We also do not believe that we need to consider each day that a violation occurs as a separate violation. We believe that considering each equine transported in violation of the regulations as a separate violation is sufficient.

One commenter stated that § 88.6 should provide that a person who assaults, resists, opposes, impedes, intimidates, or interferes with any USDA representative or his/her agent in performing an official duty pursuant to the regulations should be assessed a fine of no less than $1,000 and up to $5,000.

There is a statute that provides protection to all Federal employees (18 U.S.C. 111). The statute prohibits the assault on any Federal employee.

One commenter stated that APHIS should provide that, for any person who fails to pay a civil penalty, the Secretary shall request the Attorney General to institute a civil action in a district court of the United States or other court of the United States for any district in which the person is found, resides, or transacts business, to collect the penalty, and to provide that the court shall have jurisdiction to hear and decide the actions.

If an owner/shipper is unable to pay a civil penalty, we can pursue payment through a payment plan or adjustment of the amount. However, if the case is not settled, a formal complaint may be filed. If a complaint is issued, the case may go to a hearing. If a hearing is held, the matter will be heard and decided by an administrative law judge.

One commenter stated that, to a certain extent, injuries during transport are unavoidable and assessing civil penalties to commercial transporters may not be appropriate. This commenter stated that civil penalties should be designed to ensure compliance with the regulations and not punish an industry for occurrences that are beyond its control.

We understand that some injuries may not be avoidable; however, the purpose of the regulations is to ensure the humane transport of equines to slaughtering facilities. If shippers and owners adhere to this rule, we believe that many of the injuries that equines have suffered in the past will be avoided.

One commenter stated that the regulations do not allow truck drivers to provide grounds for their defense as to how the equines were injured.

USDA will consider a trucker's explanation in determining whether a violation has occurred. However, as stated in the proposal, if adjudication is necessary, it will be conducted pursuant to the USDA's ''Uniform Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes,'' found at 7 CFR part 1, subpart H(7 CFR 1.130–1.151), and the Supplemental Rules of Practice found at 9 CFR, part 70, subpart B (9 CFR 70.10). The Rules of Practice establish, among other things, the procedures for filing a complaint and a response, settling a case, and holding a hearing. Based on this information, any one who is cited for violating the regulations will be provided an opportunity to present his or her case.

Many commenters stated that enforcement of the regulations may be difficult because we use performance-based standards rather than engineering-based standards. Some of these commenters stated that Congress directed the Secretary of Agriculture to employ ''to the extent possible'' performance-based standards. One of these commenters stated that USDA tried performance-based standards with § 3.81 of the Animal Welfare regulations regarding primate psychological well-being, which led to confusion among entities that were affected by the regulations.

The conference report states that, to the extent possible, the Secretary is to employ performance-based standards rather than engineering-based standards when establishing regulations to carry out the intent of the statute and that the Secretary is not to inhibit the commercially viable transport of equines to slaughtering facilities. We used performance-based standards

rather than engineering-based standard because they are the least intrusive method of regulating entities and are potentially less burdensome on regulated entities. We will review and evaluate these standards once they are in place. If we determine that changes are necessary, we will publish another document in the **Federal Register** for public comment.

One commenter stated that we will not be able to adequately enforce the regulations because we do not require persons transporting equines to slaughter to register with or apply for a USDA license. This commenter stated that individuals who are not in compliance could be threatened with suspension of their licenses rather than assessment of fines, which could be viewed as the cost of doing business.

We do not believe that registration with or a license issued by APHIS is necessary. We believe that the civil penalties set forth in § 88.6 are sufficient to ensure compliance with the regulations.

One commenter stated that the regulations should provide for suspension of a hauler's carrier certificate, the operator's commercial driver's license (CDL), and the registration of the vehicle involved for not less than 90 calendar days from the date of adjudication upon violations of the regulations. This commenter further stated that the hauler and consignor should be jointly responsible for the maintenance of the animals that were in the vehicle at the time of the seizure at the seizing authority's choice until a proper vehicle is provided for their continued shipment. The commenter also maintained that failure to post a satisfactory bond or to pay the costs involved should result in forfeiture of the vehicle and load to the seizing authority as partial payment for costs incurred by the seizing authority, which should retain all other remedies including civil suits and criminal prosecutions. The commenter also stated that a second violation of the regulations or violation of any other jurisdiction's animal transportation regulations should result in penalties applied per animal in the vehicle, without limit, and that a third violation should result in a minimum 1-year suspension of certificates and CDL per animal in the vehicle.

The statute does not provide the Secretary with the authority to suspend a hauler's carrier certificate, the operator's commercial driver's license, or registration of the vehicle if the operator violates these regulations. In addition, the statute does not give the Secretary authority to seize vehicles. The statute provides the Secretary with the authority to assess only civil penalties for violation of the regulations.

One commenter stated that the regulations do not address how we will determine, other than by checking for a signed, properly timed and dated owner-shipper certificate, that the intentions of the regulations are being met and a violation of the regulations has not occurred. One commenter stated that the proposed regulations were unclear as to what APHIS would do when an owner-shipper certificate appears to be in order but the equines arrive in poor condition or with injuries. Several commenters stated that the regulations should state that any equine arriving in a condition that is noncompliant with the regulations will be considered a violation, regardless of the information on the owner-shipper certificate.

The USDA representative at the slaughtering facility will have access to both the equines and the paperwork accompanying them. If an equine arrives at a slaughtering facility with an injury that was not recorded on the owner-shipper certificate or in a condition that is evidence that the equine was not fit to travel, the owner/shipper may be found in violation of the regulations and may be assessed civil penalties as set forth in § 88.6.

Paperwork Burden

One commenter stated that electronic transmission of the owner-shipper certificate may not decrease the burden because the format must be standardized, and a ''hard-copy'' must be made to accompany each equine. The commenter stated that the owner-shipper certificate could be in book form that is bound and supplied with a duplicate-style copy so the owner/shipper would have a copy of the certificate that was given to APHIS.

The owner-shipper certificate will consist of a multipart set that will eliminate the need for the owner/shipper to make copies of the form.

One commenter stated that completion of the owner-shipper certificate would take 2 to 3 minutes. Several commenters stated that completion of the owner-shipper certificate will take more than 5 minutes per equine. One of these commenters stated that each equine must be examined thoroughly, in addition to completing the certificate.

The estimated burden was based on discussions with owners and shippers of slaughter horses and the owner/operators of slaughtering facilities. The estimated burden of 5 minutes was only an estimate. We are aware that some individuals may take a little less or a little more time than others to inspect each equine and complete the owner-shipper certificate.

Miscellaneous

One commenter stated that the proposal does not cover equines that belong to slaughtering facilities and that are transferred from a feeding facility owned by the facility to the plant grounds. This commenter stated that the regulations are not clear as to whether owner-shipper certificates are required to ship equines to a feedlot when the equines will be eventually transported for slaughter, and they are not clear as to whether a slaughtering facility has to complete owner-shipper certificates for equines owned by the facility to transport them from its own facilities or ranches to the slaughtering facility.

The regulations pertain to any individual or other entity that fits the definition of the term *owner/shipper.* Therefore, a slaughtering facility would have to complete an owner-shipper certificate and otherwise adhere to the regulations if it moves equines from its own premises, such as a ranch or feedlot, to the slaughtering facility. However, if equines arrive at a slaughtering facility (defined as a commercial establishment that slaughters equines for any purpose) and the facility moves all or some of the equines to its own feedlot or other premises, the slaughtering facility will not have to complete an owner-shipper certificate or otherwise comply with the regulations for that movement. The slaughtering facility must, however, complete an owner-shipper certificate and otherwise comply with the regulations when it transports the equines back to the slaughtering facility.

One commenter stated that mileage calculations that we provided under the ''Executive Order 12866 and Regulatory Flexibility Analysis'' section of the proposal were based on the assumption that shippers deliver to the closest available plant, which is not always the case. This commenter stated that shippers deliver to the plant where they have their contract or to the plant that is paying the most money. This commenter also stated that the proposal contended that shippers would have to share driving responsibilities with another driver to meet the requirements, but the regulations do not require it.

We believe that barring unusual circumstances, the overwhelming majority of equines arrive at slaughtering facilities in 28 hours or less. As to the use of two different drivers, we stated that drivers of equines that originate at east or west coast

locations could reduce the time equines spent on conveyances considerably by using two different drivers on long trips. However, this scenario was only an example for those drivers who can share driving responsibilities with another driver. If the driver of a conveyance will require more than 28 hours to reach his or her destination, whether alone or with a partner, he or she must abide by § 88.4(b)(3) and offload the equines from the conveyance to provide them with appropriate food, potable water, and the opportunity to rest for at least 6 consecutive hours before reloading them.

One commenter stated that we should require drivers to be certified by APHIS as knowledgeable in equine handling and humane treatment.

We do not believe this is necessary. We believe that the regulations will help ensure the humane movement of equines that are transported to slaughtering facilities. If the equines are not handled or transported as required by the regulations, or if the equines are injured during transport, the owner/shipper may be found in violation of the regulations and assessed a civil penalty. To assist drivers and others in meeting the requirements of the regulations, we are preparing an educational program.

One commenter stated that the regulations should extend to agents of owners and shippers. This commenter suggested, ''The act, omission, or failure of an individual acting for or employed by the owner or shipper, within the scope of employment, shall be considered the act, omission, or failure of the owner or shipper as well as that of the individual.''

We do not believe that we need to address agents. We believe that we have defined owner/shipper broadly enough to cover anyone transporting equines to slaughtering facilities (except as specifically exempted by the regulations).

One commenter stated that the regulations will result in increased transit time and more frequent loading and unloading of equines, which will increase the possibility of exacerbating existing injuries or creating new ones.

We do not believe that the regulations will result in an increase in transit time or loading and unloading in most cases. As stated in the discussion under ''Executive Order 12866 and Regulatory Flexibility Act,'' officials at two of the U.S. equine slaughtering facilities, including the largest facility, indicated that, barring unusual circumstances, the overwhelming majority of equines already arrive at the slaughtering facilities in 28 hours or less. In cases where transport would take more than 28 hours, we believe the benefits of unloading the equines for rest, food, and water outweigh the disadvantages of unloading and reloading. Also, owners or shippers could locate, in advance, appropriate facilities close to their routes for unloading the equines. In addition, the educational program that we are developing will provide owners and shippers with information on the proper methods for loading and unloading equines from a conveyance to help ensure that injuries to equines do not occur.

One commenter stated that the regulations should apply as minimum standards for all commercial haulers, regardless of the origin or destination of the load. One commenter stated that the regulations seem to state that if an equine is transported to a slaughtering facility, the transportation is given protection by Federal regulations; however, if the animal is transported to some other destination, the transportation can be performed without protection of these regulations.

We are unable to expand the scope of these regulations to include the transportation of equines to any destination other than a slaughtering facility. Congress authorized the Secretary to issue guidelines for the regulation of the commercial transportation of equines for slaughter by persons regularly engaged in that activity. In addition, Congress clarified its intentions with regard to the statute through a conference report. The conference report states, among other things, that the Secretary has not been given the authority to regulate the routine or regular transportation of equines to other than a slaughtering facility.

One commenter stated that conveyances that enter the United States from Canada are sealed by authorities in Canada, and that to meet the requirement that equines must be fed, watered, and offloaded every 28 hours, the seals would have to be broken during transport in the United States to comply with the regulations.

Few equines are transported from Canada into the United States for slaughter purposes. However, if equines are transported from Canada into the United States and must be offloaded in the United States to meet the requirements of part 88, the seals may only be broken by a USDA representative at an approved site for offloading the equines. The owner/shipper must make arrangements with the APHIS office that is nearest to the location where the equines must be offloaded. After the equines have had the prescribed rest, food, and water, the truck will be sealed by the USDA representative and allowed to resume transport to the slaughtering facility.

One commenter stated that we should obtain written agreements from Canada and Mexico to ensure compliance with the regulations for equines moving into those countries for slaughter. One commenter stated that the regulations would allow travel time of 28 hours within the United States and additional travel time after entering Canada. This commenter stated that the regulations should include travel time to the final destination in Canada because the locations of plants in Canada are established.

For equines transported by conveyance from a point inside the United States to a slaughtering facility outside the United States, the regulations end at the border, where the owner/shipper must present the owner-shipper certificates. We do not have jurisdiction over movement of equines outside the United States. Although, we currently do not have an arrangement with Mexico, we have revised the owner-shipper certificate to include a field for a stamp to be administered by Canadian officials at slaughtering facilities in Canada. The stamp will include the time and date of arrival and slaughtering facility. We can use this information to verify the amount of time that equines have been on a conveyance prior to leaving the United States.

One commenter stated that we must provide the public with the findings from USDA-commissioned research so the public can offer comment. Another commenter stated that she could not obtain copies of the research.

Copies of the USDA-commissioned research were and are available from the person listed under **FOR FURTHER INFORMATION CONTACT.**

One commenter stated that an equine first aid kit that includes, among other things, fly spray, rubbing alcohol, and a hoof pick should be on the conveyance. In addition, this commenter stated that at least one fire extinguisher should be on the conveyance and that the driver's ability to use the fire extinguisher should be established by an APHIS inspector.

We do not believe that it is necessary to require an equine first aid kit. If an equine is in physical distress, the owner/shipper is required, in accordance with § 88.4(b)(2), to have an equine veterinarian provide veterinary assistance as soon as possible. Until such assistance is available, the owner/shipper may be the only person in a conveyance, and attempts by the owner/shipper to apply first aid, without assistance, to an injured equine could be

dangerous for the person and the equine. As to a fire extinguisher, the Federal Motor Carrier Safety Administration within the Department of Transportation requires commercial motor vehicles used on a highway in interstate commerce to be equipped with a fire extinguisher when, in short, the gross vehicle has a weight rating or gross combination weight rating, or gross vehicle weight, or gross combination weight, of 4,537 kg (10,001 lb) or more; whichever is greater. We believe that most conveyances used for the commercial transportation of equines to slaughtering facilities meet this weight threshold.

Several commenters stated that a $400 disposal fee should be levied against an owner or shipper for every equine that arrives dead or in an unusable condition to discourage owners from sending downed or dying horses to slaughter. One of these commenters stated that the disposal fee could be used to subsidize long distance shipments of equines that are made at reduced loading density. Two commenters stated that the regulations should establish a per equine fee of $5 to be levied upon an owner who sells an equine to slaughter. One commenter stated that the $5 per equine fee could be used to cover the costs of administering and enforcing the regulations, and another commenter stated that the fee could be used to provide rewards for information leading to documentation of violations of the regulations.

We believe that the regulations will help ensure that equines that are shipped to slaughtering facilities are fit to travel. However, we do not have authority to assess a disposal fee and/or a $5 fee per equine.

One commenter stated that we should not allow dogs to be used to herd equines for breeding.

If someone wishes to use dogs to herd equines into a conveyance, the equines must be handled in a manner that does not violate the regulations, including those in § 88.4(c). In § 88.4, paragraph (c) states that handling of all equines in commercial transportation to a slaughtering facility shall be done in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma.

One commenter stated that all conveyances that contain live animals should be so labeled and that a toll-free USDA/APHIS telephone number should be displayed for the public to call if a vehicle is operating in an unsafe manner or a dangerous or inhumane treatment is witnessed.

We do not believe that we should require a conveyance to be labeled as containing live equines or to display a toll free USDA/APHIS telephone number. Many conveyances transport equines for purposes other than to slaughtering facilities, and the Secretary has not been given the authority to regulate the routine or regular transportation of equines to other than a slaughtering facility. However, if someone witnesses inhumane treatment, we encourage the person to contact the nearest APHIS office or the proper local authorities. In addition, if a vehicle is operating in an unsafe manner, especially if human safety is threatened, the proper local law enforcement authorities should be contacted.

One commenter stated that individuals who transport equines to veterinary facilities for treatment should be exempt from the regulations that pertain to the health of the equines that are hauled.

The regulations do not pertain to the transport of equines to veterinary facilities, only to the transport of equines to slaughtering facilities.

One commenter stated that USDA does not have a program to identify stolen equines that arrive at slaughtering facilities.

APHIS will require an owner-shipper certificate for each equine that is transported to a slaughtering facility. The USDA representative at the slaughtering facility will collect the certificates. In addition, the owner/shipper must maintain a copy of the certificate for 1 year. We will maintain information from the completed certificates in a database that can help us trace lost or stolen equines.

One commenter stated that proficiency testing (written and skills) for those engaged in the commercial transport of equines should be required because it is impossible to determine whether the persons targeted (e.g., drivers of the conveyances) are reading and understanding the educational materials. One commenter stated that an educational component should be included in the regulations to ensure that all affected parties are informed of the new regulations. One commenter stated that APHIS must put effort toward educating inspectors at feedlots, assembly points, or stockyards because shippers and owners already know how to properly transport equines.

We do not think that a proficiency test is necessary. We are developing an educational program that will include a video, guidebook, and workshops. The program will be directed towards owners, shippers, and others in the equine slaughtering industry. We will also provide opportunities for individuals who work at feedlots, assembly points, and stockyards to participate in the educational program.

Several commenters expressed concern that burdensome regulations in the United States may lead to an increase in the shipment of livestock to countries where animal welfare is not a consideration. One of these commenters and others stated that the regulations are not necessary and that effective enforcement of existing laws is necessary. One of these commenters stated that safeguards already exist for the humane treatment of equines prior to slaughter. One commenter stated that imposing additional humane shipping conditions on the industry will decrease profits by increasing transportation costs.

Until this final rule becomes effective, no specific standards exist that address the needs of equines transported to slaughtering facilities. We believe that the regulations are the minimum standards to ensure the humane movement of equines to slaughtering facilities via commercial transportation. If equines are transported by conveyance from a point inside the United States to a slaughtering facility outside the United States, the owner/shipper will be required to meet the requirements of the regulations until the conveyance reaches the U.S. border. In addition, this rule allows us to assess civil penalties for those individuals who are not in compliance.

Under the heading, ''Executive Order 12866 and Regulatory Flexibility Act,'' we estimate that this rule will increase operating costs for owners and commercial shippers who transport equines to slaughtering facilities by an amount somewhere between $300 and several thousand dollars annually for an entity that transports 500 equines per year. However, we added that the data suggested that the economic consequences for most entities would fall somewhere near the minimum point on the impact scale because many entities are already in compliance with at least some of the rule's provisions.

One commenter stated that the USDA does nothing to prevent the shipment of diseased animals for human consumption.

FSIS has regulations that provide for the antemortem and postmortem examination of equines to ensure that equines with certain diseases are not slaughtered or used for the purposes of human consumption.

One commenter stated that all horses shipped for slaughter should have a negative Coggins test performed within 6 months of transport due to possible zoonosis and also because horses are transported near highways and pass

horses on private farms and could pose a disease risk. One commenter stated that Coggins tests are required for horses that enter or exit Pennsylvania.

A Coggins test is the common name for the agar gel immunodiffusion test used for the diagnosis of equine infectious anemia (EIA). The purpose of this rule is to provide for the humane transport of equines to slaughtering facilities. Other regulations are concerned with the potential transmission of disease, including 9 CFR part 75, which restricts the interstate movement of horses that are positive to a test for EIA. Also, all States require a Coggins test for equines entering the State. At this time, there is no evidence that EIA can be contracted by humans through the consumption of meat from an equine infected with EIA. However, equines infected with EIA are not allowed to be used for human consumption. The transmission of EIA infection from equines on a conveyance to equines on farms that are passed by the conveyance is a low risk and highly unlikely because a number of factors have to be present, such as presence of tabanidaes (horse flies) and high viremia in the infected equine.

Several commenters stated that all meetings regarding the statute were not open to all interested parties. One commenter stated that, contrary to the statements in the proposal, consensus was not reached on the proposed regulations, and certain humane organizations opposed the regulations.

We did not state in the proposed rule that the proposal was a consensus-based document. We stated that, prior to drafting the proposed rule, APHIS representatives established a working group that included participants from other parts of the USDA, including FSIS and the Agricultural Marketing Service. In addition, APHIS attended two meetings regarding the statute that were hosted by humane organizations and attended by representatives of the equine, auction, slaughter, and trucking industries and the research and veterinary communities. At these meetings, we had an opportunity to listen to diverse opinions. We have relied on the proposed rule and public comment period to obtain comments from all interested persons.

One commenter stated that APHIS should remove ''minimum'' in the summary in reference to the standards to ensure the humane movement of equines to slaughtering facilities. This commenter also added that the summary should be revised to state ''humane movement and treatment of equines to slaughtering facilities via commercial transportation.''

The summary only serves as a brief description of the document and is not intended to prove a point or argue a case.

Two commenters stated that proposed rules should be made available to everyone, and one commenter stated that APHIS should disclose them to the media, especially the press.

All proposed rules are published in the **Federal Register**, which satisfies the legal requirements to notify the public. In addition, APHIS makes all of its proposed rules available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html* and advises various media through distribution of press releases.

Two commenters stated that they must pay taxes on transactions that involve horses, but entities involved in the transportation of horses to slaughter, including slaughtering facilities, do not. Many commenters stated that they were opposed to the slaughter of equines. One commenter stated that, rather than slaughter horses, zoos should be established or States zoned to hold the horses. These comments are outside the scope of this rulemaking.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document. In addition, we are making minor, nonsubstantive, editorial changes in the rule for clarity.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis for this rule, which is set out below. Our discussion of the anticipated economic effects of this rule on small entities also serves as our cost-benefit analysis under Executive Order 12866.

This rule is intended to fulfill a responsibility given to the Secretary of Agriculture in the 1996 Farm Bill. Sections 901–905 of the 1996 Farm Bill (7 U.S.C. 1901 note) authorize the Secretary of Agriculture, subject to the availability of appropriations, to issue guidelines for the regulation of the commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. In both fiscal years 1998 and 1999, $400,000 was made available to administer this law. The regulations, which appear as a new part in title 9 of the CFR, are designed to help ensure the humane transport of equines to slaughtering facilities. The regulations cover, among other things, food, water, and opportunity for rest; space on the conveyance; segregation of stallions and other aggressive equines; completion of an owner-shipper certificate; and prohibitions on the movement of certain types of equines as well as on the use of electric prods and conveyances with animal cargo spaces divided into more than one stacked level.

This rule pertains almost exclusively to the commercial transportation of slaughter horses because horses account for almost all equines slaughtered in the United States. Equines are generally slaughtered for their meat, which is sold for human consumption, primarily outside the United States. From 1995 through 1997, an average of 100,467 equines were slaughtered annually in federally inspected U.S. slaughtering facilities. At the current time, there are three slaughtering facilities that accept equines in the continental United States: Two are located in Texas (Ft. Worth and Kaufman), and one is in Illinois (DeKalb). In 1996, the United States exported 38 million pounds of horse, ass, and mule meat, with a value of $64 million. Of the total volume exported in 1996, 29 million pounds, or 76 percent, was exported to Belgium and France. Slaughter equines represent a variety of types, and they come from a variety of sources, including working ranches, thoroughbred racing farms, and pet owners. Equines are usually slaughtered when they are unfit or unsuitable for riding or other purposes.

Economic Effects of the Rule on Owners and Commercial Shippers

The ''path'' from source supplier (farmer, rancher, pet owner, etc.) to slaughtering facility can vary. However, the most common scenario and the one used for the purpose of this analysis is as follows: The source suppliers transport their equines to local auction markets, where the equines are sold to persons who purchase the equines for the specific purpose of selling them to a slaughtering facility. (Hereafter, for the purposes of this final regulatory flexibility analysis, we will refer to persons who sell equines for slaughter as ''owners''; however, in some cases, the owners use agents to conduct some aspect of the business of purchasing the equines and transporting and selling them to slaughtering facilities. We will use the term ''owners'' to refer to either the actual owners or their agents.) The owners consider price lists published by the slaughtering facilities for equines (the price varies in relation to the

weight of the equine and the quality of the meat), transportation costs, and profit requirements to establish the maximum prices that they will pay for equines at local auctions. Because the owners cannot usually purchase enough slaughter-quality equines at any one auction to make it economically feasible to ship the equines directly from the auction site to the slaughtering facility, the owners transport the equines back to their own farms or feedlots, usually nearby, where the equines are stored until such time as the owners can accumulate more equines from other auctions. Double-deck livestock trailers, which are the types most often used for transporting equines to slaughtering facilities, can carry up to about 45 equines each; single-deck trailers can carry up to about 38 equines each.

When enough equines have been accumulated to comprise a shipment, the owners transport the equines to the slaughtering facility. Although owners who ship 2,000 or more equines to slaughter per year are not uncommon, most owners ship far fewer than that number. In an estimated 75 percent of the cases, owners hire commercial shippers to move the equines to the slaughtering facilities; in the remaining estimated 25 percent of the cases, owners transport the equines to slaughter in their own conveyances. Therefore, the regulations will apply both to owners of equines destined for slaughter and to commercial shippers who transport such equines to slaughtering facilities. We estimate that approximately 200 owners and commercial shippers will be affected by this rule. Based on the average number of equines slaughtered in the United States per year (approximately 100,000) and on the estimated number of potentially affected owners and commercial shippers (approximately 200), the average number of equines transported annually to slaughter per affected entity would be 500.

This rule will require that, for a period of not less than 6 consecutive hours immediately prior to the equines being loaded on the conveyance, each equine be provided access to food and water and the opportunity to rest. As indicated above, the owners generally have possession of the equines immediately prior to their being loaded onto conveyances for transport to slaughtering facilities. In those cases where the owners hire commercial shippers, the latter do not take possession of the equines until they are loaded onto the conveyance. Furthermore, when commercial shippers are hired, they are normally not in the presence of the equines for the full 6-hour period prior to loading. For these reasons, it can be assumed that the owners, not commercial shippers, would be responsible for fulfilling the preloading requirements of this rule. In addition, the owners are more likely than commercial shippers to have the facilities necessary to meet the preloading requirements.

This requirement is unlikely to impose a hardship on affected entities. While in the possession of the owners, equines are usually housed on farms or in feedlots, where they have access to food, water, and rest. Owners have an incentive to provide equines awaiting transport to a slaughtering facility with food, water, and rest because malnourished equines have a reduced slaughter value and dead equines have no slaughter value. Furthermore, most equines are stored on farms or in feedlots for 6 consecutive hours or more because it usually takes at least that long for owners to accumulate enough equines to fill a conveyance. At most, the rule would result in owners having to keep their equines in a farm or feedlot for an additional 6 hours to fulfill the preloading requirements for the last equines needed to fill a conveyance. This worst-case scenario assumes that the ''last-in'' equines have not had the required preloading services prior to their acquisition by the owners. If the last-in equines have had those services, then the owners would be able to load them onto the conveyance immediately. For example, owners might be able to stop at an auction en route to a slaughtering plant and pick up their last-in equines.

We cannot estimate the precise dollar effects of this requirement because no hard data is available on the prevalence of slaughter equines receiving the required food, water, and rest prior to loading. However, for the reasons stated above, the economic effects would be minimal. Storing equines in feedlots costs about $2 per day per animal. (This amount is the typical rental rate for a pen, which includes food and water.) If an owner had to store a truckload of equines (assume 38) for a full day, the cost would be $76. The cost for storing 500 equines (the estimated average number of equines shipped annually to slaughter per affected entity) would be $1,000.

This rule will require that owners or commercial shippers sign an owner-shipper certificate for each equine being transported to a slaughtering facility. Among other things, the owner-shipper certificate will include a statement that the equine has received the required preloading services. If, as a result of this requirement, commercial shippers load fewer equines per conveyance, the shippers should not be affected because they typically charge owners a flat rate to transport equines to slaughtering facilities regardless of the number of equines on the conveyance. For owners who use their own vehicles for transportation, fewer equines per conveyance translates into increased costs. As an example, assume that it costs an owner $1,850 ($1.85 per mile—a representative average rate for commercial shipment of slaughter equines—times 1,000 miles) to transport a truckload of equines in the person's own conveyance. Assume also that, as a result of this rule, the owner could ship only 35 equines in a particular shipment, 3 fewer than the 38 that would have been shipped had the rule not been in effect. Using that data, the owner's transportation costs on a per-equine basis for that particular shipment would increase by 8.6 percent, from $48.68 to $52.86. The owner would incur similar costs if the owner secured the services of a commercial shipper.

This rule will require that any equine that has been on the conveyance for 28 consecutive hours or more without food, water, and the opportunity to rest be offloaded and, for at least 6 consecutive hours, provided with food, water, and the opportunity to rest. This rule will also require that each equine be provided with enough space on the conveyance to ensure that no animal is crowded in a way likely to cause injury or discomfort. Finally, this rule will require that stallions and other aggressive equines be segregated from each other and all other equines on the conveyance.

Available data suggest that the ''28-hour rule'' should not pose a problem for the vast majority of slaughter equine transporters. Officials at two of the U.S. equine slaughtering facilities, including the largest facility, indicate that, barring unusual circumstances, the overwhelming majority of equines arrive at the slaughtering facilities in 28 hours or less. Indeed, there is reason to believe that few equines actually fit the ''worst-case'' scenario in terms of travel distance—equines transported from the east or west coasts to the slaughtering facilities, which are all located in the central part of the United States. Equines on the east coast, at least from the State of Maryland northward, as well as those on the west coast and in the States of Montana and Idaho, are usually transported to Canadian slaughtering facilities. (For example, the slaughtering plant at Massueville, Quebec, is about 100 miles from the port of entry at Champlain, NY. For transporters in the northeastern part of

the United States, the Massueville plant is closer than any of the U.S. plants.) Furthermore, even for equines that do originate at east and west coast locations, the time spent on conveyances is reduced considerably by the common transport practice of using two different drivers on long trips. This practice allows the equines to be transported virtually nonstop because one person can drive while the other rests, thereby avoiding federally mandated rest periods that apply in a single-driver situation. Assuming an average speed of 55 mph and two different drivers, and allowing 1½ hours for loading and 2 hours for refueling and meal stops, even a trip as long as 1,300 miles would take only about 27 hours.

If equines do have to be offloaded for feeding, rest, etc., while en route to a slaughtering facility, transporters would incur additional costs. As stated previously, pens can generally be rented at a rate of about $2 per day per equine. (The rent for a 6-hour period is unknown but, presumably, it would be less than the full-day fee.) In addition to the pen rental fee, transporters would have to spend time unloading the equines. Also, they may have to: (1) Adjust routes and schedules to find pens to accommodate the equines; (2) wait while they are being serviced; and (3) reload them after they have been serviced. These activities would add to the cost of servicing equines at intermediate points.

This rule will also require that, during transport, equines must be provided with enough space to ensure that they are not crowded in a way that is likely to cause injury or discomfort. One source of injury and discomfort, double-deck trailers, will be banned in 5 years. (See ''Alternatives Considered,'' below, for a discussion of why we selected a 5-year phase-in period rather than a shorter time.) Overcrowding can also occur in single-deck (also called straight-deck) trailers, which are used to transport equines to a lesser extent than double-deck trailers. The requirement concerning adequate space could translate into fewer equines per conveyance. As stated previously, commercial shippers typically charge owners a flat rate to transport their equines, so the possibility of fewer equines per shipment should not result in less revenue for commercial shippers. For owners, however, fewer equines per conveyance translates into increased costs, regardless of whether the owners hire commercial shippers or use their own vehicles for transportation.

The requirement that aggressive equines be segregated during transport is not likely to have a significant impact. Available data suggests that such segregation is already common practice. Owners have an incentive to make sure that aggressive equines are segregated because equines that arrive at the slaughtering facilities injured as the result of biting and kicking en route command lower market values. The segregation of equines requires that transporters spend more time and effort during loading, but that added time and effort is considered to be relatively minor. Nor should most transporters have to buy special equipment, because livestock trailers usually come equipped with devices, such as swing gates, that permit animal segregation. As a final point in this regard, relatively few stallions are transported for slaughter. USDA personnel stationed at two of the slaughtering facilities estimate that no more than about 5 percent of the equines arriving for slaughter are stallions.

This rule will require that an owner-shipper certificate be completed for each equine prior to departing for the slaughtering facility. The certificate must describe, among other things, the equine's physical characteristics (color, sex, permanent brands, etc.), and it must show the number of the animal's USDA backtag. It must also certify the equine's fitness to travel and note any special care and handling needs during transit (e.g., segregation of stallions). An equine will be fit to travel if it: (1) Can bear weight on all four limbs; (2) can walk unassisted; (3) is not blind in both eyes; (4) is older than 6 months of age; and (5) is not likely to give birth in transit. Affected entities will not need the services of a veterinarian in order to make the fitness-to-travel determination. This rule will require that either the owners or the commercial shippers sign the certificate and that the owner-shipper certificate accompany the equine to the slaughtering facility.

This requirement for an owner-shipper certificate will create additional paperwork for both owners and commercial shippers. As with the other preloading services discussed above, it is reasonable to assume that the responsibility for providing the data on the certificate will generally rest with the owners, not the commercial shippers. The owners have possession of the equines prior to departing for the slaughtering facility and presumably are more qualified to provide the data required by the owner-shipper certificate. It is also reasonable to assume that the responsibility for obtaining and installing the USDA backtag will be theirs, not the commercial shippers. The owners will not incur a cost for obtaining the backtags, which are available free of charge from a variety of sources. The backtags are adhesive and are attached simply by sticking them on the equine's back, so owners will not incur installation costs.

The added administrative costs that owners will incur as a result of having to complete and sign the owner-shipper certificate is difficult to quantify. Assuming that it takes 5 minutes to complete each certificate, an owner who ships 500 equines to slaughter annually will have to spend about 42 hours per year complying with the rule. Assuming a labor rate of $7 per hour, the 42 hours translates into added costs of about $300 per year. For reasons explained earlier, the added administrative costs for commercial shippers will likely be less than those for owners.

This rule will allow the use of electric prods only in life-threatening situations and will prohibit the transport of equines to slaughter on conveyances divided into more than one level, such as double-deck trailers, 5 years after publication of this final rule. The restriction on the use of electric prods should not pose a burden because effective, low-cost substitutes are available for use in non-life-threatening situations. For example, fiberglass poles with flags attached, which cost only about $5 each, are considered to be an effective alternative to electric prods. Any current use of electric prods by transporters of slaughter equines probably derives from the traditional use of these devices to assist in moving other livestock, such as cattle and swine.

The retail cost of a new double-deck livestock trailer averages about $42,000; single-deck trailers retail for about $38,000 each. The cost varies depending largely on the model, type of construction, and optional features. The useful life of the trailers also varies, depending on such factors as the weight and type of animals hauled and the needed frequency of cleaning. It is not uncommon, however, for trailers of both types to provide 10 to 12 years' worth of useful service.

As discussed previously, double-deck trailers can carry more equines than single-deck trailers, and some owners and shippers will be negatively affected by the reduction in the numbers of equines that could be transported in a single conveyance. Upon publication of this rule, shippers using floating-deck trailers to transport equines to slaughtering facilities will need to collapse the decks so that they create only one level. Conveyances divided permanently into more than one stacked

level can be, and are, also used to transport commodities other than equines, including livestock and produce. In fact, it is estimated that double-deck trailers in general carry equines no more than about 10 percent of the time they are in use. Upon effect of the ban, commercial shippers who transport equines to slaughtering facilities could use their double-deck trailers to transport other livestock and produce. Owners who use their own double-deck trailers to transport equines to slaughtering facilities will have to find another use for the equipment or trade them for single-deck trailers. Owners should be able to sell their serviceable trailers at fair market value to transporters of commodities other than equines. Furthermore, some of the double-deck trailers now in use by owners will need to be taken out of service within the next 5 years anyway as the result of normal wear and tear and could be replaced by single-deck trailers.

In conclusion, we do not anticipate that any of the requirements will have undue onerous economic effects on any affected owners or commercial shippers. We believe that many transporters of slaughter equines may already be in compliance with many of the requirements. The requirement for an owner-shipper certificate will affect all transporters of slaughter equines, but we have designed the form to make its preparation as easy as possible. We do not believe that the completion and maintenance of these certificates will be unreasonably time-consuming or burdensome. As stated previously, the proposed ''28-hour rule'' should not pose a problem for the vast majority of slaughter equine transporters, and the ban on double-deck trailers should not have a significant economic effect on owners or commercial shippers because these trailers can be used for other purposes and will need to be replaced anyway within the next 5 years and could be replaced with a single-deck trailer.

At a minimum, the rule will require that affected owners and commercial shippers complete an owner-shipper certificate, an administrative task that they do not have to perform now. For an entity that transports 500 equines per year, the average for all potentially affected entities, the requirement regarding owner-shipper certificates will translate into added costs of about $300 annually. In a worst-case scenario, the rule can add several thousand dollars to the annual operating costs of an entity that transports 500 equines per year. This worst-case scenario assumes that, at the current time, affected owners and commercial shippers are engaging in little or no voluntary compliance with the requirements.

Economic Effects of the Rule on Horse Slaughtering Facilities

Up to this point, the discussion in this final regulatory flexibility analysis has centered entirely on owners and commercial shippers, who represent the bulk of the entities affected by this rule. However, the rule will also impact the three horse slaughtering facilities currently operating in the continental United States. While the deferral of the effective date for the prohibition on double-deck trailers will allow them time to respond to the expected decline in the number of transporters willing to haul horses to slaughter, these slaughtering facilities will nonetheless be affected because they will experience lost business as a result of that expected decline. Some transporters will choose to keep their double-deck trailers and carry other commodities (*i.e.,* other than equine) because in their locations it is more lucrative for them to do so. Other transporters will likely find that it is not cost effective to haul horses long-distance in conveyances that have a smaller capacity, i.e., straight-deck and goose-neck trailers.

The slaughtering facilities will also experience increased hauling costs over time, because transporters that continue to ship horses to slaughter will be forced to do so in smaller conveyances. The hauling cost that slaughtering facilities pay to acquire each horse will increase, because the number of horses per load (being hauled the same distance) will be reduced but the hauling cost per load will remain the same. Officials at one U.S. slaughtering facility indicate that commercial shippers currently charge a hauling fee of $1.65 per mile if they have a return load, and $2.25 per mile if they return empty, regardless of the type of conveyance used. For a trip of 1,000 miles at $1.65 per mile, the facility's hauling cost per horse is $36.67 with a double-deck trailer and $43.42 with a straight-deck trailer, an increase of $6.75 or 18 percent per horse.[2] For each lot of 1,000 horses delivered to the slaughtering facility, the per horse cost increase of $6.75 translates into increased costs of $6,750.

Economic Effects on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of rules on small entities (i.e., businesses, organizations, and governmental jurisdictions). As discussed above, the entities that will be affected by this rule are owners and commercial shippers who transport equines to slaughtering facilities and the slaughtering facilities themselves.

As stated previously, we estimate that approximately 200 entities will be affected by this rule, most of whom are owners and commercial shippers. Although the sizes of these entities are unknown, it is reasonable to assume that most are small by U.S. Small Business Administration (SBA) standards. This assumption is based on composite data for providers of the same and similar services in the United States. In 1993, there were 30,046 U.S. firms in Standard Industrial Classification (SIC) 4213, a classification category comprising firms primarily engaged in ''over-the-road'' trucking services, including commercial shipping. The per-firm average gross receipts for all 30,046 firms that year was $2.6 million, well below the SBA's small-entity threshold of $18.5 million. Similarly, in 1993, there were 1,671 U.S. firms in SIC 5159, a classification category that includes horse dealers. Of the 1,671 firms, 97 percent had fewer than 100 employees, the SBA's small-entity threshold for those firms.

This rule will result in increased costs for affected entities, large and small. As indicated above, operating costs will increase somewhere between about $300 and several thousand dollars annually for an entity that transports 500 equines per year. However, the available data suggests that, for most entities, the economic consequences will fall somewhere near the minimum point on the impact scale because, as stated previously, many are already in compliance with at least some of the rule's provisions, such as stallion segregation. Because we did not have enough data to conclude that even a cost increase of as low as $300 annually will not be significant for most of the potentially affected entities, we requested public comment on the potential economic impact of the proposal on small entities.

We received several comments regarding the initial regulatory flexibility analysis.

One commenter stated that the effect of the rule is so minimal that the small entities are the ''winners'' at an impact of $300 per year or $25 per month. Another commenter stated that APHIS put more emphasis on not creating financial hardship for the entities involved than on what Congress mandated regarding the humane transport of equines to slaughter.

We believe that these regulations will help ensure the humane movement of

[2] This assumes 45 horses on a double-deck trailer and 38 horses on a single-deck trailer.

equines to slaughtering facilities via commercial transportation. However, we do not believe that small entities are not affected. In fact, in the discussion under the heading, ''Executive Order 12866 and Regulatory Flexibility Act,'' we stated that the regulations would have a negative economic effect on affected entities, large and small. We determined that operating costs would increase somewhere between about $300 and several thousand dollars annually for an entity that transports 500 equines per year, which would be a negative impact on these entities. However, we stated that, for most entities, the economic consequences of the regulations would fall somewhere near the minimum point on the impact scale because many entities are already in compliance with at least some of the requirements in part 88.

One commenter stated that the number of affected entities was understated because certain entities were not counted. Commercial airlines; air and sea cargo carriers; vendors that supply packing plants; feed manufacturers; and suppliers of veterinary supplies and medications were among the entities the commenter cited.

We stated above that the entities that would be affected by this rule were owners and commercial shippers who transport equines to slaughtering facilities and the slaughtering facilities themselves. These are the primary entities that would be directly affected by this rule. It is possible that these regulations may indirectly affect other entities, including commercial airlines, vendors, and feed manufacturers; however, these entities are not directly affected by this rule, and this rule should not have a significant economic effect on them.

Alternatives Considered

The Regulatory Flexibility Act requires Federal agencies promulgating new regulations to consider alternatives that will lessen the economic effects of the regulations on affected small entities. In developing the proposed rule, we considered many alternatives, some of which are discussed below. In developing the proposed program to carry out the statute, we established a working group that included participants both from within the agency as well as from other parts of USDA, including FSIS and AMS. In addition, APHIS representatives attended two meetings about the statute hosted by humane organizations and attended by representatives of the equine, auction, slaughter, and trucking industries and the research and veterinary communities.

We considered requiring that owners and commercial shippers of equines destined for slaughter secure the services of a veterinarian to certify the equines' fitness for travel. However, this rule allows owners and commercial shippers to certify the equines' fitness to travel themselves. In addition, we considered various alternatives with regard to the types of equines that would be prohibited from shipment. After much consideration, we are prohibiting the shipment of equines that are unable to bear weight on all four limbs, unable to walk unassisted, blind in both eyes, less than 6 months of age, and likely to give birth during shipment. We believe that we must prohibit the shipment to slaughter of equines in these five categories to carry out congressional intent under the statute for ensuring the humane transport of equines for slaughter. In addition, we considered many allowable time frames for equines to be on conveyances without access to food and water; the proposed 28-hour period is based on available data and input from interested and potentially affected parties. Finally, in regard to the prohibition on the transport of slaughter equines in any type of conveyance divided into more than one stacked level, we determined that such a ban is necessary to ensure the humane transport of equines to slaughtering facilities. However, this rule would allow the use of double-deck trailers for a period of 5 years following publication of this rule to lessen the effect of the ban on affected entities.

The Regulatory Flexibility Act also requires that Federal agencies consider the use of performance-based rather than design-based standards. In keeping with this requirement and the direction provided in the conference report to employ performance-based rather than engineering-based standards to the extent possible, the requirements included in the proposed rule are primarily performance-based. As examples, the rule's requirements for design of the conveyance, space allotted per equine on the conveyance, and manner of driving the conveyance are all performance-based.

For this rule, we also considered establishing the effective date of the ban on double-deck trailers at various points of time in the future, ranging from 6 months to 10 years after the rule's publication. We chose a 5-year effective date because we believe it provides a strategy for steadily improving the welfare of equines transported to slaughter. For reasons discussed below, a shorter period could have an onerous impact on the slaughter horse industry and result in unintended consequences for equines.

As discussed above, hauling costs for slaughtering facilities will increase as a result of owners and commercial shippers using smaller conveyances, and to the extent that the transition to a new single-deck system results in more trips at the higher, empty backhaul rate. In this regard, slaughtering facility officials believe that transporters who decide to continue shipping horses in the new single-deck environment will need time to find markets or customers with alternative products to haul, thereby avoiding empty backhauls and saving the facilities money. As indicated above, transporters charge one slaughtering facility a hauling fee of $1.65 per mile if they have a return load and $2.25 per mile if they return empty. For one trip of 1,000 miles, the savings for that facility would be $600 if the transporter is able to secure a return load. For 100 trips, the savings would be $60,000.

Slaughtering facility officials believe that they also need a deferral of the effective date for the prohibition on double-deck trailers to allow them time to respond to the expected decline in the number of transporters willing to haul horses to slaughter. Specifically, they have stated that they need time to budget and to arrange for financing on equipment they may need to acquire if they must haul horses on their own because commercial shippers and owners will not. The largest facility currently owns two tractors and one straight-deck trailer and estimates that it would have to acquire about 10 additional tractor trailers in order to do all of its own hauling. One new tractor costs approximately $100,000, and one new single-deck trailer costs approximately $38,000.

Officials at one slaughtering facility believe that, because the profit margin for their operation is already very thin (due in part to the financial burden imposed by the new European Union Additional Residue Testing Program), the facility could not make the transition to single-deck trailers in 6 months.[3] However, the same officials believe that, with a gradual transition,

[3] The European Union established Maxxam Laboratory, Inc. (Maxxam) in Canada as the North American residue testing facility. Maxxam charged the horse slaughter facilities in the United States $130,000 start-up costs; as a direct result, one facility, Central Nebraska Packing in North Platte, NE., closed its operation. The three facilities in Canada in direct competition with the U.S. facilities are subsidized by the Canadian government for both start-up and future testing fees. This places the U.S. facilities at a financial disadvantange with their Canadian competitors.

over a 5-year period, they would be able to plan accordingly and the facility might survive. They point out that their facility, which generates export sales exclusively, may be forced to close regardless of the time frame imposed by this rule, but the facility's chances of remaining open would be substantially improved with a 5-year phase-in.

If the facility closes, we believe it likely that horses in the United States that are intended for slaughter will be trucked to feedlots in Canada or Mexico, ostensibly as saddle horses, then go to slaughter. If that happens, we will have no jurisdiction over those movements because our statutory authority to regulate is limited to the commercial transportation of horses to slaughter and to movements to slaughter within the United States. Thus, a critical factor in our decision to use a 5-year time frame for the ban on double-deck trailers is our belief that if the rule has too great an impact on horse slaughtering facilities in the United States, our rule will not provide equines transported to slaughter the protection that we intend.

The information collection and recordkeeping requirements contained in this rule were described in the proposed rule and have been approved by the Office of Management and Budget. See ''Paperwork Reduction Act,'' below.

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0160.

List of Subjects

9 CFR Part 70

Administrative practice and procedure.

9 CFR Part 88

Animal welfare, Horses, Penalties Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR, chapter I, subchapter C, as follows:

PART 70—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

1. The authority citation for part 70 is revised to read as follows:

Authority: 21 U.S.C. 111, 112, 114a, 114a–1, 115, 117, 120, 122, 123, 125–127, 134b, 134c, 134e, and 134f; 7 CFR 2.22, 2.80, 371.4.

2. In § 70.1, the list of statutory provisions is amended by adding at the end of the list the following:

§ 70.1 Scope and applicability of rules of practice.

* * * * *

Sections 901–905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note).

* * * * *

3. A new part 88 is added to read as follows:

PART 88—COMMERCIAL TRANSPORTATION OF EQUINES FOR SLAUGHTER

Sec.

88.1 Definitions.
88.2 General information.
88.3 Standards for conveyances.
88.4 Requirements for transport.
88.5 Requirements at a slaughtering facility.
88.6 Violations and penalties.

Authority: 7 U.S.C. 1901, 7 CFR 2.22, 2.80, 371.4.

§ 88.1 Definitions.

The following definitions apply to this part:

APHIS. The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Commercial transportation. Movement for profit via conveyance on any highway or public road.

Conveyance. Trucks, tractors, trailers, or semitrailers, or any combination of these, propelled or drawn by mechanical power.

Equine. Any member of the *Equidae* family, which includes horses, asses, mules, ponies, and zebras.

Euthanasia. The humane destruction of an animal by the use of an anesthetic agent or other means that causes painless loss of consciousness and subsequent death.

Owner/shipper. Any individual, partnership, corporation, or cooperative association that engages in the commercial transportation of more than 20 equines per year to slaughtering facilities, except any individual or other entity who transports equines to slaughtering facilities incidental to his or her principal activity of production agriculture (production of food or fiber).

Owner-shipper certificate. VS Form 10–13,[1] which requires the information specified by § 88.4(a)(3) of this part.

Secretary. The Secretary of Agriculture.

Slaughtering facility. A commercial establishment that slaughters equines for any purpose.

Stallion. Any uncastrated male equine that is 1 year of age or older.

USDA. The U.S. Department of Agriculture.

USDA backtag. A backtag issued by APHIS that conforms to the eight-character alpha-numeric National Backtagging System and that provides unique identification for each animal.

USDA representative. Any employee of the USDA who is authorized by the Deputy Administrator for Veterinary Services of APHIS, USDA, to enforce this part.

§ 88.2 General information.

(a) State governments may enact and enforce regulations that are consistent with or that are more stringent than the regulations in this part.

(b) To determine whether an individual or other entity found to transport equines to a slaughtering facility is subject to the regulations in this part, a USDA representative may request from any individual or other entity who transported the equines information regarding the business of that individual or other entity. When such information is requested, the individual or other entity who transported the equines must provide the information within 30 days and in a format as may be specified by the USDA representative.

§ 88.3 Standards for conveyances.

(a) The animal cargo space of conveyances used for the commercial transportation of equines to slaughtering facilities must:

(1) Be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the equines being transported (e.g., provides

[1] Forms may be obtained from the National Animal Health Programs Staff, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231.

adequate ventilation, contains no sharp protrusions, etc.);

(2) Include means of completely segregating each stallion and each aggressive equine on the conveyance so that no stallion or aggressive equine can come into contact with any of the other equines on the conveyance;

(3) Have sufficient interior height to allow each equine on the conveyance to stand with its head extended to the fullest normal postural height; and

(4) Be equipped with doors and ramps of sufficient size and location to provide for safe loading and unloading.

(b) Equines in commercial transportation to slaughtering facilities must not be transported in any conveyance that has the animal cargo space divided into two or more stacked levels, except that conveyances lacking the capability to convert from two or more stacked levels to one level may be used until December 7, 2006. Conveyances with collapsible floors (also known as ''floating decks'') must be configured to transport equines on one level only.

§ 88.4 Requirements for transport.

(a) Prior to the commercial transportation of equines to a slaughtering facility, the owner/shipper must:

(1) For a period of not less than 6 consecutive hours immediately prior to the equines being loaded on the conveyance, provide each equine appropriate food (i.e., hay, grass, or other food that would allow an equine in transit to maintain well-being), potable water, and the opportunity to rest;

(2) Apply a USDA backtag [2] to each equine in the shipment;

(3) Complete and sign an owner-shipper certificate for each equine being transported. The owner-shipper certificate for each equine must accompany the equine throughout transit to the slaughtering facility and must include the following information, which must be typed or legibly completed in ink:

(i) The owner/shipper's name, address, and telephone number;

(ii) The receiver's (destination) name, address, and telephone number;

(iii) The name of the auction/market, if applicable;

(iv) A description of the conveyance, including the license plate number;

(v) A description of the equine's physical characteristics, including such information as sex, breed, coloring, distinguishing markings, permanent brands, tattoos, and electronic devices that could be used to identify the equine;

(vi) The number of the USDA backtag applied to the equine in accordance with paragraph (a)(2) of this section;

(vii) A statement of fitness to travel at the time of loading, which will indicate that the equine is able to bear weight on all four limbs, able to walk unassisted, not blind in both eyes, older than 6 months of age, and not likely to give birth during the trip;

(viii) A description of any preexisting injuries or other unusual condition of the equine, such as a wound or blindness in one eye, that may cause the equine to have special handling needs;

(ix) The date, time, and place the equine was loaded on the conveyance; and

(x) A statement that the equine was provided access to food, water, and rest prior to transport in accordance with paragraph (a)(1) of this section; and

(4) Load the equines on the conveyance so that:

(i) Each equine has enough floor space to ensure that no equine is crowded in a way likely to cause injury or discomfort; and

(ii) Each stallion and any aggressive equines are completely segregated so that no stallion or aggressive equine can come into contact with any other equine on the conveyance.

(b) During transit to the slaughtering facility, the owner/shipper must:

(1) Drive in a manner to avoid causing injury to the equines;

(2) Observe the equines as frequently as circumstances allow, but not less than once every 6 hours, to check the physical condition of the equines and ensure that all requirements of this part are being followed. The owner/shipper must obtain veterinary assistance as soon as possible from an equine veterinarian for any equines in obvious physical distress. Equines that become nonambulatory en route must be euthanized by an equine veterinarian. If an equine dies en route, the owner/shipper must contact the nearest APHIS office as soon as possible and allow an APHIS veterinarian to examine the equine. If an APHIS veterinarian is not available, the owner/shipper must contact an equine veterinarian;

(3) Offload from the conveyance any equine that has been on the conveyance for 28 consecutive hours and provide the equine appropriate food, potable water, and the opportunity to rest for at least 6 consecutive hours; and

(4) If offloading is required en route to the slaughtering facility, the owner/shipper must prepare another owner-shipper certificate as required by paragraph (a)(2) of this section and record the date, time, and location where the offloading occurred. In this situation, both owner-shipper certificates would need to accompany the equine to the slaughtering facility.

(c) Handling of all equines in commercial transportation to a slaughtering facility shall be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma. Electric prods may not be used on equines in commercial transportation to a slaughtering facility for any purpose, including loading or offloading on the conveyance, except when human safety is threatened.

(d) At any point during the commercial transportation of equines to a slaughtering facility, a USDA representative may examine the equines, inspect the conveyance, or review the owner-shipper certificates required by paragraph (a)(3) of this section.

(e) At any time during the commercial transportation of equines to a slaughtering facility, a USDA representative may direct the owner/shipper to take appropriate actions to alleviate the suffering of any equine. If deemed necessary by the USDA representative, such actions could include securing the services of an equine veterinarian to treat an equine, including performing euthanasia if necessary.

(f) The individual or other entity who signs the owner-shipper certificate must maintain a copy of the owner-shipper certificate for 1 year following the date of signature.

§ 88.5 Requirements at a slaughtering facility.

(a) Upon arrival at a slaughtering facility, the owner/shipper must:

(1) Ensure that each equine has access to appropriate food and potable water after being offloaded;

(2) Present the owner-shipper certificates to a USDA representative;

(3) Allow a USDA representative access to the equines for the purpose of examination; and

(4) Allow a USDA representative access to the animal cargo area of the conveyance for the purpose of inspection.

(b) If the owner/shipper arrives during normal business hours, the owner/shipper must not leave the premises of

[2] USDA backtags are available at recognized slaughtering establishments and specifically approved stockyards and from State representatives and APHIS representatives. A list of recognized slaughtering establishments and specifically approved stockyards may be obtained as indicated in § 78.1 of this chapter. The terms ''State representative'' and ''APHIS representative'' are defined in § 78.1 of this chapter.

a slaughtering facility until the equines have been examined by a USDA representative. However, if the owner/shipper arrives outside of normal business hours, the owner/shipper may leave the premises but must return to the premises of the slaughtering facility to meet the USDA representative upon his or her arrival.

(c) Any owner/shipper transporting equines to slaughtering facilities outside of the United States must present the owner-shipper certificates to USDA representatives at the border.

§ 88.6 Violations and penalties.

(a) The Secretary is authorized to assess civil penalties of up to $5,000 per violation of any of the regulations in this part.

(b) Each equine transported in violation of the regulations of this part will be considered a separate violation.

(Approved by the Office of Management and Budget under control number 0579–0160.)

Done in Washington, DC, this 3rd day of December 2001.

Bill Hawks,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 01–30259 Filed 12–6–01; 8:45 am]

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Federal Register

Friday,
December 7, 2001

Part III

Department of State

Designation of 39 "Terrorist Organizations" Under the "PATRIOT USA ACT"; Notice

DEPARTMENT OF STATE

[Public Notice 3852]

Designation of 39 ''Terrorist Organizations'' Under the ''PATRIOT USA Act''

AGENCY: Office of the Coordinator for Counterterrorism, Department of State.

ACTION: Designation.

Pursuant to Section 411(a)(1)(G) of the Uniting andStrengthening America by providing Appropriate ToolsRequired to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107–56, 115 Stat. 272 (''USA PATRIOT Act''), the Secretary of State, in consultation with the AttorneyGeneral, hereby designates each group listed in the Appendix to this notice as a ''terrorist organization.'' This designation is effective upon publication.

Section 411(a)(1)(G) of the USA PATRIOT Act requires the Secretary of State to find that a group has engaged in terrorism-related activities before designating it as a ''terrorist organization.'' This statutory requirement has been satisfied because classified and/or unclassified information available to the Secretary of State contains findings that the named groups have committed, or have provided material support to further, terrorist acts.

Dated: December 5, 2001.

Mark Wong,

Acting Coordinator for Counterterrorism, Department of State.

Appendix

—Al-Ittihad al-Islami (AIAI)
—Al-Wafa al-Igatha al-Islamia
—Asbat al-Ansar
—Darkazanli Company
—Salafist Group for Call and Combat (GSPC)
—Islamic Army of Aden
—Libyan Islamic Fighting Group
—Makhtab al-Khidmat
—Al-Hamati Sweets Bakeries
—Al-Nur Honey Center
—Al-Rashid Trust
—Al-Shifa Honey Press for Industry and Commerce
—Jaysh-e-Mohammed
—Jamiat al-Ta'awun al-Islamiyya
—Alex Boncayao Brigade (ABB)
—Army for the Liberation of Rwanda (ALIR)—AKA: Interahamwe,Former Armed Forces (EX–FAR)
—First of October Antifascist Resistance Group (GRAPO)—AKA: Grupo de Resistencia Anti-Fascista Premero De Octubre
—Lashkar-e-Tayyiba (LT)—AKA: Army of the Righteous
—Continuity Irish Republican Army (CIRA)—AKA: Continuity Army Council
—Orange Volunteers (OV)
—Red Hand Defenders (RHD)
—New People's Army (NPA)
—People Against Gangsterism and Drugs (PAGAD)
—Revolutionary United Front (RUF)
—Al-Ma'unah
—Jayshullah
—Black Star
—Anarchist Faction for Overthrow
—Red Brigades-Combatant Communist Party (BR–PCC)
—Revolutionary Proletarian Nucleus
—Turkish Hizballah
—Jerusalem Warriors
—Islamic Renewal and Reform Organization
—The Pentagon Gang
—Japanese Red Army (JRA)
—Jamiat ul-Mujahideen (JUM)
—Harakat ul Jihad i Islami (HUJI)
—The Allied Democratic Forces (ADF)
—The Lord's Resistance Army (LRA)

[FR Doc. 01–30576 Filed 12–6–01; 12:55 pm]

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Federal Register

Vol. 66, No. 236

Friday, December 7, 2001

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

60139–62906 3
62907–63148 4
63149–63306 5
63307–63486 6
63487–63620 7

CFR PARTS AFFECTED DURING DECEMBER

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:
7507 62907
7508 62909
7509 62911
7510 63149

Administrative Orders:
Presidential Determinations:
No. 02–07 of November 21, 2001 63487

5 CFR
6001 60139

7 CFR
301 63151

Proposed Rules:
352 63005
1410 63339

9 CFR
70 63588
88 63588
94 62913

12 CFR
5 62914

Proposed Rules:
Ch. IX 63008
584 63517

14 CFR
39 ..... 60140, 60143, 60144, 60145, 62915, 63154, 63157, 63159, 63307
71 63489
73 63433
93 63294
107 63474
108 63474

Proposed Rules:
39 ..... 63009, 63010, 63341
71 ..... 60162, 63517

18 CFR
381 63162

19 CFR
12 63490

20 CFR
655 63298

21 CFR
510 ..... 63163, 63164, 63499
520 ..... 63165, 63166
524 63164
556 62916
558 ..... 62916, 63499, 63500

Proposed Rules:
500 63519

24 CFR
30 63436

26 CFR

Proposed Rules:
1 63203

29 CFR
578 63501
579 63501
580 63501

30 CFR
256 60147
944 62917

33 CFR
117 ..... 62935, 62936, 62938, 62939, 62940
165 ..... 60151, 62940

34 CFR

Proposed Rules:
Ch. VI 63203

37 CFR
201 62942

38 CFR
17 ..... 63446, 63449
20 60152

40 CFR
8 63454
52 63311
62 63311
63 63313
70 ..... 62945, 62946, 62949, 62951, 62954, 62961, 62967, 62969, 63166, 63168, 63170, 63175, 63180, 63184, 63188, 63318, 63503
180 63192
261 ..... 60153, 62973
271 63331

Proposed Rules:
52 ..... 63204, 63343
80 60153

42 CFR
411 60154
1001 62980

43 CFR
3600 63334
3610 63334
3620 63334
3800 63334

44 CFR

Proposed Rules:
61 60176

47 CFR

1 62992
25 63512
73 ....60156, 60157, 63199
76 62992
101 63512

Proposed Rules:

73 63209

48 CFR

202 63334
212 63335
215 63334
217 63336
237 63335
242 63334

Proposed Rules:

235 63348

49 CFR

571 60157

Proposed Rules:

107 63096
171 63096
172 63096
173 63096
177 63096
178 63096
180 63096

50 CFR

17 62993
600 63199
622 60161
635 63003
648 63003
660 63199

Proposed Rules:

17 63349
21 63349
648 63013

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 DECEMBER 7, 2001

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Watermelon research and promotion plan; published 11-7-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Alabama; published 11-7-01

Maryland; published 11-7-01

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Monensin; published 12-7-01

Sponsor name and address changes—

Phibro Animal Health, Inc.; published 12-7-01

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Title I Property Improvement and Manufactured Home Loan Insurance programs and Title I lender/Title II mortgagee approval requirements; published 11-7-01

POSTAL SERVICE

Domestic Mail Manual:

Rate, fee, and classification changes; published 12-15-00

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Louisiana; published 11-7-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Aeromot-Industria Mecanico Metalurgica Itda.; published 11-26-01

TREASURY DEPARTMENT

Customs Service

Merchandise, special classes:

Import restrictions—

Bolivia; archaeological and ethnological materials; published 12-7-01

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant pest regulations; comments due by 12-10-01; published 10-9-01 [FR 01-25229]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant Protection and Quarantine Treatment Manual; incorporation by reference:

Limes; hot water treatment; comments due by 12-10-01; published 11-8-01 [FR 01-28065]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

King and tanner crab; comments due by 12-10-01; published 11-30-01 [FR 01-29772]

Magnuson-Stevens Act provisions—

Domestic fisheries; exempted fishing permit applications; comments due by 12-14-01; published 11-29-01 [FR 01-29640]

Domestic fisheries; exempted fishing permit applications; comments due by 12-14-01; published 11-29-01 [FR 01-29641]

International fisheries regulations:

Fraser River sockeye and pink salmon; inseason orders; comments due by 12-12-01; published 11-27-01 [FR 01-29495]

Marine mammals:

Atlantic Large Whale Take Reduction Plan; comments due by 12-13-01; published 11-28-01 [FR 01-29601]

CONSUMER PRODUCT SAFETY COMMISSION

Flammable Fabrics Act:

Mattresses/bedding; open flame ignition; flammability standard; comments due by 12-10-01; published 10-11-01 [FR 01-25442]

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Testimony by employees and production of official records in legal proceedings; comments due by 12-14-01; published 11-14-01 [FR 01-28543]

EDUCATION DEPARTMENT

Postsecondary education:

Higher Education Act Title IV program issues; negotiated rulemaking committees; intent to establish; comments due by 12-14-01; published 12-5-01 [FR 01-30260]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Wisconsin; comments due by 12-10-01; published 11-8-01 [FR 01-27829]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste management system:

RCRA hazardous waste management facilities; standardized permit, corrective action, and financial responsibility; comments due by 12-11-01; published 10-12-01 [FR 01-24204]

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Sethoxydim; comments due by 12-10-01; published 10-10-01 [FR 01-25021]

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 12-10-01; published 11-8-01 [FR 01-27831]

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 12-10-01; published 11-8-01 [FR 01-27832]

Water programs:

Pollutants analysis test procedures; guidelines—

Mercury; measurement method; comments due by 12-10-01; published 10-9-01 [FR 01-24886]

Water supply:

Underground injection control program—

Texas; Class I, III, IV, and V injection wells; comments due by 12-10-01; published 11-8-01 [FR 01-27835]

Texas; Class III brine mining injection wells; comments due by 12-10-01; published 11-8-01 [FR 01-27836]

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:

Mississippi; comments due by 12-14-01; published 10-26-01 [FR 01-26943]

Practice and procedure:

Satellite Digital Audio Radio Service; terrestrial repeater networks authorization; comments due by 12-14-01; published 11-23-01 [FR 01-29328]

Radio stations; table of assignments:

Florida; comments due by 12-10-01; published 11-9-01 [FR 01-28205]

Missouri; comments due by 12-10-01; published 10-31-01 [FR 01-27348]

Texas; comments due by 12-10-01; published 10-31-01 [FR 01-27347]

FEDERAL COMMUNICATIONS COMMISSION

Television stations; table of assignments:

Florida; comments due by 12-13-01; published 11-5-01 [FR 01-27639]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Imported food products of animal origin; drug residue tolerances; comments due by 12-10-01; published 8-10-01 [FR 01-20161]

HEALTH AND HUMAN SERVICES DEPARTMENT

Grants:

Substance Abuse and Mental Health Service Administration; mental health and substance abuse emergency response criteria; comments due by 12-10-01; published 10-11-01 [FR 01-25451]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Practice and procedure:

Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac)—

Corporate governance; comments due by 12-13-01; published 11-9-01 [FR 01-28214]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Light goose populations; harvest management; comments due by 12-11-01; published 10-12-01 [FR 01-25612]

Correction; comments due by 12-14-01; published 11-7-01 [FR 01-27940]

JUSTICE DEPARTMENT

Drug Enforcement Administration

Schedules of controlled substances:

Tetrahydrocannabinols; placement into Schedule I

Clarification; comments due by 12-10-01; published 10-9-01 [FR 01-25023]

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Foreign language alien broadcasters; special fourth preference immigrant visas; comments due by 12-10-01; published 10-11-01 [FR 01-25478]

LABOR DEPARTMENT

Employment and Training Administration

Disaster unemployment assistance program; eligibility clarification due to September 11 terrorist attacks; comments due by 12-13-01; published 11-13-01 [FR 01-28412]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 12-14-01; published 11-14-01 [FR 01-28511]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 12-14-01; published 11-14-01 [FR 01-28512]

SMALL BUSINESS ADMINISTRATION

Business loans:

Loan guaranty and amounts, minimum guaranteed dollar amount of 7(a) loans, financing percentages, etc.; comments due by 12-14-01; published 11-14-01 [FR 01-28371]

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Pennsylvania; comments due by 12-10-01; published 10-10-01 [FR 01-25425]

Vessel documentation:

Coastwise trade vessels; foreign ownership; ''sold foreign'' interpretation; comments due by 12-11-01; published 9-12-01 [FR 01-22815]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 12-14-01; published 11-19-01 [FR 01-28794]

Bell; comments due by 12-11-01; published 10-12-01 [FR 01-25695]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bell; comments due by 12-14-01; published 10-15-01 [FR 01-25692]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 12-10-01; published 10-24-01 [FR 01-26713]

General Electric Co.; comments due by 12-10-01; published 10-10-01 [FR 01-25400]

Pilatus Britten-Norman Ltd.; comments due by 12-10-01; published 11-7-01 [FR 01-27653]

Sikorsky; comments due by 12-11-01; published 10-12-01 [FR 01-25696]

Socata-Groupe Aerospatiale; comments due by 12-12-01; published 11-14-01 [FR 01-28420]

Class E airspace; comments due by 12-15-01; published 11-7-01 [FR 01-27991]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Side impact protection and fuel system integrity—

Radial tires instead of bias ply tires used on moving barriers; comments due by 12-10-01; published 10-10-01 [FR 01-25428]

Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act; implementation:

Foreign safety recalls and campaigns related to potential defects; information reporting; comments due by 12-10-01; published 10-11-01 [FR 01-25429]

TREASURY DEPARTMENT

Thrift Supervision Office

Savings and loan holding companies:

Authority to engage in financial activities; comments due by 12-10-01; published 11-8-01 [FR 01-27889]

VETERANS AFFAIRS DEPARTMENT

Loan guaranty:

Prepurchase counseling requirements; comments due by 12-10-01; published 10-11-01 [FR 01-25459]

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. 768/P.L. 107–72
Need-Based Educational Aid Act of 2001 (Nov. 20, 2001; 115 Stat. 648)

H.R. 2620/P.L. 107–73
Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Nov. 26, 2001; 115 Stat. 651)

H.R. 1042/P.L. 107–74
To prevent the elimination of certain reports. (Nov. 28, 2001; 115 Stat. 701)

H.R. 1552/P.L. 107–75
Internet Tax Nondiscrimination Act (Nov. 28, 2001; 115 Stat. 703)

H.R. 2330/P.L. 107–76
Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Nov. 28, 2001; 115 Stat. 704)

H.R. 2500/P.L. 107–77
Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (Nov. 28, 2001; 115 Stat. 748)

H.R. 2924/P.L. 107–78
To provide authority to the Federal Power Marketing Administration to reduce vandalism and destruction of property, and for other purposes. (Nov. 28, 2001; 115 Stat. 808)

Last List November 23, 2001

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