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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airport Docket No. 01–AWP–28]**

### Establishment of a Class E Enroute Domestic Airspace Area, Bristol Mountains, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule, request for comments.

**SUMMARY:** This action establishes a Class E enroute domestic airspace area beginning at 1,200 feet above ground level (AGL) in the vicinity of the Bristol Mountains, CA, to replace existing Class G uncontrolled airspace.

**EFFECTIVE DATE:** 0901 UTC February 21, 2002. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before January 16, 2002.

**ADDRESSES:** Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 01–AWP–28, Air Traffic Division, P.O. Box 92007, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

**FOR FURTHER INFORMATION CONTACT:** Debra Trindle, Air Traffic Division, Airspace Specialist, AWP–520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

**SUPPLEMENTARY INFORMATION:** This action will establish a Class E enroute domestic airspace area with a base altitude of 1,200 feet AGL in the vicinity of the Bristol Mountains, CA. A review of the airspace in southern California revealed large areas of uncontrolled (Class G) airspace immediately adjacent to numerous federal airways. Because this airspace is Class G(uncontrolled) below 14,500 feet mean sea level (MSL), the Los Angeles Air Route Traffic Control Center (ARTCC) cannot initiate instrument flight rules (IFR) air traffic services within Class G airspace. IFR services may be provided to aircraft operating in Class G airspace only when the pilot requests such service. This procedure effectively limits the flexibility of Los Angeles ARTCC in providing off route vectors and direct routing to aircraft in these areas. En route domestic airspace areas are intended to create controlled airspace in those areas where there is a requirement, or need, to provide instrument Flight Rules (IFR) en route air traffic control services but the Federal airway segment is inadequate. The intended effect of this action is to establish Class E controlled airspace within the boundaries of the above-mentioned area, thereby replacing the existing uncontrolled airspace.

Class E enroute domestic airspace areas are published in Paragraph 6006 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 Class E airspace designation listed in this document would be published subsequently in this Order.

### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

### Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or argument as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 01–AWP–28.'' The postcard will be date stamped and returned to the commenter.

### Agency Findings

The regulations adopted herein will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, 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.

**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; 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. 18054, 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 6006 Enroute Domestic Airspace Areas.*

* * * * *

**Bristol Mountains, CA [Established]**

That airspace extending upward from 1200 feet above the surface bounded on the north by V8–210, bounded on the east by V514–538, bounded on the south by V264, bounded on the west by V386 and V8–21–283–587, excluding that airspace within the Twentynine Palms, CA Class E airspace area, the Sundance MOA, and that airspace designated for federal airways.

Issued in Los Angeles, California, on October 31, 2001.

**Dawna J. Vicars,**

*Acting Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 01–30999 Filed 12–14–01; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–AWP–23]**

## Revocation of Class E Surface Area at Lompoc, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule, request for comments.

**SUMMARY:** This action revokes the Class E Surface Area airspace at Lompoc Airport in Lompoc, CA. The airport does not meet Class E Surface Area criteria due to inadequate radio communications capabilities between the Los Angeles Air Route Traffic Control Center (ARTCC) and operators on the airport surface at Lompoc, CA.

**DATES:** *Effective Date:* 0901 UTC February 21, 2002. *Comment date:* Comments for inclsion in the Rules Docket must be received on or before January 16, 2002.

**ADDRESSES:** Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager,Airspace Branch, AWP–520, Docket No. 01–AWP–23, Air Traffic Division, P.O. Box 92007, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jeri Carson, Air Traffic Division, Airspace Specialist, AWP–520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

**SUPPLEMENTARY INFORMATION:** This action revokes the Class E2 airspace designated as a Surface Area at Lompoc Airport in Lompoc, CA. Existing Class E5 airspace, extending upward from 700 feet above the surface, will continue to support instrument operations at Lompoc Airport, and will not be changed as a result of this action. The intended effect of this action is to retain only the minimum Class E airspace required to protect instrument operations at Lompoc Airport, consistent with airspace criteria contained in FAA Order 7400.2E, Procedures for Handling Airspace Matters. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 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 Class E airspace revocation listed in this document will be published subsequently in that Order.

**The Direct Final Rule Procedure**

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a meet final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is

extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 01–AWP–23.'' The postcard will be date stamped and returned to the commenter.

## Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, 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.

## 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 6002 Class E Airspace Designated as a Surface Area for an airport.*

* * * * *

**AWP CA E2 Lompoc, CA [Removed]**

Lompoc Airport, CA
(Lat. 34°39′56″ N, long. 120°28′00″ W)

Within a 4.3-mile radius of Lompoc Airport, excluding that airspace within Restricted Areas R–2516 and R–2517. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on November 23, 2001.

**Leonard A. Mobley,**

*Acting Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 01–31000 Filed 12–14–01; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 301

**[TD 8970]**

**RIN 1545–AY16**

## Amendment, Check the Box Regulations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to elective changes in entity classification under section 7701 of the Internal Revenue Code. The regulations apply to subsidiary corporations that elect to change their classification for Federal tax purposes from a corporation to either a partnership or disregarded entity.

**DATES:** *Effective Date:* These regulations are effective December 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Beverly Katz, (202)622–3050 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

On November 29, 1999, final regulations were published in the **Federal Register** (TD 8844, 64 FR 66580 (1999–2 C.B. 661)) describing the transactions that are deemed to occur when an entity elects to change its classification for Federal tax purposes. Those regulations did not address certain requirements of section 332 as applied to the deemed liquidation incident to an association's election to be classified as a partnership or to be disregarded as an entity separate from its owner. This amendment to the final regulations addresses those requirements.

On January 25, 2000, final regulations were published in the **Federal Register** (TD 8869, 65 FR 3843 (2000–6 I.R.B. 498)) relating to qualified subchapter S subsidiaries (QSub). In order to permit the deemed transaction resulting from a QSub election to comply with the requirement of section 332 that a plan of liquidation has been adopted at the time of a liquidating distribution, the final regulations provide that a plan of liquidation is deemed adopted immediately before the deemed liquidation incident to the QSub election, unless a formal plan of liquidation that contemplates the filing of a QSub election is adopted on an earlier date. The preamble to the QSub regulations provides that Treasury and the IRS intend to amend the section 7701 regulations regarding elective changes in entity classification to provide a similar rule concerning the timing of the plan of liquidation.

Consistent with the commitment in the preamble to the QSub regulations, on January 17, 2001, proposed regulations were published in the **Federal Register** (REG–110659–00, 66 FR 3959 (2001–12 I.R.B. 917)) under section 7701. No comments were received from the public in response to the proposed regulations. No public hearing was requested or held. The proposed regulations are adopted by this Treasury decision.

**Explanation of Provisions**

Section 301.7701–3(g)(1) describes how elective changes in the classification of an entity will be treated for tax purposes. Section 301.7701–3(g)(1)(ii) provides that an elective conversion of an association to a partnership is deemed to have the following form: the association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership. Section 301.7701–3(g)(1)(iii) provides that an elective conversion of an association to an entity that is disregarded as an entity separate from its owner is deemed to have the following form: the association distributes all of its assets and liabilities to its single owner in liquidation of the association.

Section 332 may be relevant to the deemed liquidation of an association if it has a corporate owner. Under section 332, no gain or loss is recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation if the requirements of section 332(b) are satisfied. Those requirements include the adoption of a plan of liquidation at a time when the corporation receiving the distribution owns stock of the liquidating corporation meeting the requirements of section 1504(a)(2) (i.e., 80 percent of vote and value). The elective change from an association to a partnership or to a disregarded entity results in a constructive liquidation of the association for federal tax purposes. Formally adopting a plan of liquidation for the entity, however, is potentially incompatible with an elective change under section 301.7701–3, which allows the local law entity to remain in existence while liquidating only for federal tax purposes. Accordingly, to provide tax treatment of an association's deemed liquidation that is compatible with the requirements of section 332, the regulations state that, for purposes of satisfying the requirement of adoption of a plan of liquidation under section 332(b), a plan of liquidation is deemed adopted immediately before the deemed liquidation incident to an elective change in entity classification, unless a formal plan of liquidation that contemplates the filing of the elective change in entity classification is adopted on an earlier date.

**Effective Date**

These regulations apply to elections filed on or after December 17, 2001; however, taxpayers may apply the amendments retroactively if the corporate owner claiming treatment under section 332 and its subsidiary making the election take consistent positions with respect to the Federal tax consequences of the election.

**Special Analyses**

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal authors of these regulations are Beverly M. Katz of the Office of Associate Chief Counsel (Passthroughs & Special Industries) and David J. Sotos of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

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

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 301.7701–3 is amended as follows:

1. Redesignating the text of paragraph (g)(2) as paragraph (g)(2)(i) and adding a heading for newly designated paragraph (g)(2)(i).
2. Adding a new paragraph (g)(2)(ii).
3. Revising the first sentence of paragraph (g)(4).

The additions and revision read as follows:

**§ 301.7701–3 Classification of certain business entities.**

* * * * *

(g) * * *

(2) *Effect of elective changes*—(i) *In general.* * * *

(ii) *Adoption of plan of liquidation.* For purposes of satisfying the requirement of adoption of a plan of liquidation under section 332, unless a formal plan of liquidation that contemplates the election to be classified as a partnership or to be disregarded as an entity separate from its owner is adopted on an earlier date, the making, by an association, of an election under paragraph (c)(1)(i) of this section to be classified as a partnership or to be disregarded as an entity separate from its owner is considered to be the adoption of a plan of liquidation immediately before the deemed liquidation described in paragraph (g)(1)(ii) or (iii) of this section. This paragraph (g)(2)(ii) applies to elections filed on or after December 17, 2001. Taxpayers may apply this paragraph (g)(2)(ii) retroactively to elections filed before December 17, 2001, if the corporate owner claiming treatment under section 332 and its subsidiary making the election take consistent positions with respect to the federal tax consequences of the election.

* * * * *

(4) *Effective date.* Except as otherwise provided in paragraph (g)(2)(ii) of this section, this paragraph (g) applies to elections that are filed on or after November 29, 1999. * * *

* * * * *

Approved: December 10, 2001.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue Service.*

**Mark Weinberger,**

*Assistant Secretary of the Treasury.*

[FR Doc. 01–31006 Filed 12–14–01; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[COTP Corpus Christi 01–002]**

**RIN 2115–AA97**

## Safety Zone; Gulf Intracoastal Waterway, Port Isabel, TX

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone to

ensure the safety of navigation within a radius of 1000 feet of Queen Isabella Bridge construction vessels and machinery. Vessels transiting the Gulf Intracoastal Waterway through the Queen Isabella Bridge may do so during daylight hours only. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by construction in the vicinity of the Queen Isabella Bridge. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Corpus Christi.

**DATES:** This regulation becomes effective at 2 p.m. on September 26, 2001 and terminates when the re-construction of the Queen Isabella Bridge is completed and certified by the Texas Department of Transportation to the satisfaction of the Captain of the Port or September 26, 2002 which ever is earlier. A document announcing the termination date will be published later in the **Federal Register**. Comments and related material must reach the Coast Guard on or before February 15, 2002.

**ADDRESSES:** Any comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Corpus Christi 01–002 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Corpus Christi, 555 N. Carancahua Street, Suite 500, Corpus Christi, Texas, 78478 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG C. J. Bright, Chief, Waterways Section, Coast Guard Captain of the Port Corpus Christi, 555 N. Carancahua St. Suite 500, Corpus Christi, Texas, 78478, (361) 888–3162

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to the potential safety hazards associated with emergency bridge repairs.

Under 5.U.S.C 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to the potential safety hazards associated with the bridge construction.

Although the Coast Guard has good cause in implementing this regulation, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of the safety zone in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP Corpus Christi 01–002, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

## Background and Purpose

At approximately 2:15 a.m., on September 15, 2001, the Uninspected Towing Vessel BROWN WATER V allided with the Queen Isabella Bridge in position 26°05.1′ N, 097°12.8′ W, Intracoastal Waterway Mile Marker 665 near Port Isabel, Texas. The resulting damage caused the Queen Isabella Bridge to collapse in the Intracoastal Waterway blocking the channel and severely impacting the ability to safely navigate the area encompassed by the Captain of the Port Corpus Christi Zone. As a result of the bridge collapse, the power for the lighting of the bridge and the bridge fendering system was also rendered inoperable. The re-construction of the bridge will take approximately six months to complete and will involve various construction vessels and equipment. The Texas Department of Transportation has certified to the satisfaction of the Captain of the Port that the bridge is safe for vessels to transit the Intracoastal Waterway during the re-construction. Vessels transiting the Intracoastal Waterway shall do so during daylight hours only, at a minimum and safe speed, and maintain a distance of at least 1,000 feet around construction vessels and machinery. The daylight transits restriction may be lifted when lighting for the bridge and fendering system is operational to the satisfaction of the Captain of the Port. This information will be made available by Marine Information Broadcast when the Captain of the Port removes the daylight transit restriction. A 1000 foot radius around the construction area is necessary to ensure the safety of vessels transiting the area during the re-construction, prevent any further damage to the bridge, and allow the re-construction vessels and machinery to operate safety. The 1000 foot radius will remain in effect during all hours and until the re-construction is completed. The Coast Guard is establishing a temporary safety zone in a 1000 foot radius around the re-construction of the Queen Isabella Bridge and limiting vessel transit of the Intracoastal Waterway (Mile Marker 665) through the bridge to daylight hours only, until it can be determined that the waters are safe for navigation.

## Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for a short period of time and notification to the marine community will be made through broadcast notice to mariners.

## Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The impact on small entities is expected to be minimal due to the short period of this regulation. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Intracoastal Waterway and the area surrounding the Queen Isabella Bridge while the safety zone is established. This safety zone will not have a significant economic impact on a

substantial number of small entities for the following reasons. This rule will be in effect for only the duration of the re-construction of the Queen Isabella Bridge as a result of the allision. The 1000-foot safety zone does not prohibit commercial traffic (tug and barge combinations) from transiting the Intracoastal Waterway and provides smaller vessels (commercial or recreational) ample room to transit around the safety zone. When these operations are completed the Intracoastal Waterway will be reopened and the safety zone cancelled. Before the effective period, we will issue maritime advisories widely available to users of the Intracoastal Waterway and surrounding navigable waters.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effect**

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

**Environment**

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new § 165.T08–080 is added to read as follows:

### § 165.T08–080 Safety Zone; Queen Isabella Bridge, Gulf Intracoastal Waterway, Brownsville, Texas

(a) *Location.* The following area is a safety zone: All waters within a 1000-foot radius of vessels and machinery involved in the re-construction of the Queen Isabella Bridge.

(b) *Effective dates.* This regulation becomes effective at 2 p.m. on September 26, 2001 and terminates when the re-construction of the Queen Isabella Bridge is completed and certified by the Texas Department of Transportation to the satisfaction of the Captain of the Port or on September 26, 2002 which ever is earlier.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port Corpus Christi.

(2) The safety zone is in effect during all hours of the day. Vessels transiting the Intracoastal Waterway (Mile Marker 665.0) under the bridge shall proceed at minimum speed to maintain steerageway and during daylight hours only.

(3) No vessels may enter this safety zone unless specifically authorized by the Captain of the Port Corpus Christi. The Captain of the Port will notify the public of changes in the status of this zone by Marine Radio Safety Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: September 26, 2001.

**William J. Wagner III,**

*Captain, U.S. Coast Guard, Captain of the Port Corpus Christi.*

[FR Doc. 01–31012 Filed 12–14–01; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 991207325–0063–02; I.D. 100699A]**

## Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish IFQ Cost Recovery Program

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

**ACTION:** Announcement of standard prices and fee percentage for North Pacific halibut and sablefish Individual Fishing Quota (IFQ) cost recovery program.

**SUMMARY:** The National Marine Fisheries Service publishes IFQ standard prices and notification of adjustment of the IFQ fee percentage for the IFQ Cost Recovery Program in the halibut and sablefish fisheries of the North Pacific. This action is intended to provide holders of halibut and sablefish IFQs with information to calculate the payments required for IFQ cost recovery fees due by January 31, 2002.

**DATES:** Effective December 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kristie Balovich, Fee Coordinator, 907–586–7344.

**SUPPLEMENTARY INFORMATION:**

### Background

NMFS, Alaska Region, administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ Programs are limited access systems authorized by section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ Programs began in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended (by Pub. L. 104–297) to, among other things, require the Secretary of Commerce to ''collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual fishing quota program'' (Section 304(d)(2)(A)). Section 304(d)(2)(B) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or quota share (QS) by entry-level and small-vessel fishermen.

NMFS published, on December 27, 1999 (64 FR 72302), a proposed rule to implement the IFQ Cost Recovery Program and published the final rule on March 20, 2000 (65 FR 14919). The final regulations implementing the IFQ Cost Recovery Program are set forth at 50 CFR 679.45.

Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 following the year in which the IFQ landings were made. The dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

### Fee Percentage

Three percent of the ex-vessel value of IFQ halibut and IFQ sablefish harvested is the maximum fee amount allowed by section 304(d)(2)(B) of the Magnuson-Stevens Act. Regulations at § 679.45(d) allow the Administrator, Alaska Region, NMFS (Regional Administrator) to reduce the fee percentage if actual management and enforcement costs could be recovered through a lesser percentage. In this event the Regional Administrator will publish a notification of any adjustment of the IFQ fee percentage in the **Federal Register** pursuant to § 679.45(d)(4).

For 2001, the Regional Administrator has determined that a fee of 2.0 percent (0.020) is necessary to recover the actual management and enforcement costs. Therefore, the Regional Administrator is adjusting the cost recovery fee applicable to year 2001 IFQ landings from 3 percent (0.03) to 2.0 percent (0.020).

### Standard Prices

The fee liability is based on the sum of all payments of monetary worth made to fishermen for the sale of the fish. This includes any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: ''Actual ex-vessel value'' and ''standard ex-vessel value.'' ''Actual ex-vessel value'' is the amount of money an IFQ permit holder received as payment for his or her IFQ fish sold. ''Standard ex-vessel value'' is the default value on which to base fee liability calculations. However, IFQ permit holders have the option of using ''actual ex-vessel value'' if they can satisfactorily document those values.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and sablefish landings, to calculate standard values. The standard prices are described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) means the weight amount, recorded in pounds, for an IFQ landing and calculated as round weight for sablefish and headed and gutted (''net'') weight for halibut. NMFS calculates the standard prices to reflect, as closely as possible, by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings. The standard prices for IFQ halibut and IFQ sablefish are listed in the following table. Data from ports are combined as necessary to protect confidentiality of data submissions.

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2001 IFQ SEASON

| LANDING LOCATION | PERIOD ENDING | HALIBUT STANDARD EX-VESSEL PRICE | SABLEFISH STANDARD EX-VESSEL PRICE |
|---|---|---|---|
| CORDOVA | March 31 | | |
| | April 30 | | |
| | May 31 | $2.08 | |
| | June 30 | | |
| | July 31 | $2.15 | |
| | August 31 | $2.21 | |
| | September 30 | $2.25 | |
| | October 31 | $2.25 | |
| | November 30 | $2.25 | |
| DUTCH HARBOR | March 31 | | |
| | April 30 | | |
| | May 31 | $1.62 | |
| | June 30 | $1.66 | |
| | July 31 | $1.76 | |
| | August 31 | $1.78 | $1.88 |
| | September 30 | $1.79 | |
| | October 31 | $1.79 | |
| | November 30 | $1.79 | |
| HOMER | March 31 | | |
| | April 30 | | |
| | May 31 | | |
| | June 30 | $2.03 | |
| | July 31 | $2.14 | |
| | August 31 | $2.08 | |
| | September 30 | $2.07 | |
| | October 31 | $2.07 | |
| | November 30 | $2.07 | |
| KODIAK | March 31 | $2.06 | $2.27 |
| | April 30 | $2.00 | $2.11 |
| | May 31 | $1.81 | |
| | June 30 | $1.90 | |
| | July 31 | $1.97 | |
| | August 31 | $1.94 | |
| | September 30 | | |
| | October 31 | | |
| | November 30 | | |
| PETERSBURG | March 31 | $2.39 | |
| | April 30 | $2.23 | |
| | May 31 | $2.15 | |
| | June 30 | $2.08 | |
| | July 31 | $2.17 | |
| | August 31 | $2.19 | |
| | September 30 | $2.16 | |
| | October 31 | $2.16 | |
| | November 30 | $2.16 | |
| SEWARD | March 31 | $2.40 | $2.35 |
| | April 30 | $2.10 | $1.97 |
| | May 31 | $2.02 | $1.96 |
| | June 30 | | |
| | July 31 | | |
| | August 31 | | |
| | September 30 | | |
| | October 31 | | |
| | November 30 | | |
| [1]BERING SEA | March 31 | | |
| | April 30 | | $1.89 |
| | May 31 | $1.61 | $1.86 |
| | June 30 | $1.66 | $1.76 |
| | July 31 | $1.76 | $1.81 |
| | August 31 | $2.05 | $2.05 |
| | September 30 | $1.76 | $2.02 |
| | October 31 | $1.76 | $2.02 |
| | November 30 | $1.76 | $2.02 |
| [2]CENTRAL GULF | March 31 | $2.39 | $2.25 |
| | April 30 | $2.16 | $2.02 |
| | May 31 | $1.98 | $2.01 |
| | June 30 | $1.96 | $2.02 |
| | July 31 | $2.02 | $2.18 |
| | August 31 | $2.02 | $2.28 |
| | September 30 | $1.98 | $2.10 |

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2001 IFQ SEASON—Continued

| LANDING LOCATION | PERIOD ENDING | HALIBUT STANDARD EX-VESSEL PRICE | SABLEFISH STANDARD EX-VESSEL PRICE |
|---|---|---|---|
| | October 31 | $1.98 | $2.10 |
| | November 30 | $1.98 | $2.10 |
| [3]SOUTHEAST | March 31 | $2.41 | $2.25 |
| | April 30 | $2.27 | $2.16 |
| | May 31 | $2.22 | $2.00 |
| | June 30 | $2.28 | $2.16 |
| | July 31 | $2.26 | $2.13 |
| | August 31 | $2.24 | $2.06 |
| | September 30 | $2.18 | $2.19 |
| | October 31 | $2.18 | $2.19 |
| | November 30 | $2.18 | $2.19 |
| [4]ALL | March 31 | $2.40 | $2.24 |
| | April 30 | $2.21 | $2.07 |
| | May 31 | $2.05 | $2.00 |
| | June 30 | $2.03 | $2.07 |
| | July 31 | $2.01 | $2.09 |
| | August 31 | $2.09 | $2.10 |
| | September 30 | $1.98 | $2.15 |
| | October 31 | $1.98 | $2.15 |
| | November 30 | $1.98 | $2.15 |

[1] *Landing locations Within Port Group—Bering Sea*: Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska.

[2] *Landing Locations Within Port Group—Central Gulf of Alaska*: Anchor Point, Anchorage, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Alitak, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez.

[3] *Landing Locations Within Port Group—Southeast Alaska*: Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat.

[4] *Landing Locations Within Port Group— All*: For Alaska: All landing locations included in 1, 2, and 3. For California: Eureka, Fort Bragg, Other California. For Oregon: Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. For Washington: Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Ranier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. For Canada: Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada.

Dated: December 11, 2001.

**Jonathan M. Kurland,**

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

[FR Doc. 01–31014 Filed 12–14–01; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 66, No. 242
Monday, December 17, 2001

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 81

**[Docket No. FV01–81–01 PR]**

**RIN 0581–AC03**

## Regulations Governing the California Prune/Plum (Tree Removal) Diversion Program

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This proposed rule invites comments on procedures for a California Prune/Plum Diversion Program. The program is voluntary and would consist wholly of tree removal. The program would be implemented under clause (3) of Section 32 of the Act of August 24, 1935, as amended. The proposed program would help the California dried plum industry address its severe oversupply problems. The tree removal is expected to bring supplies into closer balance with market needs, and provide some relief to growers faced with excess supplies and acreage, and low prices.

**DATES:** Comments received by January 16, 2002, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525—South Building, Washington, D.C. 20090–6456; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http:/www.ams.usda.gov/fv/moab.html.*

**FOR FURTHER INFORMATION CONTACT:** Anne M. Dec, Marketing Order Administration Branch, at the above address; Telephone: 202–720–2491; Fax: 202–720–8938; or E-mail: *Anne.Dec@usda.gov.*

Small businesses may request information on the diversion program by contacting Jay Guerber at the above address, telephone, fax, or E-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This proposed 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 (OMB). In accordance with Executive Order 12866, the Department of Agriculture (USDA) has prepared a regulatory cost-benefit assessment and a civil rights impact analysis. These documents can be obtained by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

### Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State and local governments and the private sector. Under section 202 of the UMRA, the Agricultural Marketing Service (AMS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State and local governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the AMS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State and local governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the reporting and recordkeeping provisions that would be generated by this proposed rule will be submitted to the Office of Management and Budget (OMB).

Two forms are needed for the administration of the tree removal program. Growers who wish to participate in the program would have to submit an ''Application for Prune Tree Removal Program.'' We estimate that 200 growers may submit an application, and that each form would take about 30 minutes to complete, for a total burden of 100 hours. After removing their trees, growers will then have to sign a statement stating they wish payment. No additional burden has been estimated for this second form which would require only a signature. Finally, participants will be required to retain records pertaining to the tree removal program for two years after the year of removal.

### Executive Order 12372

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

### Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

**Authority for Tree Removal Program**

The proposed program is intended to reestablish prune/plum farmers' purchasing power. Programs to reestablish farmers' purchasing power are authorized by clause (3) of Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c)(''Section 32''). This clause of Section 32 authorizes USDA to ''* * * reestablish farmers'' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption.'' Section 32 also authorizes USDA to use Section 32 funds ''* * * at such times, and in such manner, and in such amounts, as USDA finds will effectuate substantial accomplishments of any one or more of the purposes of this section.'' Furthermore, ''Determinations by USDA as to what constitutes * * * normal production for domestic consumption shall be final.''

**Need for the Tree Removal Program**

Production of prune/plums for marketing as dried plums is concentrated in California. Production of dried plums during the 2000 season increased for the second consecutive year, to nearly 219,000 tons (natural condition).

Changes in growing conditions have substantially altered the production outlook for 2001. Production was originally estimated to be 220,000 tons. However, due to a lighter crop-set in major producing areas, as well as freezing temperatures and hail, production for the 2001 crop year is now estimated at about 155,000 tons. This smaller crop somewhat alleviates the oversupply situation, but does not represent a change in the longer-term oversupply situation.

When the crop was estimated at 220,000 tons in the spring of 2001, the industry discussed the use of volume control authorized under the Federal marketing order. In addition, carryin inventories from the 2000 crop year were reported at 100,829 tons. With this level of inventories and crop, the total available supply would have been 320,829 tons.

With this estimated crop size, establishing a 48 percent reserve (52 percent free tonnage) was discussed. The industry does not have a history of establishing reserve percentages, and reserve percentages were last used in the 1970's. The fact that the marketing order committee even considered use of the reserve provision indicates the gravity with which the industry views the oversupply problem. The use of marketing order reserve provisions is intended to help industries deal with surplus production and facilitate orderly marketing of their crops.

The Prune Bargaining Association (PBA) represents about 40 percent of the independent growers and negotiates a selling price for its members. With the large anticipated crop for the 2001 season and the large carryin inventory, the PBA had difficulty establishing a price with handlers. Even with the smaller crop of 155,000 tons, the PBA could only negotiate a price of $763 per ton. This compares to $845 for the 2000 season, or a decrease of 9.7 percent. Although the price has been set, not all handlers have signed the agreement. Even this lower price may be too high in the eyes of the non-signing handlers, given current supply conditions.

The smaller crop size for 2001 has provided the industry some relief in reducing total available supplies. However, there are still a large number of nonbearing acres (15,000) that will become productive over the next six years. In addition, there are many acres with older, less productive trees which could be replanted in the near future. A tree removal program would assist growers who are facing difficult replanting decisions by allowing them to receive funds for the removal of trees and, at the same time, prohibit those growers from replanting prune/plums in those orchards. Prune/plum growers also tend to be producers of almonds, walnuts, and cling peaches. Plantings of these crops could increase in future years as growers remove prune/plum acreage.

Bearing acreage expanded to a record 86,000 acres during the 2000 season and the average yield increased 19 percent. Yields are anticipated to increase further as more densely planted acres become productive over the next several years.

Nonbearing acreage, which is an indicator of future production levels, increased to an all-time high of 26,000 acres in 1998. This represented a 22-percent increase in the productive capacity of the industry. The non-bearing acres are more densely planted than in previous years which results in a higher yield per acre.

The dried plum industry faces a long-run surplus situation. For the 2000 crop year, bearing acres were 86,000 and non-bearing acres were 15,000. Bearing acres could exceed 100,000 in the near future. With yields in excess of 2.0 tons per acre, production could be expected to be above 200,000 tons in many crop years.

Total domestic shipments exceeded 100,000 tons for six seasons in the late 1980's and early 1990's, but have declined from a high of 108,085 processed tons in 1996. Per capita consumption has been steadily declining since 1980. Export shipments have been stagnant. As a result of these domestic and export trends, total shipments have never exceeded 190,000 processed tons.

Until recently, export shipments were a source of growth in the dried plum industry. In 2000, exports represented 47 percent of total shipments. However, the strong dollar and the downturn in the economies in Asia and Europe have significantly slowed export sales.

Due to the significant supply-demand imbalance, the industry anticipates several years in which the expected annual carryin inventories will exceed the industry's desirable carryin level of approximately 40,000 tons. If dried plum markets continue to be over-supplied with product, grower prices and grower relations with packers will deteriorate significantly. Even with the lower production estimate for the 2001 crop year, the carryout inventory is expected to exceed 76,000 tons.

High prices from 1992 through 1995, and a more balanced supply and demand situation, helped to stimulate investments in new acreage. This additional acreage came from a variety of sources, mainly rice and pasture land. Intensifying the anticipated surplus situation is the fact that new acres are more productive than existing acres, which causes output to grow more rapidly in proportion to acreage growth.

It takes dried plum trees 6 years to become fully productive. Many of the costs of producing plum trees are ''sunk,'' making it difficult to reverse decisions once those acres are planted. Because supply is slow to adjust to changing market conditions, the industry anticipates many years of production outpacing demand, resulting in continued distressed grower conditions.

From 1980 through 2000, the total cost per ton of producing dried plums exceeded the growers' season-average prices. Similarly, the total cost per acre exceeded revenue per acre.

However, it is also important to consider variable cost. In recent years, the total revenue per ton and per acre has been greater than the total variable cost per ton and per acre. Prices and revenues greater than variable costs provide some indication of why a dried plum producer continues to harvest and process a crop despite losing money.

**Tree Removal Diversion Program**

The industry is requesting a voluntary tree removal program estimated to cost $17 million. The industry would like to

remove a minimum of 20,000 bearing acres of prune/plum trees. With many of the current bearing acres reaching the age where replanting would be considered, the industry is trying to provide an incentive to growers to remove older trees, while ensuring that those orchards are not replanted with prune/plum trees.

To be eligible for the proposed tree removal program, orchards must have a minimum yield of 1.5 tons per acre. With a minimum threshold yield of 1.5 tons per acre, sufficient land would be enrolled in the tree removal program to reduce annual production by approximately 30,000 tons.

The industry has estimated that it will take $8 to $9 per tree to induce growers to participate in such a program. It is believed that financial institutions that provide growers operating funds would not allow them to participate if the payment per tree is below this level.

This type of one-time decrease in production would more closely align supply with demand, while assuring an adequate supply. This would allow the industry to concentrate their efforts on rebuilding demand for future years.

The industry has already undertaken an initial smaller-scale tree removal program. However, to finance this grower-initiated tree pull program, grower assessments for promotion were reduced from $50 per ton to $30 per ton. Less money is available for promotion, but growers felt that this re-direction of funds was necessary to help redress the oversupply situation.

The tree removal program would be administered through the Agricultural Marketing Service (AMS) and the Prune Marketing Committee (Committee). The Committee is an administrative agency appointed by AMS to locally administer the terms of Federal Marketing Order No. 993.

Any prune/plum producer wishing to participate in the program would file an application with the Committee. The application period would begin 15 days after publication of the program announcement and last for 30 days.

Each applicant would provide information needed by the Committee to operate the program. This would include, for example, the number of trees the applicant wished to remove and their location. The applicant would have to certify that he/she has not contracted to sell the land or otherwise already arranged to have the trees removed. The Committee would review each application for completeness, and would make reasonable efforts to contact growers to obtain any missing information.

In order to be eligible to participate in the program, the orchards or blocks of trees being removed from production would have to have a minimum yield of 1.5 tons per net planted acre during both the 1999 and 2000 crop years. A net planted acre is the actual acreage planted with prune/plum trees. This would mean that abandoned orchards would not be eligible for participation. The Department considered establishing the minimum qualifying yield at 2.2 tons per acre, but determined that at that level, too many orchards would be ineligible for the program.

USDA has allocated $17 million for this program, including administrative costs. Applications would be approved until the level of available funding was reached. Each participating grower would have to then remove trees from production by June 30, 2002. Growers would be paid $8.50 for each eligible tree removed. This level of payment is deemed necessary for a significant number of growers to participate in the tree-removal program. It would cover most of the costs of removing the trees (bulldozing, cutting, etc.), and preparing the land for other uses. The costs vary depending on the number of acres removed. Some cost savings may accrue with larger acreage removals.

Estimated costs for removing, piling, chipping, or other disposal methods range from $142–$225 per acre or from $1.29–$2.05 per tree. Costs for removing the roots and other debris are expected to range from $163–$289 per acre or from $1.48–$2.63 per tree. Leveling of the ground is expected to cost $161–$401 per acre or $1.46–$3.65 per tree. Fumigation of the tree holes is expected to cost $550 per acre or $5.00 per tree. This would amount to $9.23–$13.33 for each tree removed. The $8.50 payment proposed under the program is expected to offset most of the grower's costs.

Each grower participating in the program would have to agree not to replant prune/plum trees on land cleared under this program through June 30, 2004. Because it takes new acres at least six years to be productive, acreage participating in the tree-removal program would not return to commercial prune/plum production for at least eight years and possibly nine years because plantings occur in January and February. Alternative crops could be planted. Additionally, the current economic conditions in the industry, specifically weak demand, reduced per capita consumption, stagnant domestic shipments and exports, and declining grower prices and revenues, would appear to limit the incentives for replanting acreage to prune/plum trees.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 1,250 producers of dried plums in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000. An estimated 32 producers, or less than 13 percent of the 1,250 total producers, would be considered large producers with annual incomes over $750,000.

This proposed rule would establish a tree removal program diversion program for California dried prune/plums. Authority for the program is provided in clause (3) of Section 32 of the act of August 24, 1935, as amended.

Participation in the diversion program is strictly voluntary, so individual producers, both small and large, can weigh the benefits and costs for their own operations before deciding whether to participate in the program.

**Economic Assessment of the Tree Removal Diversion Program**

To assess the impact a tree removal program would have on prices growers receive for their product, impacts on grower prices and inventories with a tree removal program and without a tree removal program were estimated. An econometric model was estimated for the purpose of estimating nominal season average grower prices under both scenarios.

A tree removal program will directly reduce the number of bearing acres, but there will not be an impact until the 2002 crop year since harvesting of the 2001 crop is completed.

In 2000, there were still 15,000 non-bearing acres. The industry has indicated that no additional plantings of prune/plum trees for acreage expansion are occurring at this time. Therefore, after the 15,000 non-bearing acres come into production, the productive capacity of the industry is assumed to stay constant.

The tree removal analysis assumes that 20,000 acres are removed through the tree removal program, while 3,000 of the non-bearing acres become productive in 2002. This results in

bearing acres being reduced from 86,000 in 2001 to 69,000 in 2002. Bearing acres increase by 3000 acres in each of the subsequent years until 2007, rising to 72,000 in 2003, 75,000 in 2004, 78,000 in 2005, and 81,000 in 2006 and 2007.

Production for the 2001 crop year is currently estimated by the Department's National Agricultural Statistics Service (NASS) at 155,000 natural condition tons. Marketable production is generally 93 percent of total production, yielding an estimated 144,500 marketable tons for 2001. Carryin inventory for the 2001 crop year was computed by the marketing order committee at 100,829 tons as of June 30, 2001. These figures are used to derive an estimated total available supply of 244,979 tons for 2001. This level of supply accounts for the fact that a number of voluntary measures have been taken by the industry to reduce the level of production for the 2001 crop year, including crop abandonment and cutbacks on cultural practices.

Shipments are estimated to grow by 1 percent annually, which results in estimated total shipments of 165,932 tons for 2001. The one percent growth in shipments reflects decreased government surplus purchases and possible retail price effects.

For 2002, total shipments are estimated at 165,932 tons and the carryin inventory is estimated at 79,047 tons. With the tree removal diversion program reducing bearing acres to 69,000 for the 2002 crop year, total available supply is estimated at 256,900 tons. It should be noted that through 2001, carryin inventory does not exactly match the prior year's difference between total available supply and total shipments. This is due to shrinkage and other minor adjustments computed by the Federal marketing order committee. However, for this analysis, the estimated carryin from 2002 to 2007 is estimated to be the exact difference between estimated total supply and estimated shipments from the prior year.

The analysis also assumes that yields will fluctuate up and down, in keeping with the known ''alternate bearing'' tendency of prune/plum trees. Estimated production, computed by multiplying acreage times yield, fluctuates accordingly.

As carryin inventories are reduced, the total available supply moderates for crop years 2003 through 2007, relative to the situation without a tree removal program. This results in season average grower prices ranging from $845 to $1,084 during that same time span. It should be noted that the margin of error for these estimates becomes very large for future crop years.

Even though season-average grower prices per ton rise under the tree removal program, all product produced is not necessarily of marketable quantity. Costs are incurred on all the production, but revenue is received only on product actually marketed. Thus, the economic effect of the tree removal program on a per acre basis is to dramatically reduce losses and bring producer returns closer to a break-even level. With losses still being incurred by producers, there should be only a limited incentive to further expand production as a result of the tree removal program. It will remain for growers to control costs and to expand demand to ensure their longer-term economic stability.

Grower prices are a small component of the finished dried plum product and are not closely associated with movements in retail prices. However, the increases in grower prices estimated for crop years 2003 through 2007 may have an impact on retail prices. The extent of any retail price increases would depend on processor and retailer margins and the pricing and availability of substitute products, such as raisins or other dried fruits. It should be noted that dried plum prices are estimated to increase with or without a tree removal program, but the magnitude of the grower price increase is greater with the program.

Without a tree removal program, bearing acres are estimated to increase to 89,000 by the 2002 crop year. Production would be in excess of 200,000 tons, resulting in carryout inventories in excess of 100,000 tons in 2003. In addition, under this scenario, 2002 grower prices are estimated at $789 per ton. With high inventories and low grower prices, market forces are assumed to induce growers to remove less productive acres and the number of bearing acres is estimated to decline from 89,000 in 2002 to 84,000 in 2007. Even with the decline in bearing acres, production and inventories remain excessive from 2002 through 2007. However, in 2007, carryout inventories fall to an estimated 6,592 tons.

Under both scenarios, grower prices increase and inventories become more manageable. The difference is that, under a tree removal program, adjustments to inventories and prices occur more rapidly. This would accelerate benefits to growers, who would otherwise be struggling to break even in a depressed market, until market forces brought about a slow correction.

In addition to the direct impact on growers' prices and revenues that a tree removal program would have, there are also indirect impacts. A tree removal program assists in decreasing burdensome (undesirable) carryout inventories. Without a tree removal program, large quantities of dried plums held in packers' inventories prevent grower pools from being closed, which delays grower payments. Large amounts of undesirable inventory lead to strained grower-packer relations. In an attempt to sell the excessive inventories, packers reduce f.o.b. prices, which in turn leads to market share battles and lower prices being passed back to producers. A more balanced supply and demand situation allows growers and packers to jointly continue developing markets in ways that benefit the entire industry.

**Industry Self-Help Initiatives**

The California dried plum industry has undertaken an initiative to reduce acreage and production. The industry implemented a pre-harvest tree removal program during the 2001 crop year. The industry collected about $3 million to support this effort by reducing assessments under their California State marketing order from $50 to $30 a ton. The $20 per ton reduced assessment was used to support the industry tree removal program.

The program was successful in removing about 3,500 acres. The effects of this industry self-help diversion are included in the analysis of the Federal program.

The industry also has taken measures to stimulate demand, including: (1) The development of new products and new uses for dried plums; (2) marketing efforts to attract younger customers; and (3) domestic and export market promotion programs under the California State marketing order and the Foreign Agricultural Service's Marketing Assistance Program (MAP). One of the most recent initiatives involved securing approval from the Food and Drug Administration to change the name ''dried prunes'' to ''dried plums.'' This has allowed the industry to redirect its generic marketing efforts to attract a new generation of consumers.

**Benefits of the Program**

The economic assessment of the tree removal program indicates that it is expected to benefit producers, particularly small, under-capitalized producers, as well as the entire dried plum industry, including packers. The per ton sales price is projected to increase from 2002-2007, reducing losses and moving producer returns closer to break-even levels. The benefit to producers from reduced losses is projected to total approximately $128

million over the six-year period 2002–2007. The benefits over the six-year period would average nearly $24 million annually.

**Costs of the Program**

The major cost of the program would be the payment to producers for removing their prune/plum trees. A total of $17 million, less Committee administrative costs, is available for the tree removal program. Committee administrative costs for reviewing applications and verifying tree removals are expected to be about $125,000. Major expense categories for administration include costs for salaries and benefits; vehicle rental and maintenance; insurance and overhead, and supplies.

Total producer costs associated with filing applications to participate in the program and maintaining records for the period specified after tree removal are expected to be about $1,000.

**Overall Assessment**

Payments made through this program could help prune/plum producers by addressing the oversupply problem that is adversely affecting the dried plum industry. A tree removal program is expected to allow supply to be adjusted downward more quickly. Market forces will also result in supplies being reduced, but this adjustment may occur more slowly, likely resulting in a number of farm failures. The tree-removal program may be beneficial in reducing the risk of loan default for lenders that financed prune/plum growers. This program will likely help small, under-capitalized producers to stay in business. These producers are often efficient, but do not have adequate resources to continue to operate given the current depressed conditions within their industry.

Reducing the level of unprofitability also should provide opportunities for the industry to engage in additional demand-enhancing activities, especially directed at the domestic market. Even a moderate increase in domestic per capita consumption will have a significant, positive impact on grower returns.

Costs for the program would include the $17 million to be paid growers and to the Committee for administration costs under the Federal tree removal diversion program. Additionally, growers would incur costs totaling $1,000 to comply with the filing and record-keeping requirements of the program.

Benefits to growers under the tree removal program could total approximately $93 million. The first step in this calculation is to multiply marketable production for each of the six years (2002–2007) times the difference between grower price and variable cost, and to sum those figures. This is done for each of the two scenarios (with and without a tree pull program). The $93 million difference between those figures represents a conservative (low-end) estimate of program benefits resulting from reduced grower losses. This cost calculation assumes that the acreage on which trees are removed remain idle, and that growers must therefore absorb all fixed costs on that acreage. To the extent that the land is put to other productive uses, growers would not be absorbing all fixed costs of producing prune/plums, and grower benefits would be higher.

If growers are earning more, it follows that processors and/or retailers beyond the farmgate would pay higher raw product costs to obtain the prune/plums from the growers. These higher costs could be passed on to consumers through higher retail prices or could be absorbed as reduced operating margins for other affected sectors of the economy—processors, wholesalers, or retailers. An estimate of these costs is obtained by multiplying the estimated grower price changes over each of the six years (2002–2007) times annual shipments (an average of the prune/plum shipments with the tree pull program and without the tree pull program). That figure, summed over the six years, is approximately $68 million. However, this $68 million cost is likely overstated due to the fact that grower prices are currently less than the cost of production. Adjustments in retail prices, and retailer and processor margins, are anticipated to change with or without a tree removal program.

Another cost of the tree removal program is the reduced economic activity due to the growers purchasing fewer inputs (labor, chemicals, etc.) from the reduction in prune/plum acres managed and harvested. Input producers (laborers and agricultural chemical firms) would see less revenue because of lowered purchases of these inputs. To the extent that acreage removed is replanted in other crops, those costs could be somewhat offset by purchases of inputs to produce the alternative crops. This cost of the tree removal program is difficult to quantify and is not included in this analysis.

Savings over the same period of up to $60 million could be realized through reduced surplus removal purchases of dried plum products for Federal feeding programs. These government savings would be used to purchase other commodities for use in school and other food assistance programs.

Historically, the dried plum industry has not relied heavily on the Federal surplus removal program. Since the 1991 season, the industry has requested and received surplus removal purchases in only 4 of the past 11 seasons. Should the tree removal program be implemented and supplies be reduced as expected, it would be unlikely that the dried plum industry would seek government assistance in the form of surplus removal purchases for several years to come.

**Conclusion**

Based on this information, USDA has determined that there is a surplus of dried plums, and that reestablishment of producers' purchasing power would be encouraged by using Section 32 funds to reduce supplies under a Diversion Program for Dried Plums/Prunes consisting wholly of a tree-removal program. USDA has further determined that this program would be a long-term solution to the oversupply situation that exists in the California dried plum industry, and that it would provide relief to growers.

**List of Subjects in 7 CFR Part 81**

Administrative practice and procedures, Agriculture, Prunes, Reporting and recordkeeping requirements, Surplus agricultural commodities.

For the reasons set forth in the preamble, it is proposed that Title 7, Subtitle B, Chapter 1 be amended as follows:

1. The authority citation for 7 CFR part 81 reads as follows:

**Authority:** 7 U.S.C. 612c.

1. In Subtitle B, Chapter 1, Part 81 is added to read as follows:

## PART 81—PRUNE/DRIED PLUM DIVERSION PROGRAM

Sec.

81.1 Applicability.
81.2 Administration.
81.3 Definitions.
81.4 Length of program.
81.5 General requirements.
81.6 Rate of payment.
81.7 Eligibility for payment.
81.8 Application and approval for participation.
81.9 Inspection and certification of diversion.
81.10 Claim for payment.
81.11 Compliance with program provisions.
81.12 Inspection of premises.
81.13 Records and accounts.
81.14 Offset, assignment, and prompt payment.
81.15 Appeals.

81.16 Refunds; joint and several liability.
81.17 Death, incompetency or disappearance.

**Authority:** 7 U.S.C. 612c.

## PART 81—PRUNE/DRIED PLUM DIVERSION PROGRAM

### § 81.1 Applicability.

Pursuant to the authority conferred by section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c)(Section 32), the Secretary of Agriculture will make payment to California producers who divert prune/plums by removing trees on which the fruit is produced in accordance with the terms and conditions set forth in this part.

### § 81.2 Administration.

The program will be administered under the general direction and supervision of the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), and will be implemented by the Prune Marketing Committee (Committee). The Committee, or its authorized representatives, does not have authority to modify or waive any of the provisions of this part.

### § 81.3 Definitions.

(a) *Application* means ''Application for Prune Tree Removal Program.''

(b) *Diversion* means the removal of prune-plum trees after approval of applications by the Committee through June 30, 2002.

(c) *Removal* means that the prune-plum trees are no longer standing and capable of producing a crop. The producer can accomplish removal by any means the producer desires.

(d) *Producer* means an individual, partnership, association, or corporation in the State of California who grows prune/plums that are dehydrated into dried plums for market.

(e) *Committee* means the Prune Marketing Committee established by the Secretary of Agriculture to locally administer Federal Marketing Order No. 993 (7 CFR part 993), regulating the handling of dried prunes produced in California.

### § 81.4 Length of program.

This program is implemented January 2, 2002, through June 30, 2004. Producers diverting prune/plums by removing prune-plum trees must complete the diversion no later than June 30, 2002.

### § 81.5 General requirements.

(a) To be eligible for this program, during one of the last two seasons, the trees to be removed must have yielded at least 1.5 tons per net planted acre during the 1999 or 2000 crop year. A net planted acre is the actual acreage planted with prune-plum trees. Abandoned orchards and dead trees will not qualify. In new orchards diverted, qualifying trees must be at least 5 years of age (6th leaf), contain at least two scaffolds, and be capable of producing at least 1.5 tons per net planted acre. The block of trees for removal must be easily definable by separations from other blocks and contain at least 1,000 eligible trees or comprise an entire orchard.

(b) Any grower participating in this program must agree not to replant prune-plum trees on the land cleared under this program through June 30, 2004. Participants bear responsibility for ensuring that trees are not replanted, whether by themselves, or by successors to the land, or by others, until after June 30, 2004. If trees are replanted before June 30, 2004, by any persons, participants must refund any USDA payment, with interest, made in connection with this tree removal program.

### § 81.6 Rate of payment.

(a) The rate of payment for each eligible prune-plum tree removed will be $8.50 per tree.

(b) Payment under paragraph (a) of this section will be made after tree removal has been verified by the staff of the Committee.

(c) The $8.50 per tree payment is intended to cover the costs of tree removal. USDA will make no other payment with respect to such removals. The producer will be responsible for arranging, requesting, and paying for the tree removal in the specified orchard blocks or orchard(s), as the case may be.

### § 81.7 Eligibility for payment.

(a) If applications for payment do not exceed $17,000,000, less administration costs, payments will be made under this program to any producer of prune/plums who complies with the requirements in § 81.8 and all other terms and conditions in this part.

(b) If applications for participation in the program authorized by this part exceed $17,000,000, less administration costs, the Committee will approve the applications (subject to the requirements in § 81.8) in the order in which the completed applications are received in the Committee office. Applications received after total outlays exceed the amount of money available will be denied.

### § 81.8 Application and approval for participation.

(a) Applications will be reviewed for program compliance and approved or disapproved by Committee office personnel.

(b) Applications for participation in the Prune-Plum Diversion Program can be obtained from the Committee office at 3841 North Freeway Boulevard, Suite 120, Sacramento, California 95834; telephone (916) 565–6235.

(c) Any producer desiring to participate in the prune-plum diversion program must file an application with the Committee prior to January 31, 2002. The application shall be accompanied by a copy of any two of the following four documents: Plat Map from the County Hall of Records; Irrigation Tax Bill; County Property Tax Bill; or any other documents containing an Assessor's Parcel Number. Such application shall include at least the following information:

(1) The name, address, telephone number and tax identification number/social security number of the producer;

(2) The location and size of the production unit to be diverted;

(3) The prune/plum production from the orchard or portion of the orchard to be diverted during the 1999–2000 and 2000–2001 seasons;

(4) A statement that all persons with an equity interest in the prune/plums in the production unit to be diverted consent to the filing of the application. That is, the applicant has clear title to the property in question, or agreement to participate in the tree removal program from lien or mortgage holders, and/or land owners, lessors, or similar parties;

(5) A statement that the applicant agrees to comply with all of the regulations established for the prune/plum diversion program;

(6) The producer applicant shall sign the application certifying that the information contained in the application is true and correct;

(7) The year that the unit of prune/plums was planted;

(8) The handlers who received the prune/plums from the producer in the last two years.

(d) After the Committee receives the producer applications, it shall review them to determine whether all the required information has been provided and that the information appears reliable.

(e) If the number of trees to be removed in such applications,

multiplied by $8.50 per tree, exceeds the amount of funds available for the diversion program, each grower's application will be considered in the order in which they are received at the Committee office.

(f) After the application reviews and confirmation of eligible trees are completed, the Committee shall notify the applicant, in writing, as to whether or not the application has been approved and the number of trees approved for payment after removal. If an application is not approved, the notification shall specify the reason(s) for disapproval.

**§ 81.9 Inspection and certification of diversion.**

When the removal of the prune-plum trees is complete, the producer(s) will notify the Committee on a form provided by the Committee. The Committee will certify that the trees approved for removal from the block or orchard, as the case may be, have been removed, and notify AMS.

**§ 81.10 Claim for payment.**

(a) To obtain payment for the trees removed, the producer must submit to the Committee by June 30, 2002, a completed form provided by the Committee. Such form shall include the Committee's certification that the qualifying trees from the blocks or orchards have been removed. AMS will then issue a check to the producer in the amount of $8.50 per eligible tree removed.

**§ 81.11 Compliance with program provisions.**

If USDA or the Committee determines that any provision of this part have not been complied with by the producer, the producer will not be entitled to diversion payments in connection with tree removal. If a producer does not comply with the terms of this part, including the requirement specified in § 80.5(b), the producer must refund any USDA payment made in connection with such tree removal, and will also be liable to USDA for any other damages incurred as a result of such failure. The Committee or USDA may deny any producer the right to participate in this program or the right to receive payments in connection with any diversion previously made under this program, or both, if the Committee or USDA determines that:

(a) The producer has failed to properly remove the prune/plum trees from the applicable block or the whole orchard regardless of whether such failure was caused directly by the producer or by any other person or persons;

(b) The producer has not acted in good faith in connection with any activity under this program; or

(c) The producer has failed to discharge fully any obligation assumed by him or her under this program.

**§ 81.12 Inspection of premises.**

The producer must permit authorized representatives of USDA or the Committee, at any reasonable time, to have access to their premises to inspect and examine the orchard block where trees were removed and records pertaining to the orchard to determine compliance with the provisions of this part.

**§ 81.13 Records and accounts.**

(a) The producers participating in this program must keep accurate records and accounts showing the details relative to the prune/plum tree removal, including the contract entered into with the firm removing the trees, as well as the invoices.

(b) The producers must permit authorized representatives of USDA, the Committee, and the General Accounting Office at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with provisions of this part. Such records and accounts must be retained for two years after the date of payment to the producer under the program, or for two years after the date of any audit of records by USDA, whichever is later.

**§ 81.14 Offset, assignment, and prompt payment.**

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop proceeds thereof in favor of the producer or any other creditors except agencies of the U.S. Government.

(b) Payments which are earned by a producer under this program may be assigned in the same manner as allowed under the provisions of 7 CFR part 1404.

(c) Prompt payment interest will not be applicable.

**§ 81.15 Appeals.**

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination.

**§ 81.16 Refunds; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application of this part, and if any refund of a payment to AMS shall otherwise become due in connection with the application of this part, all payments made under this part to any producer shall be refunded to AMS together with interest.

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

(c) Interest shall be applicable to refunds required of any producer under this part if AMS determines that payments or other assistance were provided to a producer who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date AMS made benefits available. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. AMS may waive the accrual of interest if AMS determines that the cause of the erroneous determination was not due to any action of the producer.

(d) Interest determined in accordance with paragraph (c) of this section may be waived on refunds required of the producer when there was no intentional noncompliance on the part of the producer, as determined by AMS.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed for those claims which are addressed in 7 CFR part 792.

(f) Producers must refund to AMS any excess payments, as determined by AMS, with respect to such application.

(g) In the event that a benefit under this part was provided as the result of erroneous information provided by the producer, the benefit must be repaid with any applicable interest.

**§ 81.17 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance, or dissolution of a prune/plum producer that is eligible to receive benefits in accordance with this part, such person or persons in the same manner as specified in 7 CFR part 707 for other payments and benefits may receive such benefits, as determined appropriate by AMS.

Dated: December 12, 2001.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 01–31038 Filed 12–13–01; 9:44 am]

BILLING CODE 3410–02–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–CE–42–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Cessna Aircraft Company (Cessna) P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 series airplanes. This proposed AD would require you to visually inspect certain horizontal stabilizer attachment reinforcement brackets for the existence of seam welds and replace any reinforcement bracket found without seam welds. This proposed AD authorizes the pilot to check the logbooks to determine whether one of the affected horizontal stabilizer attachment reinforcement brackets is installed. This proposed AD is the result of a report that certain parts were manufactured without seam welds. The actions specified by this proposed AD are intended to detect and replace structurally deficient horizontal stabilizer attachment brackets. Continued use of such brackets could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 11, 2002.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–42–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Al Phillips, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4116; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How Do I Comment on This Proposed AD?*

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

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

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule.

You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

*How Can I Be Sure FAA Receives My Comment?*

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–42–AD.'' We will date stamp and mail the postcard back to you.

### Discussion

*What Events Have Caused This Proposed AD?*

Cessna notified FAA of a defect in the manufacturing of the horizontal stabilizer attachment reinforcement brackets. Cessna manufactured reinforcement brackets without seam welds on certain Cessna Model 206H and T206H airplanes. AD 2001–09–06, Amendment 39–12211, (66 FR 21278, April 30. 2001), addresses these airplanes. The seam welds help provide the required structural integrity for the horizontal stabilizer attachment bracket.

Since the issuance of AD 2001–09–06, Cessna determined that certain Model P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 series airplanes may have had horizontal stabilizer attachment reinforcement brackets (part number 1232624–1) without seam welds installed as replacement parts. Cessna shipped these brackets from February 27, 1998, through March 17, 2000.

*What Are the Consequences if the Condition Is Not Corrected?*

This condition, if not corrected, could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

*Is There Service Information That Applies to This Subject?*

Cessna has issued Service Bulletin SEB00–10, dated November 6, 2000.

*What Are the Provisions of This Service Information?*

The service bulletin includes procedures for:

—Visually inspecting the right and left horizontal stabilizer attachment reinforcement brackets for the existence of seam welds along the lower inboard and outboard wall/flange; and

—Removing and replacing the horizontal stabilizer assemblies with new parts.

### The FAA's Determination and an Explanation of the Provisions of This Proposed AD

*What Has FAA Decided?*

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

—The unsafe condition referenced in this document exists or could develop on other Cessna P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 series airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

*What Would This Proposed AD Require?*

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

*What Are the Differences Between the Service Information and This Proposed AD?*

Cessna requires you to inspect and, if necessary, replace the horizontal stabilizer attachment reinforcement brackets, part number 1232624–1, within 20 hours time-in-service (TIS),

not to exceed 30 days, of operation. We are proposing a requirement that you inspect and, if necessary, replace the horizontal stabilizer attachment reinforcement brackets, part number 1232624–1, within 50 hours TIS of operation after the effective date of the proposed AD.

We do not have justification to require this action within 20 hours TIS. Compliance times such as this are utilized when we have identified an urgent safety of flight situation. We believe that 50 hours TIS will give the owners/operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

## Cost Impact

*How Many Airplanes Would This Proposed AD Impact?*

We estimate that this proposed AD affects 144 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish the proposed inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 2 workhours × $60 = $120 | Not applicable | $120 | $120 × 144 = $17,280. |

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 24 workhours to replace both brackets × $60 = $1,440. | $135 for both the right and left bracket | $1,440 + $135 = $1,575. |

## Regulatory Impact

*Would This Proposed AD Impact Various Entities?*

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

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

**Cessna Aircraft Company:** Docket No. 2001–CE–42–AD

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

| Model | Serial Nos. |
|---|---|
| P206C and TP206C | P206–0420 through P206–0519. |
| P206D and TP206D | P206–0520 through P206–0603. |
| P206E and TP206E | P20600604 through P20600647, and P206–0001. |
| U206C and TU206C | U206–0915 through U206–1234. |
| U206D and TU206D | U206–1235 through U206–1444, U20601445 through U20601587. |
| U206E and TU206E | U20601588 through U20601700. |
| U206F and TU206F | U20601701 through U20602588, and U20602590 through U20603521. |
| U206G and TU206G | 676, U20602589, and U20603522 through U20607020. |
| 207 and T207 | 20700001 through 20700362. |
| 207A and T207A | 20700363 through 20700788. |
| 210G | 21058819 through 21058936. |
| 210H | 21058937 through 21059061. |
| 210J | 21059062 through 21059199. |
| 210K and T210K | 21059200 through 21059502. |
| 210L and T210L | 21059503 through 21061041, and 21061043 through 21061573. |
| 210M and T210M | 21061042, and 21061574 through 21062954. |
| 210N and T210N | 21062955 through 21064897. |
| P210N | P21000001 through P21000834. |
| T210G | T210–0198 through T210–0307. |

| Model | Serial Nos. |
|---|---|
| T210H | T210–0308 through T210–0392. |
| T210J | T210–0393 through T210–0454, and 21058140. |

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and replace structurally deficient horizontal stabilizer attachment brackets. Continued use of such brackets could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Maintenance Records Check:<br>(i) Check the maintenance records to determine whether a horizontal stabilizer attachment reinforcement bracket, part number (P/N) 1232624–1 shipped by Cessna from February 27, 1998, through March 17, 2000, is installed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.<br>(ii) If, by checking the maintenance records, the owner/operator can positively show that a horizontal stabilizer attachment reinforcement bracket, P/N 1232624–1 shipped by Cessna from February 27, 1998, through March 17, 2000, is not installed, then the inspection requirement of paragraph (d)(2) and the replacement requirement of paragraph (d)(3) of this AD does not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). | Within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished. | No special procedures required to check the logbook. |
| (2) Inspection:<br>Visually inspect the right and left horizontal stabilizer attachment reinforcement brackets, part number (P/N) 1232624–1, for the existence of seam welds along both the lower inboard and outboard wall/flange. | Within the next 50 hours TIS after the effective date of this AD, unless already accomplished. | In accordance with the Accomplishment Instructions in Cessna Service Bulletin SEB00–10, dated November 6, 2000, and the applicable maintenance manual. |
| (3) Replacement:<br>(i) If no seam weld is found along both the lower inboard and outboard wall/flange on the right and left horizontal stabilizer attachment reinforcement bracket during the inspection required in paragraph (d)(2) of this AD, replace with a new or airworthy P/N 1232624–1 horizontal stabilizer attachment reinforcement bracket.<br>(ii) If the right and left horizontal stabilizer attachment reinforcement bracket has seam welds along both the lower inboard and outboard wall/flange, no further action is required. | Accomplish any necessary replacements prior to further flight after the inspection required by this AD, unless already accomplished. | In accordance with the Accomplishment Instructions in Cessna Service Bulletin SEB00–10, dated November 6, 2000, and the applicable maintenance manual. |
| (4) Installation Prohibition:<br>Do not install any P/N 1232624–1 horizontal stabilizer attachment reinforcement bracket (or FAA-approved equivalent part) unless the bracket:<br>(i) is inspected as required in paragraph (d)(2) of this AD; and<br>(ii) has seam welds along both the lower inboard and outboard wall/flange | Not applicable | Not applicable. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

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

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Al Phillips, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4116; facsimile: (316) 946–4407.

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

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 6, 2001.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01–30954 Filed 12–14–01; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–CE–41–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; SOCATA—Groupe Aerospatiale Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to supersede Airworthiness Directive (AD) 77–15–06, which applies to all SOCATA—Groupe Aerospatiale (Socata) Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, Rallye 150T, and Rallye 150ST airplanes. AD 77–15–06 currently requires you to repetitively inspect the engine mount assembly for cracks, repair any cracks found, and modify the brackets on airplanes with right angle engine mounts. This proposed AD is the result of the French airworthiness authority's determination that updated service information and additional aircraft should be added to the applicability of AD 77–15–06. This proposed AD would retain the inspection and repair requirements of the current AD and would add the information communicated by the French airworthiness authority. The actions specified by this proposed AD are intended to detect and correct cracks in the engine mount assembly. Such a condition could cause the engine mount assembly to fail, which could result in loss of control of the airplane.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this rule on or before January 11, 2002.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–41–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4191. You may also view this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

*Are there any specific portions of this proposed AD I should pay attention to?* The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

*How can I be sure FAA receives my comment?* If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–41–AD.'' We will date stamp and mail the postcard back to you.

### Discussion

*Has FAA taken any action to this point?* Fatigue cracks found on the engine mount assemblies of Socata Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, Rallye 150T, and Rallye 150ST airplanes caused us to issue AD 77–15–06, Amendment 39–2975. This AD currently requires the following:

—Inspecting the engine mount assembly for cracks at repetitive intervals;

—Repairing any cracks found; and
—Modifying the brackets on airplanes with right angle engine mounts.

*What has happened since AD 77–15–06 to initiate this action?* The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA of the need to change AD 77–15–06. The DGAC reports that:

—The manufacturer has issued new service information to address the unsafe condition;
—Additional airplane models should be added to the applicability; and
—The initial compliance time should be changed from 100 hours time-in-service (TIS) to 50 hours TIS.

*Is there service information that applies to this subject?* Socata has issued Service Bulletin SB 156–17, dated May 2001.

*What are the provisions of this service bulletin?* The service bulletin includes procedures for:

—Repetitively inspecting certain engine mount assemblies for cracks; and
—Repairing cracks that are a certain length.

*What action did the DGAC take?* The DGAC classified this service bulletin as mandatory and issued French AD 2001–400(A), dated September 19, 2001, in order to ensure the continued airworthiness of these airplanes in France.

*Was this in accordance with the bilateral airworthiness agreement?* These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, DGAC has kept FAA informed of the situation described above.

**The FAA's Determination and an Explanation of the Provisions of the Proposed AD**

*What has FAA decided?* The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on certain Socata Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST airplanes of the same type design that are on the U.S. registry;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

*What would the proposed AD require?* This proposed AD would supersede AD 77–15–06 with a new AD that would require you to:

—Repetitively inspect any engine mount assembly that is not part number 892–51–0–035–0 (or FAA-approved equivalent part number) for cracks;
—Repair cracks that do not exceed a certain length; and
—Replace the engine mount when the cracks exceed a certain length and cracks are found on an engine mount that already has two repairs.

**Cost Impact**

*How many airplanes would the proposed AD impact?* We estimate that the proposed AD affects 81 airplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish each proposed inspection(s):

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 workhour × $60=$60 | No parts required | $60 | $60 × 81=$4,860 |

We estimate the following costs to accomplish any necessary repairs that would be required based on the results of the proposed inspection(s). We have no way of determining the number of airplanes that may need such repair:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 3 workhours × $60=$180 | No parts required | $180 |

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection(s). We have no way of determining the number of airplanes that may need such replacement:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 9 workhours × $60=$540 | $3,500 | $540 + $3,500=$4,040 |

**Regulatory Impact**

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

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

Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. FAA amends Section 39.13 by removing Airworthiness Directive (AD) 77–15–06, Amendment 39-2975, and by adding a new AD to read as follows:

**SOCATA—Groupe Aerospatiale:** Docket No. 2001-CE–41–AD; Supersedes AD 77–15–06, Amendment 39–2975.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category and do not have a part number 892–51–0–035–0 engine mount assembly (or FAA-approved equivalent part number) installed:

| Model | Serial Nos. |
|---|---|
| MS 892A–150 | All serial numbers. |
| MS 892E–150 | All serial numbers. |
| MS 893A | All serial numbers. |
| MS 893E | All serial numbers. |
| MS 894A | 1005 through 2204 equipped with kit OPT8098 9037. |
| MS 894E | 1005 through 2204 equipped with kit OPT8098 9037. |
| Rallye 150T | All serial numbers. |
| Rallye 150ST | All serial numbers. |

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the engine mount assembly. Such a condition could cause the engine mount assembly to fail, which could result in loss of control of the airplane.

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Inspect the engine mount assembly for cracks. | For airplanes previously affected by AD 77–15–06: inspect or within the next 50 hours time-in-service (TIS) after the last inspection required by AD 77–15–06 or within the next 50 hours TIS after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 50 hours TIS. For all other airplanes: inspect within the next 50 hours TIS after the effective date of this AD and thereafter at intervals not to exceed 50 hours TIS. | In accordance with the Accomplishment Instructions section of Socata Service Bulletin SB 156–71, dated May 2001. |
| (2) If any crack is found during any inspection required by this AD that is less than 0.24 inches (6 mm) in length, repair the engine mount assembly. If two repairs on the engine mount have already been performed, replace in accordance with paragraph (d)(3) of this AD. | Prior to further flight after the inspection in which the crack is found. | In accordance with the Accomplishment Instructions section of Socata Service Bulletin SB 156–71, dated May 2001. |
| (3) If any crack is found during any inspection required by this AD that is 0.24 inches (6 mm) or longer in length or if any crack is found and two repairs on the engine mount have already been performed, replace the engine mount assembly with part number 892–51–0–035–0 (or FAA-approved equivalent part number). | Prior to further flight after the inspection in which the crack is found. Repetitive inspections are no longer required after this replacement. | In accordance with the applicable maintenance manual. |
| (4) You may terminate the repetitive inspections of this AD after installing engine mount assembly, part number 892–51–0–035–0 (or FAA-approved equivalent part number). | At any time but it must be done prior to further flight if any of the criteria of paragraph (d)(3) are met. | In accordance with the applicable maintenance manual. |

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

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

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

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

(2) Alternative methods of compliance approved in accordance with AD 77–15–06, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas

City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

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

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4191. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 77–15–06, Amendment 39–2975.

**Note 2:** The subject of this AD is addressed in French AD 2001–400(A), dated September 19, 2001.

Issued in Kansas City, Missouri, on December 6, 2001.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01–30953 Filed 12–14–01; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–SW–39–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; MD Helicopters Inc. Model MD–900 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes superseding an existing airworthiness directive (AD) for MD Helicopters Inc. Model MD–900 helicopters. That AD currently requires inspecting the main rotor upper hub assembly drive plate attachment flange (flange), determining the torque of each flange nut (nut), and if a crack is found, before further flight, replacing the hub assembly. In addition to the current requirements, this action would require visually inspecting the outer surface of the flange at specified intervals and removing the drive plate and visually inspecting the flange for a crack at specified intervals and replacing any unairworthy hub assembly. This proposal is prompted by reports that cracks starting at the drive plate attachment holes were found in the main rotor hub. The actions specified by the proposed AD are intended to detect a crack in the flange and to prevent failure of the hub assembly, loss of drive to the main rotor, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before February 15, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–39–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–39–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–39–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### Discussion

On December 17, 1999, the FAA issued Emergency AD 99–26–20 to require certain inspections of the hub assembly for a crack, ensuring the correct torque of each nut, and replacing any cracked hub assembly with an airworthy hub assembly. That action was prompted by three occurrences of cracked hub assemblies. The FAA discovered errors after issuing Emergency AD 99–26–20 and corrected those errors by superseding that Emergency AD with AD 2001–07–09, Amendment 39–12175 (66 FR 19383, April 16, 2001). The requirements of that AD were intended to prevent failure of the hub assembly, loss of drive to the main rotor, and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has received reports indicating that additional cracks have been found in the main rotor hub emanating from the drive plate attachment holes.

This unsafe condition is likely to exist or develop on other MD Helicopters Inc. Model MD–900 helicopters of the same type design. Therefore, the proposed AD would supersede AD 2001–07–09 to contain the current requirements and to also require the following:

- Visually inspect the outer surface of the flange using a light and a 10x or higher magnifying glass at intervals not to exceed 100 hours TIS.
- Remove the drive plate and visually inspect the flange for a crack at intervals not to exceed 300 hours TIS.
- Replace any unairworthy hub assembly before further flight.

The FAA estimates 28 helicopters of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per helicopter to verify the torque, 3 work hours per helicopter to perform the inspection, and 10 work hours per helicopter to replace the hub assembly,

if necessary. The proposed actions would require approximately 1 work hour for a 100-hour TIS inspection, and 3 work hours for a 300-hour TIS inspection, at an average labor rate of $60 per work hour. Required parts to replace the hub assembly, if necessary, would cost approximately $21,610 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $159,770 for the first year, assuming 5 hub assembly replacements and assuming each helicopter has 6 torque verifications, 6 inspections, two 100-hour inspections, and one 300-hour inspection.

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended].

2. Section 39.13 is amended by removing Amendment 39–12175 (66 FR 19383, April 16, 2001), and by adding a new airworthiness directive (AD), to read as follows:

**MD Helicopters, Inc.:** Docket No. 2001–SW–39–AD. Supersedes AD 2001–07–09, Amendment 39–12175, Docket No. 2000–SW–15–AD.

*Applicability:* Model MD–900 helicopters, with main rotor upper hub (hub) assembly, part number (P/N) 900R2101006–105 or 900R2101006–107, installed, certificated in any category.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the hub assembly, loss of drive to the main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For the hub assembly, P/N 900R2101006–107,

(1) Within 6 hours time-in-service (TIS), visually inspect the main rotor upper hub assembly drive plate attach flange (flange) for a crack and determine the torque of each flange attach nut (nut) in accordance with the Accomplishment Instructions, Part I, paragraph 2.A., steps (1) through (7) of MD Helicopter Inc. Service Bulletin SB 900–072, dated December 10, 1999 (SB). If a crack is found, before further flight, remove and replace the hub assembly with an airworthy hub assembly.

(2) Within 25 hours TIS, accomplish Part II, of the Accomplishment Instructions, paragraph 2.B., steps (1) through (6), (8), and (9) of the SB. If a crack is found, before further flight, remove and replace the hub assembly with an airworthy hub assembly.

(b) For the hub assembly, P/N 900R2101006–105,

(1) Within 6 hours TIS, visually inspect the flange for a crack and determine the torque of each nut in accordance with the Accomplishment Instructions, Part I, paragraph 2.A., steps (1) through (7) of the SB.

**Note 2:** The SB effectivity does not include hub assembly, P/N 900R2101006–105; however, certain provisions of this AD do apply to this P/N.

(2) If any nut has less than 180 inch pounds (20.34 Nm) of torque, before further flight, remove the drive plate and fretting buffer and inspect the flange in accordance with the procedures in paragraph (b)(3) of this AD. If a crack is detected, before further flight, remove and replace the hub assembly with an airworthy hub assembly. Reassemble in accordance with the procedures in paragraph (b)(3) of this AD.

(3) Within 25 hours TIS, remove the main rotor drive plate assembly and anti-fretting ring and visually inspect the main rotor hub assembly as follows:

(i) If present, remove sealant from the drive plate attachment to the hub assembly.

(ii) Mark the main rotor hub holes to correspond with the drive plate hole numbers (see Figure 1 of this AD).

(iii) Remove the main rotor drive plate (drive plate) assembly and anti-fretting ring (fretting buffer).

(iv) Inspect drive plate to rotor hub assembly mating surfaces and the fretting buffer for fretting.

(v) Using paint stripper (Consumable Item List C313 or equivalent) and cleaning solvent (C420 or equivalent), remove the paint from the upper mating surface of the hub assembly to enable an accurate visual inspection of each drive plate attachment bolt hole (bolt hole) area for cracking (Figure 1). Ensure the paint stripper and solvent DO NOT contaminate the upper bearing and upper grease seal areas.

(vi) Using a 10 × or higher magnifying glass and light, inspect the mating surface area and the area around and inside the 10 boltholes of the hub assembly for a crack. If a crack is found, prior to further flight, replace the hub assembly with an airworthy hub assembly.

(vii) If no crack is found, remove fretting debris from the mating surfaces of the hub assembly and the drive plate assembly, reassemble, fillet seal (C211 or equivalent) the surface of the drive plate to fretting buffer to hub assembly mating lines, and seal all exposed unpainted upper surfaces of the hub assembly.

(viii) Reinstall the main rotor drive plate using 10 new sets of replacement attachment hardware. Torque the nuts to 160 inch pounds above locknut locking/run-on torque in the sequence shown (Figure 1). Record in the rotorcraft logbook, or equivalent record, the locknut locking/run-on torque for each nut.

(ix) After the next flight, verify that the torque on each of the 10 nuts is at least 160 inch pounds above the locknut locking/run-on torque (minimum torque). Retorque as required without loosening nuts.

(x) Thereafter, at intervals of at least 4 hours TIS, not to exceed 6 hours TIS, verify that the torque of each of the 10 nuts is at least the minimum torque. Retorque as required without loosening nuts. This torque verification is no longer required after the torque on each of the 10 nuts has stabilized at a torque value of 160 or more inch pounds for each nut during two successive torque verifications.

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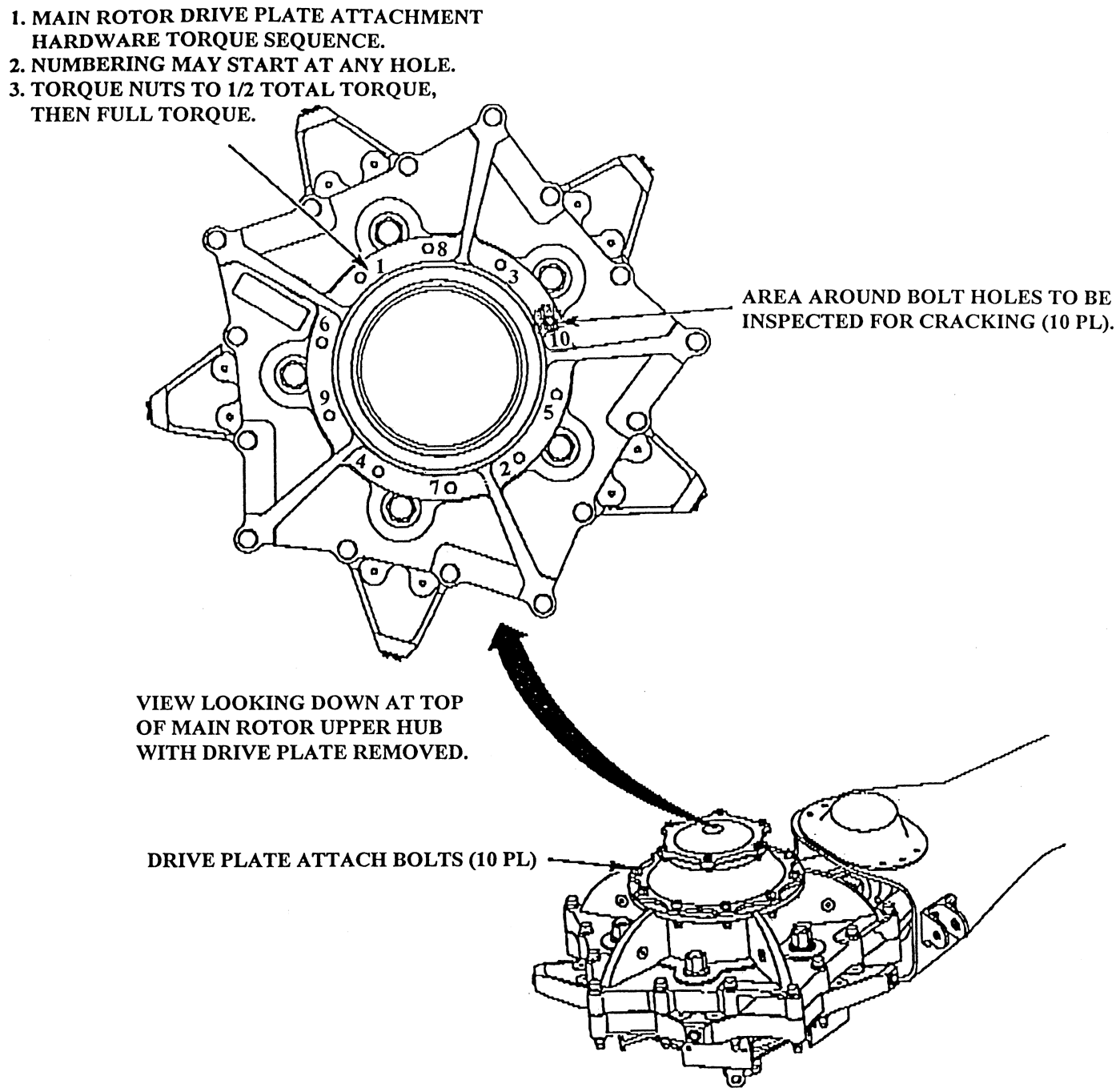


**Figure 1. Main Rotor Upper Hub Assembly Inspection.**

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(c) Within 100 hours TIS and thereafter at intervals not to exceed 100 hours TIS, visually inspect the outer surface of the flange for a crack using a light and a 10 × or higher magnifying glass. If a crack is detected, replace the unairworthy hub assembly with an airworthy hub assembly before further flight.

(d) At intervals not to exceed 300 hours TIS, remove the drive plate and visually inspect the flange for a crack using a light and a 10 × or higher magnifying glass. If a crack is detected, replace the unairworthy hub assembly with an airworthy hub assembly before further flight.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(f) If any nut torque is below minimum torque and no hub assembly crack is found before disassembly inspection, after retorque

in accordance with the applicable Maintenance Manual, a special flight permit for one flight below 100 knots indicated airspeed may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on December 11, 2001.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 01–31042 Filed 12–14–01; 8:45 am]

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## DEPARTMENT OF JUSTICE

## Office of the Attorney General

## 28 CFR Part 97

**[OAG 100P; AG Order No. 2539–2001]**

**RIN 1105–AA77**

## Establishment of Minimum Safety and Security Standards for Private Companies That Transport Violent Prisoners

**AGENCY:** Office of the Attorney General, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In the Interstate Transportation of Dangerous Criminals Act of 2000 (''the Act''), Congress instructed the Department of Justice (''the Department'') to promulgate regulations providing minimum safety and security standards for private companies that transport violent prisoners on behalf of State and local jurisdictions. The Act provides that the regulations shall not impose stricter standards with respect to private prisoner transport companies than are applicable to certain Department agencies that transport violent prisoners under comparable circumstances. This rule proposes minimum standards in only those areas that Congress identified in the Act.

**DATES:** *Comment date:* Comments must be submitted on or before February 15, 2002.

**ADDRESSES:** Please submit written comments to Lizette Benedi, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530. Comments may also be submitted by fax at (202) 353–9164 and by electronic mail at Jeannas.Act.Comments@usdoj.gov. To ensure proper handling, please reference ''Jeanna's Act'' on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** For matters relating to this proposed rule, please contact Lizette Benedi, (202) 514–3824.

**SUPPLEMENTARY INFORMATION:**

### A. Background

*What Does This Rule Propose?*

This rule proposes a limited number of minimum safety and security standards for private companies that engage in the business of transporting violent prisoners on behalf of State and local jurisdictions. The proposed rule requires private prisoner transport companies to establish measures designed to improve public safety by preventing escapes of violent prisoners and establishing appropriate safeguards and procedures in the event of the escape of a violent prisoner.

In addition, the rule proposes minimum standards to ensure the safety of violent prisoners during transportation.

*Why Is This Rule Needed?*

In enacting the Interstate Transportation of Dangerous Criminals Act of 2000, Public Law 106–560 (114 Stat. 2784)(enacted December 21, 2000), Congress found that State and local jurisdictions are increasingly turning to private companies to transport their violent prisoners, and that escapes have occurred. Congress determined that minimum regulations for the private prisoner transport industry were necessary to provide protection against risks to the public that are inherent in the transportation of violent prisoners and to assure the safety of those being transported.

*Does Compliance With These Regulations Mean That Private Prisoner Transport Companies Have Met All of Their Legal Obligations?*

No. These regulations implement the Act and do not pre-empt any applicable Federal, State, or local law that may impose additional obligations on private prisoner transport companies or otherwise regulate the transportation of violent prisoners. For example, all Federal laws and regulations governing interstate commerce (*e.g.,* Federal laws regulating the possession of weapons and Federal Aviation Administration rules and regulations governing travel on commercial aircraft) will continue to apply to private prisoner transport companies.

Because these regulations implement the Act, they affect only limited aspects of a private prisoner transport company's operations. Therefore, these regulations are not intended to be model guidelines or a complete set of standards for the private prisoner transport industry. Private prisoner transport companies should be aware that compliance with these regulations will mean only that they will not be subject to the sanctions established in the Act. The regulations are not meant to prevent or discourage private prisoner transport companies from adopting additional or more stringent standards relating to the transportation of prisoners. Similarly, these regulations do not limit the authority of Federal, State, or local governments to impose additional safety requirements or impose a higher standard of care upon private companies that transport violent prisoners.

The purpose of these regulations is to enhance public security and the safety of both prisoners and guards during transportation. The regulations are not intended to create a defense to any civil action, whether initiated by a unit of government or any other party. Thus, for example, compliance with these regulations is not intended to and does not establish a defense against an allegation of negligence or breach of contract. Regardless of whether a contractual agreement establishes minimum precautions, the companies affected by these regulations will remain subject to the standard of care that is imposed by statute and common law upon their activities (or other activities of a similarly hazardous nature).

*Overview of the Standards That This Rule Proposes*

This proposed rule would (1) require that private prisoner transport companies comply with minimum standards for fingerprint-based criminal background checks and preemployment drug testing for potential employees; (2) provide minimum standards for the length and type of employee training; and (3) establish restrictions on the number of hours that transportation employees can be on duty during a given time period.

This rule also proposes that private prisoner transport companies comply with minimum standards for the use of restraints while transporting violent prisoners, and it establishes categories of violent offenders required to wear identifying clothing. Further, the rule proposes a minimum guard-to-prisoner ratio that must be observed while transporting violent prisoners, and proposes that private prisoner transport companies comply with standards regarding employee uniforms and employee identification.

In addition, the rule proposes to require private prisoner transport

companies to notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction when transporting violent prisoners. In the event of the escape of a violent offender, the proposed rule requires that the private prisoner transport company personnel immediately notify appropriate law enforcement officials in the jurisdiction where the escape occurs, as well as the governmental entity that contracted with the private prisoner transport company for the transport of the escaped violent prisoner.

Finally, the rule proposes that private prisoner transport companies adopt certain minimum standards to protect the safety of violent prisoners in accordance with applicable Federal and State law.

Pursuant to section 4(c) of the Act, except for the standards regarding the categories of violent prisoners required to wear brightly colored clothing, these proposed standards are not stricter than the standards applicable to the United States Marshals Service (USMS), Immigration and Naturalization Service (INS), and the Federal Bureau of Prisons (BOP) when transporting violent prisoners under comparable circumstances.

*Who Is Covered by This Proposed Rule?*

The proposed rule only covers ''private prisoner transport companies,'' which are defined in Section 3 of the Act as ''any entity, other than the United States, a State, or an inferior political subdivision of a State, which engages in the business of the transporting for compensation, individuals committed to the custody of any State or of an inferior political subdivision of a State, or any attempt thereof.''

Section 3 of the Act defines a ''violent prisoner'' as ''any individual in the custody of a State or an inferior political subdivision of a State who has previously been convicted of or is currently charged with a crime of violence or any similar statute of a State or the inferior political subdivisions of a State, or any attempt thereof.''

The term ''crime of violence'' has the same meaning as in section 924(c)(3) of title 18, United States Code. Pursuant to this subsection, a crime of violence is an offense that is a felony and (a) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

*Does This Rule Affect Companies That Only Transport Violent Prisoners Within the Boundaries of One State, Only Those Companies That Transport Prisoners Across State Lines, or All Private Prisoner Transport Companies?*

If a company meets the definition of ''private prisoner transport company'' as defined in section 3(2) of the Act, the company must comply with this rule even if it does not transport prisoners across state lines. Congress passed the Act in order to impose regulations upon a previously federally unregulated industry that operates across the United States and engages in a potentially dangerous activity. In section 2 of the Act, Congress found that, ''when a government entity opts to use a private prisoner transport company to move violent prisoners, then the company should be subject to regulation in order to enhance public safety.'' This finding by Congress indicates that the threat that it intended to remedy was that posed by an unregulated industry engaging in business that could potentially affect the safety of citizens in all states.

Although the Act is officially titled the ''Interstate Transportation of Dangerous Criminals Act of 2000,'' it is the Department's view that limiting the Act's provisions to only those companies that cross state borders would create the unacceptable result of leaving unregulated certain members of the industry that Congress clearly intended to regulate. In addition, the definition that Congress provided for ''private prisoner transport company'' does not require that the company engage in the interstate transportation of violent prisoners in order to be covered by the Act's provisions.

The statutory direction of Congress to the Department was clear on this point. Section 4(a) of the Act states that the Department ''shall promulgate regulations relating to the transportation of violent prisoners in or affecting interstate commerce.'' A company that only operates intrastate can affect interstate commerce in several ways (*e.g.,* by using interstate highways, by utilizing communications systems that rely on interstate modes of communications or satellites, by transporting prisoners who generally seek to cross state lines during escapes, by relying on the law enforcement agencies of nearby states in the event of an escape, etc.). Therefore, it is the Department's view that Congress clearly contemplated that, viewed either singly or in the aggregate, private companies that engage in the commercial activity of transporting violent prisoners within a state sufficiently affect interstate commerce to be covered by the requirements of this proposed rule.

*What Are the Penalties For Noncompliance With the Regulations?*

Section 5 of the Act states that violators shall be fined up to $10,000 per violation and the costs of prosecution. Violators also will be responsible for making restitution to any public entity that expends funds for the purpose of apprehending any violent prisoner who escaped, in whole or in part, because of a violation of the Act. As discussed above, conduct constituting a violation of these regulations may also result in unrelated penalties as a result of criminal, administrative, or civil process pursuant to local, State, or other Federal laws.

*Additional Considerations*

There is considerable variation in the classification of prisoners that the Department transports and the circumstances under which those prisoners are transported. For example, unlike private prisoner transport companies, INS at times transports entire family groups (of both sexes and of different ages) who have been apprehended after illegally entering the United States. Under other circumstances, INS (along with BOP and USMS) transports offenders who have committed very violent crimes and are considered to be a high security risk. Accordingly, the Department's components that transport prisoners have developed differing standards for prisoner transport that are appropriately tailored to their roles and missions.

By requiring the Department to promulgate regulations in this area, Congress appears to have at least two goals in mind. First, uniform standards for transporting prisoners serve to improve public security and the safety of the prisoners and guards during transportation. Second, by providing that the Department's regulations for the private sector not be stricter than those governing the Department's own components, Congress appears to have been concerned that the regulations not be unduly burdensome.

The Department shares Congress' concerns that any regulations that the Department issues should not unduly burden private industry, especially small entities, while still addressing the problems that motivated the passage of this Act. However, regulations that fully reflect the considerable variation of the Department's own prisoner transport activities might be so complex as to be burdensome on the affected entities and,

nonetheless, still not fully comply with congressional intent in certain areas.

Therefore, consistent with section 4(c) of the Act, for some of the specific requirements of the Act (*e.g.,* that prisoners ordinarily be required to wear brightly colored clothing) the rule proposes standards somewhat more stringent than the Department uses itself for the transport of prisoners, under certain circumstances. Moreover, for certain requirements that Congress imposed on private entities, the Department may have greater flexibility in its comparable internal procedures because the functions of Departmental agencies differ significantly from those of private prisoner transport companies, and therefore the circumstances are not comparable.

For other requirements of the Act (*e.g.,* the guard-to-prisoner ratio), the Department is proposing for comment a one-guard-to-six-violent-prisoner ratio for promulgation in the final rule. The Department specifically invites comments from private prisoner transport companies, from State and local law enforcement entities, and from the general public concerning what ratio the Department should adopt in the final rule.

The Department also seeks comment on the potential impacts that these regulations may have on the ability of sheriffs' departments and other operators of local jails to arrange safe and efficient violent prisoner transport in response to writs or other requirements.

*How Does the Rule Affect the Transportation of Juveniles?*

It is the Department's view that the provisions of the Act do not apply to the transportation of juveniles unless the juvenile has been charged or convicted as an adult for a crime of violence as defined in 18 U.S.C. § 924(c)(3).

The Act defines a violent prisoner as one ''who has previously been convicted of or is currently charged with a crime of violence.'' The Act gives the term ''crime of violence'' the same meaning as that term has in 18 U.S.C. § 924(c)(3). Section 924(c)(3) includes in its definition of ''crime of violence'' the requirement that it be ''an offense that is a felony.'' This should be understood as referring to adults convicted of or facing felony criminal charges and to juveniles who previously have been convicted of or who are being prosecuted as adults for violent felony offenses. Unless juvenile offenders have been or are being tried as adults under federal law, they generally are not considered to have been ''convicted'' or ''charged'' with a ''crime of violence'' as defined in 18 U.S.C. 924(c)(3). Instead, they are considered to have been adjudicated delinquent or found guilty (or found ''involved'') in a juvenile delinquency proceeding, rather than convicted of a crime. *E.g., United States* v. *Frasquillo-Zomosa,* 626 F.2d 99, 101 (9th Cir. 1980)(''A successful prosecution under the [Federal Juvenile Delinquency] Act results not in a conviction of a crime but rather in adjudication of a status''). Although some provisions under federal law create an exception to this general understanding by explicitly providing that a ''conviction'' includes certain juvenile adjudications, *e.g.,* 18 U.S.C. § 924(e)(2)(B)(''violent felony'' includes ''any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for [a term exceeding one year] if committed by an adult''), neither 18 U.S.C. 924(c)(3) nor the Act itself contain any language that would support interpreting the Act as including within its scope the transportation of juvenile offenders who have been adjudicated or who are to be tried as juveniles.

*Who Was Consulted During the Development of This Proposed Rule?*

In accordance with the Act, Department of Justice officials met with several representatives of the private prisoner transport industry, the American Correctional Association (ACA), and law enforcement groups, including the National Sheriffs' Association, American Jail Association, National Association of Police Organizations, and the National Association of Government Employees International Brotherhood of Police Officers. During this rulemaking process, the Department looks forward to hearing additional comments from law enforcement groups, the public, and the private prisoner transport industry.

**B. Detailed Discussion of the Proposed Requirements Covering Private Prisoner Transport**

*1. Background Checks and Drug Testing Standards for Potential Employees*

Under the proposed rule, potential employees of private prisoner transport companies will have to pass a preliminary fingerprint-based criminal background check prior to being hired. This background check will disqualify from employment those applicants convicted of a misdemeanor crime of domestic violence or any felony conviction. The fingerprint-based criminal background check would be performed by providing the applicant's fingerprints to the governmental agency that is contracting with the private prisoner transport company, for submission through the state history record repository to the FBI. The background check also must include a credit report check, a physical examination, and a personal interview.

Also, potential employees of private prisoner transport companies must undergo testing to detect the prior or current use of controlled substances as a condition of employment. The pre-employment drug testing must be done in accordance with applicable State law. In the event that there is no applicable State law, private prisoner transport companies must comply with the pre-employment drug testing requirements that apply to commercial drivers (*See*, 49 CFR 382.301).

*2. Length and Type of Employee Training*

The Act states that the Department may require that employees of private prisoner transport companies participate in up to 100 hours of preservice training relating to the transportation of prisoners. This training must be in the following areas: use of restraints, searches, use of force (including use of appropriate weapons and firearms), CPR, map reading, and defensive driving. This rule proposes to require private prisoner transport companies to provide their employees with 100 hours of preservice training in those areas.

The training of Department personnel who transport violent prisoners is notably more rigorous in length and in type than the 100-hour maximum that Congress established in the Act for private prisoner transport companies. For instance, the BOP requires any employee who assists with prisoner bus transport to have successfully completed, at a minimum, one ''probationary'' year of service and attended 80 hours of Institutional Familiarization, 120 hours of Introduction to Correctional Techniques, 24 hours of Basic Prisoner Transport, and 80 hours of Bus Operations Training. In addition, a BOP employee must undergo 40 hours of refresher training annually and must possess a commercial drivers license.

Similarly, INS employees who transport prisoners must undergo a minimum of 196 hours of training, including 20 hours of driving-related training, 16 hours of first-aid training and CPR, 6 hours of training on conducting searches, 48 hours of training on the use of firearms, and 88

hours of training on the proper use of force.

The USMS also requires that its employees who transport prisoners undergo rigorous training, including follow-up courses. As part of its required training regimen, the USMS requires over 100 hours of training in the areas of prisoner handling, prisoner searches, proper application and removal of restraints, tactical training in dealing with combative subjects, the proper escalation and de-escalation of force, vehicle operation, and firearms safety.

The proposed rule does not address the minimum quality standards required for training programs, the need for in-service training, or instructor qualifications, although these are critical factors that enable Department agencies to transport prisoners safely. In its consultations with ACA and private prisoner transport companies, the Department has learned that there is currently no accredited training program to serve the function of training the employees of private prisoner transport companies. The ACA has reported that it has begun to develop standards for such training. The Department seeks comment from the private prisoner transport industry, the public, and law enforcement officials on the manner in which this training should be conducted and its quality assured.

*3. Number of Hours an Employee May Be on Duty During a Given Time Period*

This proposed rule sets requirements to ensure that drivers of private prisoner transport companies comply with Federal standards that limit the amount of time a commercial driver may be on duty during a given time period. Pursuant to 49 CFR 395.3, no driver of a commercial vehicle may drive more than 10 hours following 8 consecutive hours off duty. A commercial driver will be barred from driving if the driver has been on duty (regardless of whether the employee drove) for 15 hours following 8 consecutive hours off duty.

If the motor vehicle carrier operates commercial vehicles every day of the week, a driver will be barred from driving if the driver has been on duty for 70 hours in any period of 8 consecutive days. If the motor vehicle carrier does not operate commercial vehicles every day of the week, a driver will be barred from driving if the driver has been on duty for 60 hours in any period of 7 consecutive days.

*4. The Number of Personnel That Must Supervise Violent Prisoners*

The Act directs the Department to develop minimum standards for the number of private prisoner transport personnel that must supervise violent prisoners. The Act states that these minimum standards shall not exceed a requirement of one agent for every six violent prisoners. In addition, the Act states that the Department must not impose stricter standards on private prisoner transport companies than are applicable, without exception, to the USMS, BOP, and INS. As a minimum standard, the Department believes that a one-agent-to-six-violent-prisoner ratio is the most appropriate standard to protect the public from the threat of violent prisoner escapes.

Although the Act states that the Department should establish a minimum guard-to-prisoner ratio, the Act also permits the Department to give private prisoner transport companies ''appropriate discretion'' in this area. The Department seeks comment from law enforcement entities, private prisoner transport industry members, and the public as to the proper level of discretion that private prisoner transport companies should have in relation to the one-guard-to-six-violent-prisoner ratio proposed by this regulation.

Department Practices and Procedures

When Justice Department components transport high-risk, maximum custody, or violent offenders, the guard-to-prisoner ratios are often significantly more strict than one guard for every six prisoners. For instance, when BOP personnel transport their maximum custody inmates on escorted trips (for medical treatment or other purposes), the BOP policy guidelines require that for each such inmate, there must be three BOP staff escorts, one of whom must be a Lieutenant. The guidelines also require that additional BOP staff ride along for the duration of the trip in a follow vehicle. Because BOP policy guidelines recommend that two BOP staff ride in the follow vehicle, the guard-to-prisoner ratio in this case is five guards to one prisoner. BOP policy guidelines require that this guard-to-prisoner ratio be maintained regardless of the number of prisoners being transported. When BOP transports prisoners who do not pose the highest security risk (regardless of the purpose of the trip), the BOP still requires that two employees ride in the van or car in which the prisoners are being transported, but without a requirement for a follow vehicle.

Similarly, when USMS transports prisoners in a sedan (with a maximum capacity of three prisoners), USMS guidelines require a minimum of two armed deputies, for a minimum ratio of two guards to three prisoners. If only two prisoners are being transported by the USMS in a sedan, the two-deputy requirement still applies, yielding a ratio of one guard to one prisoner. If, for any reason, a sedan or van with a safety screen is not available, USMS guidelines require a minimum of a one-guard-to-one-prisoner ratio. Similar to the BOP policy, when the USMS transports prisoners in a van, USMS guidelines require that a minimum of two armed deputies accompany the prisoner. The resulting ratio will be at least two armed USMS deputies for 12 prisoners, yielding a ratio of one guard for six prisoners.

INS guidelines require that if an INS detainee is being transported in an unsecured sedan, van, or utility vehicle by one INS officer, there is a minimum guard-to-detainee ratio of one guard for every two INS detainees. If there are more than two INS detainees being transported, there must be another INS guard present. The maximum capacity of an unsecured INS van is six detainees, resulting in a minimum possible guard-to-detainee ratio of one guard to three detainees for travel in an unsecured INS van. For secured sedans, vans, and utility vehicles, there is a minimum requirement of one officer unless the trip is over a long distance or requires stops for food or fuel. In that case, another officer would normally be required.

There are instances where Department personnel must transport prisoners in buses, and in these cases, the guard-to-prisoner ratio typically diminishes. At times, this ratio may decrease to less than one guard for every six prisoners. The BOP guidelines require that three BOP staff accompany bus movements (not including the transportation of high risk offenders described above). Similarly, USMS policy mandates that a minimum of two armed deputies and a driver be used during bus transportation. Regulations of the INS require a minimum of two INS agents on each bus; however, the regulations also state that the minimum number of agents should be increased, or an escort vehicle added, if INS agents determine that the risk level of detainees warrants it.

Despite any decrease in the guard-to-prisoner ratio, there are numerous Department operating procedures that are not required of private prisoner transport companies that ensure the security of the Department vehicles,

officers, and prisoners. For instance, there are Department operating procedures that require buses and other vehicles to have the rear cage door locked while inmates are aboard, to be equipped with security screens that separate the driver from the prisoners, to have steel mesh over the windows and doors, to have inside door handles removed, and to be searched for contraband before and after each prisoner movement. There are extensive Department guidelines that govern the movement of prisoners to and from buses, and also govern prisoner seating arrangements once on the bus. There are additional policies and procedures for monitoring and controlling prisoner conduct while on the bus and during stops. In addition, Department personnel have extensive training and knowledge of proven safety techniques (e.g., rules that handcuff keys are to be carried on separate key rings from vehicle ignition keys). This proposed rule will not require that any of these measures be adopted by private prisoner transport companies.

Simplified Guard-To-Prisoner Ratio for Industry

As discussed in the preceding paragraphs, the Department's guard-to-prisoner ratio varies depending upon the nature and security classification of the offender, the escape risk, and other factors. This ratio is often significantly more strict than the maximum ratio the Act permits the Department to require for private companies. The Department's ratio is also sometimes less strict than the one-to-six ratio referred to in the Act. The Department's own excellent record in transporting prisoners safely and securely with ratios lower than one guard to six prisoners is due in large measure to the extensive training that custodial and transport personnel receive (training that greatly exceeds the maximum training that the Department is permitted to require by regulation), to the carefully designed physical configuration of the transport vehicles, and to the elaborate procedures set forth in the Department's guidelines.

It should be noted that this proposed rule does not require that private transport companies adhere to all of the Department's own guidelines regarding prisoner transport. Compliance with such guidelines would likely be very expensive for private companies. Further, a multi-tiered approach that the Department follows for conducting its own transport of prisoners would be administratively burdensome for private companies and require them to obtain information about each prisoner (such as their escape risk or security classification) which they are not at present likely to receive from the committing authority. But in the absence of mandated compliance with all of these safeguards, private prisoner transport does not involve ''comparable circumstances'' that would permit use of ratios more lenient than one to six.

In an effort to comply both with the statutory requirement that the guard-to-prisoner ratio not exceed one to six and the statutory requirement that the Department not impose on private companies stricter requirements than it adheres to without exception, the Department proposes to require that private companies transporting offenders not exceed a ratio of one agent to six violent prisoners.

The Department believes that this ratio provides a security level consistent with congressional intent but without imposing an elaborate set of multi-tiered ratios, compliance with which would be complex for private entities lacking the Department's resources. The Department further believes that the circumstances under which it transports prisoners with a ratio less stringent than one to six are fully justified by the additional security precautions that the Department takes that will not be imposed upon private companies.

The Department recognizes that the private prisoner transport industry may experience significant variations in the carrying capacity of vehicles used, the number of prisoners transported per trip, and the security levels of the prisoners being transported. The variation among these factors may complicate the construction of a workable guard-to-violent-offender ratio; therefore, the Department seeks input from industry, law enforcement, and the public as to the factors that should guide the development of a minimum guard-to-violent-prisoner ratio.

*5. Employee Uniforms and Identification*

The rule proposes to require that private prisoner transport companies comply with certain minimum requirements for employee uniforms and identification. These standards will require the wearing of a uniform with a badge or insignia that identifies to the prisoners and others that the employee is a transportation officer.

While engaged in the transportation of violent prisoners, private prisoner transport company employees must wear a uniform that clearly identifies them as such. The uniforms should be readily distinguishable in color and style from uniforms worn by Department of Justice personnel who transport violent prisoners.

The rule also proposes that private prisoner transport companies require their employees to have identification credentials on their uniform that are visible at all times while engaged in the transportation of violent prisoners. The identification credentials must have a photograph of the employee that is at least one inch square, and a printed personal description of the employee, including the employee's name, the signature of the employee, and date of issuance. This standard is in accordance with Department regulations that require Department employees to carry proper identification (and a badge under certain circumstances).

While Department regulations require its employees to possess proper identification at all times, under the proposed rule private prisoner transport company employees will only be required to possess and display proper identification while transporting violent prisoners.

*6. Uniforms for Violent Prisoners*

The Act directs the Department to create standards establishing categories of violent prisoners required to wear brightly colored clothing clearly identifying them as prisoners. Congress has observed that a number of violent prisoners have escaped from private prisoner transport companies while wearing civilian clothing. An escaped violent prisoner wearing civilian clothing presents a much more serious risk to the public than an escaped prisoner who is clearly identified as a prisoner. The absence of any requirement for transported prisoners to wear distinctive and brightly colored clothing has unnecessarily hindered law enforcement officers in their search for escaped prisoners.

After consulting with representatives of the law enforcement community, the private prisoner transport industry, and the ACA, the Department has determined that the category of prisoners required to wear distinctive prisoner uniforms should consist of all violent prisoners covered by the Act. Therefore, this rule proposes to require all violent prisoners transported by private prisoner transport companies to wear distinctive clothing that clearly identifies them as prisoners. As currently defined, this category is sufficiently broad to encompass those prisoners who may constitute a threat to public safety without requiring private companies to conduct intensive individualized risk assessments for each prisoner transported. This rule will not prohibit or in any way impede the

ability of private prisoner transport companies to require the wearing of uniforms by some or all other prisoners. The Department welcomes comments from interested parties as to whether it would be beneficial to broaden or narrow the category of prisoners required to wear such clothing.

The Department recognizes that there are circumstances when it may be inappropriate or impractical to transport violent prisoners in distinctive brightly colored clothing (*e.g.*, traveling on commercial aircraft, to a court appearance, or in the case of a particular physical disability). In keeping with the intent of the Act, any exceptions to the prisoner clothing requirement will be narrow. The Department seeks comment from the public, law enforcement, and industry as to what types of security or other specific considerations may warrant exceptions to the prisoner clothing requirement. Nothing in this proposed rule or in the final rule will supersede any applicable Federal Aviation Administration rules or regulations concerning the transportation of prisoners on commercial aircraft.

The Department also learned from its consultations with the industry that it might be advisable for the Department to establish a standardized, brightly colored, and distinctive prisoner uniform that all private prisoner transport companies would be required to use. Industry representatives indicated that a standardized style, color, or pattern of prisoner uniform could have practical advantages, such as being easier and less expensive for the companies to purchase in bulk and making a more definite impression in the mind of the public to help them easily identify a prisoner in transit. The Department seeks comment from all interested parties as to whether a standardized prisoner uniform would be a useful or valuable element of prisoner transportation by private companies.

From those entities who believe that the concept of a standardized prisoner uniform should be pursued, the Department welcomes recommendations as to the color (bright yellow, black and white striped, etc.) as well as style (jump-suits, two-piece uniforms that accommodate restraints, etc.) of prisoner uniform that should be adopted. Any recommendations for a particular color or style of standardized prisoner uniform should consider that the prisoner uniform must be distinctive without being confusingly similar to uniforms in use by other public or private entities. Such recommendations should also be distinctive from brightly colored clothing worn by law-abiding citizens, such as the ''blaze orange'' worn by hunters and road crews or the bright yellow clothing worn by certain firefighters.

The Department requests comments on whether private prisoner transport companies that currently require violent prisoners to wear distinctive uniforms should be required to purchase new uniforms to comply with a new standard (if a new standard is established). As an alternative to the Department requiring the immediate replacement of currently-used brightly colored prisoner uniforms with some standard uniform, the Department requests comments on whether it should permit those companies that currently use prisoner uniforms to continue to use their current inventory until the uniforms are replaced in the ordinary course of business before being required to comply with any new standard. Under this alternative, the regulations would only require that any new uniforms that are purchased (or new contracts for the purchase of uniforms entered into) after the effective date must conform to the standard uniform described in the regulations.

This part of the proposed rule would require that private prisoner transport companies take precautions that are similar to those taken by Department agencies must ensure that violent prisoners wear brightly colored clothing that identifies them as prisoners when they are being transported. Absent extenuating circumstances, the BOP requires that all inmates who travel on BOP buses be transported in government-issued clothing, including shoes. The INS requires violent prisoners to wear orange or red uniforms and less dangerous offenders to wear blue or yellow uniforms.

*7. Restraints To Be Used While Transporting Prisoners*

The Department agencies that transport violent prisoners have similar policies governing the type of restraints that must be used on violent prisoners, during transportation. Violent prisoners, and those defined by the BOP to be ''Maximum Custody'' prisoners, are to be transported in handcuffs, leg irons, and waist chains. This rule proposes to apply this standard to private prisoner transport companies. Violent prisoners are to be transported in handcuffs, leg irons, and waist chains unless the use of all three restraints would create a serious health risk to the prisoner, or unless extenuating circumstances make the use of all three restraints impracticable. Examples of such exceptions would include the pregnancy or physical disability of a violent prisoner.

The Department is considering the implementation of additional minimum requirements for private prisoner transport companies concerning the use of restraints. These additional minimum requirements would be similar to certain guidelines used by Department agencies during transportation of violent prisoners. For example, Department agencies have regulations that dictate when and how a violent prisoner is to be restrained during movement to the bus and during rest stops. Department agencies are also required to maintain an adequate supply of all types of restraint equipment on the bus. Each BOP bus is required to carry a minimum of two sets of modified leg irons to be used as handcuffs for large inmates. In addition, each BOP bus is required to have a 35-foot long chain and padlock in the event that a mass emergency evacuation of the bus is required.

Department agencies also adhere to standards concerning the maintenance of restraints. All restraining equipment is to be inspected daily while the bus is operational. This inspection is necessary to avoid the use of restraining equipment that may have been altered during a previous trip. Comment is requested on the potential inclusion of one or more of these additional requirements as part of the minimum transportation requirements.

*8. Notification of Local Law Enforcement Prior to Stops Within Their Jurisdiction*

When a prisoner transport vehicle is stopped, the risk of escape is greatest because prisoners may be boarding or exiting the vehicle and guards may be distracted while getting food, fueling the vehicle, or attending to medical or other emergencies. In the Act, Congress found that the private prisoner transport process can last for weeks as violent prisoners are dropped off and picked up at a network of hubs nationwide. Because each stop involves a potentially high security risk, Congress has imposed a requirement that when transporting violent prisoners, private prisoner transport companies are to notify local law enforcement officials 24 hours prior to a scheduled stop in their jurisdiction.

For the purposes of this proposed rule, a ''scheduled stop'' is defined as a predetermined stop at a State, local, or private correctional facility for the purpose of loading or unloading prisoners or using such facilities for overnight, meal, or restroom breaks. Scheduled stops do not include routine fuel stops or emergency stops. Notice is

to be given to law enforcement officials prior to these scheduled stops to ensure that the risk of a prisoner escaping is as small as possible.

There is no comparable requirement for Department agencies to provide advanced notice of scheduled stops because the transporting agency is a law enforcement entity. Any emergency or other disturbance may be instantaneously reported to other law enforcement entities through the Emergency Alert System that links all BOP buses with the central office. There is no need for BOP buses to relate their location to local law enforcement because the BOP central office is able to locate the bus via the Global Positioning System that is installed on each BOP bus.

The rule will not propose that the use of specific technological equipment be required of private prisoner transport companies, such as the installation of a satellite tracking system that is linked to law enforcement. However, the rule will propose to require that notice of scheduled stops be given to local law enforcement 24 hours prior to the stop.

*9. Immediate Notification of Law Enforcement in the Event of an Escape*

In the event of the escape of a violent prisoner, the private prisoner transport company must immediately notify appropriate law enforcement officials in the jurisdiction where the escape occurred, and also contact the governmental entity that contracted with the transport company. Private prisoner transport companies should be sufficiently equipped to provide immediate notification to law enforcement in the event of a prisoner escape. Law enforcement officials must receive notification no later than 15 minutes after an escape is detected unless the company can demonstrate that extenuating circumstances necessitated a longer delay.

Congress imposed this requirement because there was at least one occasion when a violent prisoner's escape from a private transport company was not reported to law enforcement until hours after the escape was detected. Such a delay placed the public at risk and irreparably harmed the ability of law enforcement to secure the area, establish roadblocks, conduct intensive searches in the vicinity, notify the public about the possibility of danger, and identify relevant witnesses who could have aided in the capture of the prisoner.

All Department agencies that transport violent offenders have guidelines that require providing notice to other law enforcement agencies in the event of a prisoner escape during transit. The USMS regulations require that prisoner escapes and attempted escapes immediately be reported to the United States Marshals Communications Center and the U.S. Marshal, Chief Deputy U.S. Marshal, or Supervisory Deputy U.S. Marshal. The United States Marshals Communications Center will then notify the Investigative Services Division and the Prisoner Services Division of the USMS. Similarly, in the event of a prisoner escape from a BOP vehicle, the BOP is required to contact the USMS and the nearest BOP institution, which will begin notifications up the chain of command as necessary. State and local law enforcement will also typically be contacted.

Department agencies have adopted a uniform rule in the event of a prisoner escape that the first priority is to secure the remaining prisoners and transport them to their final destination. Under no circumstances will the supervision of the other inmates be relaxed in order to pursue an escaping inmate. The Department is considering proposing that private prisoner transport companies adopt similar procedures.

*10. Safety of Violent Prisoners*

Congress has determined that private prisoner transport companies must provide standards of safety for violent prisoners in accordance with applicable Federal and State law. Department agencies have implemented extensive requirements to ensure the safety of violent prisoners who are transported. In addition to the protections provided by existing State and Federal laws, the Department may propose that private prisoner transport companies adopt some of the safety measures that Department agencies have adopted including: requiring safety equipment on buses (including first-aid kits, extra blankets, sirens, and extra restraining devices); abiding by rigid maintenance schedules for vehicles; mandatory inspections of vehicles; requirements for communications systems on vehicles; prohibitions on tobacco use in vehicles; seating arrangements to accommodate troublesome prisoners or those with medical needs; and requirements that prisoners be searched and restrained in a professional, systematic, methodical, and consistent manner.

Similarly, Department agencies engaged in prisoner transport have procedures to conduct searches of vehicles and prisoners as needed to ensure that no contraband or weapons are brought onto the vehicle. To protect the safety of prisoners, Department personnel are rigorously trained in the proper use of firearms and the appropriate use of force. Also, to protect prisoners, appropriate forms and records must be filed prior to the use of specialized restraints on a prisoner and after a strip search that occurs for reasons other than receipt of a new prisoner (this report documents the identity of the prisoner searched, date, place, time, and duration of the search, reason for the search, names of those present, and a description of any weapons, evidence, or contraband found). The final rule may adopt all or some of the safety measures discussed above that have been implemented by Department agencies.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is designed to have the lowest possible impact on businesses that transport violent prisoners while still protecting the safety of the public. This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804, and it will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Unfunded Mandates Reform Act of 1995**

By this rule, the Department is proposing to implement the requirements of the Act, which imposes minimum security and safety standards upon private companies transporting violent offenders. The Act's requirements as implemented by these regulations may increase the operating costs of some of these private companies. While State and local governments are the primary entities that contract with private prisoner transport companies, this proposed rule does not impose any direct requirements upon State or local governments or upon their law enforcement offices.

The Act requires potential private company employees to undergo a background check. Federal law does not permit dissemination of criminal history records to private employers for screening unless statutorily authorized. Because current statutory law does not grant private entities the authority to request Federal criminal history records, the private prisoner transport companies must arrange to do so with the contracting State or local

government. Therefore, to effectuate Congress' intent, this proposed rule suggests private prisoner transport companies arrange with the State or local law enforcement agency with which they are contracting to obtain a fingerprint-based background check of their employees or potential employees.

Local law enforcement agencies routinely provide fingerprinting services for various public purposes (e.g. teacher applicants and bar examinations). If a governmental agency wishes to contract its prisoner transport obligations out to a private company, it will need to make arrangements for submitting the applicant's fingerprints to the FBI to conduct a criminal history background check on the applicant. The governmental agency submitting the fingerprints would incur the initial financial responsibility associated with these applications. The cost of the background check is determined by individual State procedure, not Federal procedure, and thus will vary from State to State. The Department has been informed that such application fees range from $14 to $95. However, even assuming the highest fee, the Department does not anticipate that this requirement will have a significant financial affect on State or local entities. Because of Federal limitations upon dissemination of background information, the Department does not believe that there are other viable options that would allow private companies to meet the background investigation requirement.

The Department has no evidence to indicate how much of any possible cost increases upon private businesses—from mandatory background checks or any other requirements imposed by this proposed rule—will be passed along as price increases to the State and local jurisdictions contracting with them. However, because of the relatively small number of private prisoner transport companies and the number of people employed by these companies, the Department believes that this proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

**Executive Order 12866**

The Department of Justice has reviewed this proposed rule in light of Executive Order 12866, Section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget.

**Executive Order 13132**

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

**Executive Order 12988**

This proposed rule meets the applicable standards set forth in Sections 3(a) and 3(b) of Executive Order 12988, Civil Justice Reform.

**Paperwork Reduction Act**

This rule imposes no new information collection requirements.

**Initial Regulatory Flexibility Act Analysis**

The Department of Justice drafted this rule in a way to minimize its impact on small businesses while meeting its intended objectives. Based upon the preliminary information available to the Department at this time, we are unable to state with certainty that this rule, if promulgated, will not have the effect on small businesses of the type described in 5 U.S.C. 605. Accordingly, the Department has prepared the following initial Regulatory Flexibility Act analysis in accordance with 5 U.S.C. 603.

*A. Need for and Objectives of This Proposed Rule*

This proposed rule will implement the Act, which requires the Attorney General to establish regulations imposing minimum safety and security standards on private companies engaged in transporting violent prisoners for State and local jurisdictions.

The Act reflects Congress' concerns about the growing number of State and local jurisdictions that are utilizing the services of private companies as an alternative to sworn law enforcement officers when transporting violent prisoners. Congress found that violent prisoners have escaped from private transport companies and that these escapes have led to further crimes committed by the escaped prisoners as well as significant expenditures by law enforcement units attempting to capture the escapees. As a result of these findings, Congress determined that it was necessary to regulate the private prisoner transport industry in order to enhance public safety.

Congress required that the Department consult with the ACA and the private prisoner transport industry in promulgating these regulations. On March 30, 2001, Department of Justice officials met in Washington, DC, with representatives of the ACA and the private prisoner transport industry. Several representatives who were not able to attend the meeting in person participated through a conference call. The ACA, and each participating industry representative, agreed that higher standards in this area are much needed. In addition, the consultations provided the Department with information that indicates that the minimum standards imposed by the proposed rules will have little economic impact on these particular companies. Most of the standards proposed in this rule are already followed by the industry leaders and, in many cases, the standards followed by the companies in the private prisoner transport industry are much stricter than those found in this proposed rule.

As is discussed more fully below, the Department has been informed that the private prisoner transport industry includes a large number of small entities. Many of these entities are smaller than those having Washington-based or other staff representatives whom the Department could identify and with whom it could consult in the limited time available under this Act to promulgate regulations.

*B. Description and Estimates of the Number of Small Entities Affected by This Proposed Rule*

A ''small business'' is defined by the Regulatory Flexibility Act (RFA) to be the same as a ''small business concern'' under the Small Business Act (''SBA''), 15 U.S.C. 32. Under the SBA, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[1] As the demand for transporting prisoners increases, local and State governments find themselves unable to handle all their transportation needs. Therefore, these governmental entities enter into contracts with private companies to

[1] See 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632.

provide for the transportation of their violent prisoners.

Based upon the information available to the Department at present, there appear to be two distinct groups of businesses in the private prisoner transport industry: Larger companies that contract with various jurisdictions nationwide, and smaller entities often made up of a few individuals who provide transportation for law enforcement departments on an as-needed basis. Both groups of private transport companies would be regulated by this proposed rule and both fall under the definition of a ''small business'' pursuant to the RFA. The discussion in this section will first focus on the larger companies involved in transporting violent prisoners and then examine issues specific to the smaller companies.

Although the Department consulted with some of the affected entities it was able to identify during the drafting of this proposed rule, the Department realizes that not all interested persons and entities may have been fully represented prior to the publication of this proposal. Therefore, the Department is requesting that further comments be submitted to help ensure that the concerns of all interested parties are considered. Commenters may wish to identify the type of industry, including: The number of companies/individuals involved and the annual income of business they conduct; how the proposed regulatory requirements would impact that industry; and, within the statutory requirements, any suggestions or comments on how the final regulations might be better tailored to the industry without compromising the basic intent of the law which is to enhance public safety by imposing minimum standards on private companies engaged in the transport of violent prisoners.

Commenters should note that the submission of any comments or information on these or other matters addressed by this proposed rule is entirely *voluntary*. The Department is not prescribing the use of any form for this information.

Pursuant to the RFA and public policy concerns, the Department encourages all affected commercial entities and law enforcement agencies to provide *specific* estimates, wherever possible, of the economic costs that this rule will impose on them and the benefits that it will bring to them and to the public. The Department asks affected small businesses to estimate what these regulations will cost as a percentage of their total revenues in order to enable the Department to ensure that small businesses are not unduly burdened.

1. Larger Private Prisoner Transport Companies

In passing the Act, Congress specifically called upon the Attorney General to consult with the ACA and the private prisoner transport industry while drafting this proposed rule. During these consultations, the Department learned that there are approximately 10 to 12 larger private prisoner transport companies currently operating in the United States. However, there is no public or private entity that monitors when a private prisoner transport business enters or exits the industry. Therefore, it is difficult to accurately estimate the number of industry participants.

The Department has drafted this proposed rule to have the minimum possible impact on these businesses while still complying with the intent of the Act. During the Department's consultations, it was informed that many of the proposed minimum standards contained in this proposed rule are already followed by the larger companies. In some instances, the larger industry participants have actually adopted more stringent internal standards than those that would be imposed by the proposed rule. Where the proposed rule would require companies to implement a practice not currently followed, industry opinion was taken into consideration so as to impose no greater burden than necessary.

2. Smaller Entities Engaged in the Transport of Violent Prisoners

In addition to the larger private companies that transport prisoners, the Department believes that there is a large number of smaller entities that contract with State and local authorities to transport prisoners. Although the Department does not have an exact number of smaller companies, the ACA and industry leaders estimated that 500 such entities may exist. The Department was informed that these entities are often composed of merely one or two people who enter into contracts with sheriffs' offices on an as-needed basis. It is therefore difficult to address the impact that the proposed regulation would have on the smaller participants in the industry without knowing approximately how many of these smaller entities transport violent prisoners (and therefore would be regulated) or what their current safety and security practices are.

However, the Department is concerned that these smaller companies will experience the greatest impact as a result of these regulations. For example, a minimum standard that imposes a ratio of at least one guard for every six violent prisoners might be a greater burden to a smaller entity that lacks the personnel resources of a larger company. Similarly, the need to possess a sufficient amount of specialized equipment, as required by these regulations, could create a greater economic burden on smaller entities. Because the Department has not been able to identify such entities, we are specifically requesting comment on the impact that this proposed rule would have on them.

3. Impact of These Regulations on Small Governmental Entities

In section 3(2) of the Act, Congress specifically exempted from the minimum standards any Federal, State, or local governmental entity engaged in the transport of violent prisoners. The proposed rule would not regulate these entities. However, the Department is cognizant of the possibility that these regulations may place a burden on small governmental entities that contract with private prisoner transport companies. The Department therefore has consulted with the National Sheriffs' Association and the American Jail Association, as well as representatives from local police departments, to gain a better understanding of the impact this proposed rule will have on their operations.

*C. Specific Requirements Imposed That Would Impact Private Companies*

1. Standards Requiring the Use of Specialized Equipment

Some of the minimum standards proposed by this rule might require private companies to purchase various pieces of equipment, thereby causing an increase in expenditures. The standards regarding mandatory restraints, uniforms for agents, identification credentials for agents, and uniforms for violent prisoners fall into this category. By imposing these standards, companies that are not already in possession of these items, or not in possession of a sufficient quantity, would have to purchase them in order to satisfy the requirements of the regulations.

However, after consulting with representatives from the industry, the Department believes that the proposed rule will not have a significant economic impact on the larger entities in the private prisoner transport industry. With the exception of prisoner uniforms, all companies consulted indicated that they currently require the

use of all equipment specified in this proposed rule. The companies currently use hand-cuffs, leg chains, and waist chains, and all agents are issued uniforms and possess credentials. Therefore, this rule will not propose any new standards that require extra expenditures. Indeed, the private companies consulted by the Department indicated that, in many instances, they require more equipment than the rule proposes. For example, many of the companies require ''black boxes'' on their restraints in order to prevent a prisoner from picking the lock. In addition, many of the companies require their agents to have cell phones or Global Positioning Systems in their transport vehicles, features that go well beyond the standards contained in this proposed rule.

The larger companies in the industry do not currently require prisoner uniforms for all violent prisoners. This rule proposes to implement a mandatory provision of the Act that requires violent prisoners to be transported in brightly colored clothing that clearly identifies the wearer as a violent prisoner. Because there is no current policy on prisoner attire, this standard would require companies to invest in a sufficient number of prisoner uniforms.

As is discussed elsewhere in this proposed rule, the Department believes that a standardized uniform for violent prisoners might benefit all interested parties, but most importantly, the public. If one were established, a standardized uniform would be able to be produced in larger quantities by clothing manufacturers at a lower cost to the private transport industry. Further, once the color/pattern of uniform for violent prisoners in private transit became widely known, it would become easier both for law enforcement and the general public to identify such prisoners in the event of an escape. Finally, by proposing a single standardized color/pattern for violent prisoners, the Department would hope to avoid any confusion with brightly colored articles of clothing worn by law abiding members of the community engaged in particular activities (*e.g.,* the blaze orange clothing worn by many hunters).

2. Training

This rule proposes to require private companies to train their employees in six enumerated areas for a minimum of 100 total hours of training before the employee may transport violent prisoners. This standard might require private companies to incur the cost of training where their current practices fail to meet the standard. Companies would need to engage qualified instructors with the ability to properly train personnel. However, all of the companies consulted by the Department currently have training procedures in place, many of which are more extensive than those required by the proposed rule. Most of the companies indicated that they require firearms training equivalent to the training received by law enforcement officers. In addition, all of the companies consulted require their personnel to undergo follow-up training during the course of employment. It is therefore unlikely that the new training standards will have a significant impact on the larger industry participants.

3. Personnel

The rule proposes to require a minimum ratio of one guard for every six violent prisoners during transport. It is possible that this standard would require companies to increase their personnel in order to meet the mandated ratio. However, all the companies consulted indicated that they already impose minimum guard-to-prisoner ratios, all of which are more stringent than the one proposed in this rule.

4. Other Standards Imposed on Companies

Many of the minimum standards in this proposed rule will place affirmative duties on private prisoner transport companies. The standards dealing with pre-employment background checks and drug testing, notification of local law enforcement 24 hours before scheduled stops, and immediate notification of law enforcement should an escape occur all fall into this category. Of these, only the first standard regarding conducting background checks and drug testing carries with it the possibility of increased expenditures. While the notification requirements in this proposed rule do place an affirmative duty on the companies, they do not impose any economic burden on the companies.

5. Impact on Smaller Entities

The Department does not have any specific information about how much of an economic impact this rule might have on the smaller industry participants in the foregoing areas: specialized equipment, training, personnel, background checking, and drug testing. However, it is reasonable to assume some aspects of this rule may have a proportionately larger economic impact upon small entities. For example, this may be the case with respect to equipment purchases where, typically, the larger the quantity purchased, the lower the per unit cost becomes. Given the inexpensive nature of handcuffs, leg irons, and waist chains, however, the additional cost burden should not be significant, especially because private prisoner transport companies are likely already to possess this equipment.

With respect to the training requirements, there may be a greater impact on a small prisoner transport entity that might have only one or two employees. Such an entity might temporarily have to suspend operations while its agents undergo training. On the other hand, a larger entity with more employees might be able to continue operations while its employees rotate through training. Similarly, it might be easier for larger entities to meet the minimum guard-to-prisoner ratio than it would be for smaller entities.

It should be stressed, however, that in proposing these regulations, the Department is merely implementing the mandatory requirements of the Act and that it has attempted to do so with the least economic impact upon any entity, large or small.

*D. Reporting and Recordkeeping Requirements*

This proposed rule does not impose any additional reporting or recordkeeping requirements on private prisoner transport companies or on the State and local entities that contract with them.

*E. Issues Raised and Alternatives Suggested*

1. Issues Raised

While consulting with representatives of the larger companies, the Department was apprised of an issue concerning the impact that this proposed rule would have on sheriffs' departments that employ private companies to transport violent prisoners. According to information provided to the Department, many of the local law enforcement offices across the nation employ smaller entities to transport prisoners, not the major companies, when the need arises. The Department, however, cannot exempt these smaller entities from the standards because they clearly fall into the definition of ''private prisoner transport company'' provided by Congress in the Act.

It is important to note that this proposed rule does not impose any minimum standards on governmental entities nor on their employees engaged in official conduct. However, the Department acknowledges the possibility that these entities may be

indirectly affected in contracting with private companies. The Department, therefore, seeks comment from both the smaller companies engaged in transporting violent prisoners as well as State and local entities that contract with private companies to meet their transportation needs.

2. Alternatives Suggested

An alternative suggestion was made during a consultation meeting between the Department and industry representatives concerning whether the Department should provide more guidance as to the quality of training required by this proposed rule. It was suggested an association, such as the ACA, develop an accredited training program and that any final rule should require private companies to receive accreditation from such a program. While the Department believes that this suggestion is worth further consideration, there is currently no such program in place and it is the Department's understanding that the earliest date by which the ACA could develop such a program would be January of 2002. Absent a standardized quality assurance program, the Department declines at this time to impose any requirements regarding the quality of training.

A second alternative that was suggested pertained to the requirement that private companies notify local law enforcement when traveling through a jurisdiction. Initially, the Department intended to require 24 hour advance notification to local law enforcement of any scheduled stop within a jurisdiction, with ''scheduled stop'' broadly defined. However, it was suggested during the Department's consultations with law enforcement and industry leaders that the definition of ''scheduled stop'' should be more narrowly defined. Law enforcement groups and industry leaders agreed that if a transport company had to provide notification for any stop, including for such things as refueling, eating, and bathroom trips, the notification requirement could pose a security threat. Therefore, the Department proposes to construe more narrowly the definition of ''scheduled stop'' so that the regulations would apply only to predetermined stops at State, local, or private correctional facilities for the purpose of loading or unloading prisoners, or using such facilities for overnight, meal, or restroom breaks.

A third alternative was suggested that would have delayed the implementation and enforcement of these provisions to allow smaller entities a longer period with which to comply with the new regulations. The Act provides no authority for delayed implementation or delayed enforcement of the new regulations. It is the Department's view that public safety would be most effectively protected if these minimum safety and security standards are applied to all private prisoner transportation companies equally, without regard to the size of the company.

*F. Conclusion*

The Department believes that, given the mandatory nature of the Act, this proposed rule meets its stated objectives while reducing as much as possible the burden imposed on private companies engaged in the private transport of violent prisoners. As statutorily required, the Department consulted with industry leaders and the ACA in developing this rule. The Department took into account their concerns, as well as the concerns of law enforcement representatives, in drafting the proposed rule. The Department intends to maintain an on-going dialogue with the affected industry and law enforcement entities. In addition, the Department is attempting to identify additional entities that might be affected by this proposed rule and looks forward to receiving additional comments to this proposed rule.

**List of Subjects in 28 CFR Part 97**

Business and industry, Penalties, Prisoners, Transportation.

Accordingly, for the reasons set forth in the preamble, part 97 of chapter I of Title 28 of the Code of Federal Regulations is proposed to be added to read as follows:

## PART 97—STANDARDS FOR PRIVATE ENTITIES PROVIDING PRISONER OR DETAINEE SERVICES

Sec.

97.1 Purpose.
97.2 Definitions.
97.11 Pre-employment screening.
97.12 Employee training.
97.13 Maximum driving time.
97.14 Guard-to-prisoner ratio.
97.15 Employee uniforms and identification.
97.16 Clothing requirements for transported violent prisoners.
97.17 Mandatory restraints to be used while transporting violent prisoners.
97.18 Notification of local law enforcement prior to scheduled stops.
97.19 Immediate notification of local law enforcement in the event of an escape.
97.20 Standards to ensure the safety of violent prisoners during transport.
97.22 No Pre-emption of federal, State, or local laws or regulations.
97.24 No civil defense created.
97.30 Enforcement.

**Authority:** Public Law 106–560, 114 Stat. 2784 (42 U.S.C. 13726b).

### § 97.1 Purpose.

This part implements the provisions of The Interstate Transportation of Dangerous Criminals Act of 2000 (the Act), Public Law 106–560, 114 Stat. 2784 (42 U.S.C. 13726b) (enacted December 21, 2000), to provide minimum security and safety standards for private companies that transport violent prisoners on behalf of State and local jurisdictions.

### § 97.2 Definitions.

(a) *Crime of violence.* The term *crime of violence* has the same meaning as in section 924(c)(3) of title 18, United States Code. Section 924(c)(3) states that the term *crime of violence* means an offense that is a felony and—has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(b) *Private prisoner transport company.* The term *private prisoner transport company* (company) means any entity, other than the United States, a State, or an inferior political subdivision of a State, that engages in the business of transporting for compensation, individuals committed to the custody of any State or of an inferior political subdivision of a State, or any attempt thereof.

(c) *Violent prisoner.* The term *violent prisoner* means any individual in the custody of a State or an inferior political subdivision of a State who has previously been convicted of or is currently charged with a crime of violence or any similar statute of a State or the inferior political subdivisions of a State, or any attempt thereof.

### § 97.11 Pre-employment screening.

Private prisoner transport companies must adopt pre-employment screening measures for all potential employees. The pre-employment screening measures must include a background check and a test for use of controlled substances. The failure of a potential employee to pass either screening measure will act as a bar to employment.

(a) Background checks must include:

(1) A fingerprint-based criminal background check that disqualifies persons with either a prior felony conviction or a State or Federal conviction for a misdemeanor crime of

domestic violence as defined in 18 U.S.C. 921;

(2) A Credit Report check;

(3) A physical examination; and

(4) A personal interview.

(b) Testing for controlled substances must be in accordance with applicable State law. In the event that there is no applicable State law, private prisoner transport companies must test potential employees for controlled substances in accordance with 49 CFR 382.301.

(c) The criminal background check references in paragraph (a)(1) of this section may not be submitted directly to the FBI or any other Federal agency. The private prisoner transport companies must work out the procedures for accomplishing the criminal background checks with their contracting governmental agencies.

**§ 97.12 Employee training.**

Private prisoner transport companies must require the completion of a minimum of 100 hours of employee training before an employee may transport violent prisoners. Training must include instruction in each of these six areas:

(a) Use of restraints;

(b) Searches of prisoners;

(c) Use of force, including use of appropriate weapons and firearms;

(d) Cardiopulmonary resuscitation (CPR);

(e) Map reading; and

(f) Defensive driving.

**§ 97.13 Maximum driving time.**

Companies covered under this part must adhere to the maximum driving time provisions applicable to commercial motor vehicle operators, under 49 CFR 395.3.

**§ 97.14 Guard-to-prisoner ratio.**

Companies covered under this part must adhere to certain minimum standards with respect to the number of employees required to monitor violent prisoners during transportation. Private prisoner transport companies must ensure that at least one guard be on duty for every six violent prisoners transported. This requirement does not preclude a contracting entity from establishing more stringent guard-to-prisoner ratios.

**§ 97.15 Employee uniforms and identification.**

(a) *Employee uniforms.* Uniforms used by private prisoner transport companies must meet the following requirements:

(1) Uniforms must be readily distinguishable in style and color from official uniforms worn by United States Department of Justice employees who transport violent offenders;

(2) Uniforms must prominently feature a badge or insignia that identifies the employee as a prisoner transportation employee; and

(3) Uniforms must be worn at all times while the employee is engaged in the transportation of violent prisoners.

(b) *Employee identification.* Identification utilized by private prisoner transport companies must meet the following requirements:

(1) The identification credentials must clearly identify the employee as a transportation employee. The credentials must have a photograph of the employee that is at least one inch square, a printed personal description of the employee including the employee's name, the signature of the employee, and date of issuance; and

(2) The employee must display proper identification credentials on his or her uniform and ensure that the identification is visible at all times during the transportation of violent prisoners.

**§ 97.16 Clothing requirements for transported violent prisoners.**

Companies covered under this part must ensure that all violent prisoners they transport are clothed in brightly colored clothing that clearly identifies them as violent prisoners, unless security or other specific considerations make such a requirement inappropriate.

**§ 97.17 Mandatory restraints to be used while transporting violent prisoners.**

Companies covered under this part must, at a minimum, require that violent prisoners be transported wearing handcuffs, leg irons, and waist chains unless the use of all three restraints would create a serious health risk to the prisoner, or extenuating circumstances (such as pregnancy or physical disability) make the use of all three restraints impracticable.

**§ 97.18 Notification of local law enforcement prior to scheduled stops.**

When transporting violent prisoners, private prisoner transport companies are required to notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction. For the purposes of this part, a scheduled stop is defined as a predetermined stop at a State, local, or private correctional facility for the purpose of loading or unloading prisoners or using such facilities for overnight, meal, or restroom breaks. Scheduled stops do not include routine fuel stops or emergency stops.

**§ 97.19 Immediate notification of local law enforcement in the event of an escape.**

Private prisoner transport companies must be sufficiently equipped to provide immediate notification to law enforcement in the event of a prisoner escape. Law enforcement officials must receive notification no later than 15 minutes after an escape is detected unless the company can demonstrate that extenuating circumstances necessitated a longer delay. In the event of the escape of a violent prisoner, a private prisoner transport company must:

(a) Ensure the safety and security of the remaining prisoners;

(b) Provide notification within 15 minutes to the appropriate State and local law enforcement officials;

(c) Provide notification as soon as practicable to the governmental entity that contracted with the transport company; and

(d) Provide complete descriptions of the escapee and the circumstances surrounding the escape to State and local law enforcement officials if needed.

**§ 97.20 Standards to ensure the safety of violent prisoners during transport.**

Companies covered under this section must comply with applicable State and federal laws that govern the safety of violent prisoners during transport. In addition, companies covered under this section are to ensure that:

(a) Protective measures are in place to ensure that all vehicles are safe and well-maintained;

(b) Vehicles are equipped with efficient communications systems that are capable of immediately notifying State and local law enforcement officials in the event of a prisoner escape;

(c) Policies are in effect to ensure the health and physical safety of the prisoners during transport, including a first-aid kit and employees who are qualified to dispense medications and administer CPR and emergency first-aid;

(d) Policies are in effect to prohibit the mistreatment of prisoners, including prohibitions against covering a prisoner's mouth with tape, and against the use of excessive force and sexual misconduct;

(e) Policies are in effect to ensure that juvenile prisoners are separated from adult prisoners during transportation, where practicable;

(f) Policies are in effect to ensure that female prisoners be separated from male prisoners during transportation, where practicable;

(g) Policies are in effect to ensure that female guards are on duty to supervise the transportation of female violent prisoners, where practicable; and

(h) Staff are well trained in the handling and restraint of prisoners, including the proper use of firearms and other restraint devices, and have received specialized training in the area of sexual harassment.

**§ 97.22 No pre-emption of federal, State, or local laws or regulations.**

The regulations in this part implement the Act and do not pre-empt any applicable federal, State, or local law that may impose additional obligations on private prisoner transport companies or otherwise regulate the transportation of violent prisoners. All federal laws and regulations governing interstate commerce (*e.g.,* federal laws regulating the possession of weapons and Federal Aviation Administration rules and regulations governing travel on commercial aircraft) will continue to apply to private prisoner transport companies. The regulations in this part in no way pre-empt, displace, or affect the authority of States, local governments, or other federal agencies to address these issues.

**§ 97.24 No civil defense created.**

The regulations in this part on private prisoner transport companies are not intended to create a defense to any civil action, whether initiated by a unit of government or any other party. Compliance with the regulations in this part is not intended to and does not establish a defense against an allegation of negligence or breach of contract. Regardless of whether a contractual agreement establishes minimum precautions, the companies affected by the regulations in this part will remain subject to the standards of care that are imposed by constitutional, statutory and common law upon their activities (or other activities of a similarly hazardous nature).

**§ 97.30 Enforcement.**

Any person who is found in violation of the regulations in this part will:

(a) Be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each violation;

(b) Be liable to the United States for the costs of prosecution; and

(c) Make restitution to any entity of the United States, of a State, or of an inferior political subdivision of a State, that expends funds for the purpose of apprehending any violent prisoner who escapes from a prisoner transport company as the result, in whole or in part, of a violation of the regulations in this part promulgated pursuant to the Act.

Dated: December 11, 2001.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 01–30937 Filed 12–14–01; 8:45 am]

BILLING CODE 4401–19–P

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Parts 1910, 1915, 1926 and 1928

**[Docket Number H–122A]**

**RIN 1218–AB37**

## Indoor Air Quality

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Withdrawal of proposal.

**SUMMARY:** OSHA is withdrawing its Indoor Air Quality proposal and terminating the rulemaking proceeding. In the years since the proposal was issued, a great many state and local governments and private employers have taken action to curtail smoking in public areas and in workplaces. In addition, the portion of the proposal not related to environmental tobacco smoke (ETS) received little attention during the rulemaking proceedings, and much of that consisted of commenters calling into question significant portions of the proposal. As a result, record evidence supporting the non-ETS portion of the proposal is sparse.

Withdrawal of this proposal will also allow the Agency to devote its resources to other projects. The Agency's current regulatory priorities, as set forth in the Regulatory Agenda, include a number of important occupational safety and health standards. This document does not preclude any agency action that OSHA may find to be appropriate in the future.

**DATES:** The withdrawal is made on December 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Friedman, Director, OSHA Public Affairs Office, Occupational Safety and Health Administration, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 693–1999; Fax (202) 693–1634.

### Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1594, 29 U.S.C. 655) and 29 C.F.R. 1911.18.

Signed at Washington, DC this 12th of December, 2001.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

[FR Doc. 01–31165 Filed 12–14–01; 8:45 am]

BILLING CODE 4510–26–M

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 51

**[CC Docket No. 01–318, CC Docket No. 98–56, CC Docket No. 98–157, CC Docket No. 96–98, CC Docket No. 98–141; DA 01–2859]**

## Performance Measurements and Standards for Unbundled Network Elements and Interconnection

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This document grants a motion requesting an extension of the comment period established in the above-captioned docket. The order grants a 21-day extension to both the comment and reply comment deadlines.

**DATES:** Comments are due January 22, 2002 and Reply Comments are due February 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Cathy Carpino, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580.

**SUPPLEMENTARY INFORMATION:**

1. On November 19, 2001, the Commission released a Notice of Proposed Rulemaking (66 FR 59759 (November 30, 2001)) establishing the pleading cycle for comments and reply comments in the above-captioned docket. The deadline for comments was established as December 31, 2001, and January 22, 2002 for reply comments.

2. On December 3, 2001, the United States Telecom Association (USTA) filed a Motion for Extension of Time to extend the date for comments and reply comments by 30 days. According to USTA, it seeks this extension to permit its membership the opportunity ''to undertake the dialogue necessary to pursue an industry wide solution'' to unbundled network element (UNE) performance standards in response to the *UNE Measurements and Standards Notice*. USTA argues that the current comment schedule, which, it notes, falls within the upcoming holiday season, would not provide USTA's members an

adequate opportunity to consider the issues raised in this proceeding and that an extension would not prejudice the interests of other parties.

3. On December 4, 2001, BellSouth Corporation (BellSouth) filed comments in support of USTA's extension request, noting that during this holiday season, many of BellSouth's personnel who are necessary to address the issues raised in this proceeding are often unavailable. BellSouth argues that affording the parties additional time to prepare comments will facilitate the development of a more complete record that will, in turn, enable the Commission to conclude this proceeding in a reasonable and timely manner. On December 5, 2001, the Competitive Telecommunications Association (CompTel) filed similar comments in support of the USTA Motion. Like BellSouth, CompTel contends that a modest extension of the comment period would permit interested parties to provide more substantive and complete comments on the complex issues raised in the *UNE Measurements and Standards Notice*. CompTel argues that the subject matter about which the Commission requested comment will require a great deal of inter-company coordination between operations, engineering, provisioning and policy experts to provide the Commission with the most useful information. CompTel notes that the upcoming holiday season will only exacerbate an undertaking that will already be complicated by the dispersion of expertise within the organizations of both competitive and incumbent carriers.

4. It is the policy of the Commission that extensions of time are not routinely granted. In this instance, however, the Bureau finds that USTA, BellSouth, and CompTel have shown good cause for a limited extension of the deadline for filing comments and reply comments in this proceeding. Because of the complexity and the sheer number of issues presented in the *UNE Measurements and Standards Notice*, the Commission's desire to obtain a complete record with input from both carriers and state public utility commissions, and the impending holiday season, a 21-day extension is granted for both comments and reply comments from the dates those comments were due initially.

5. Accordingly, pursuant to authority found in section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and sections 0.91, 0.291 and 1.46 of the Commission's rules, 47 CFR 0.91, 0.291, 1.46, USTA's Motion for Extension of Time *is granted* to the extent described herein to establish a new comments deadline of January 22, 2002 and reply comments deadline of February 12, 2002.

Federal Communications Commission.

**Michelle M. Carey,**

*Chief, Policy and Program Planning Division.*

[FR Doc. 01–30984 Filed 12–14–01; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register

Vol. 66, No. 242

Monday, December 17, 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

### Forest Service

### Giant Sequoia National Monument Scientific Advisory Board; Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Giant Sequoia National Monument Scientific Advisory Board (Scientific Advisory Board) will meet at the Visalia Convention Center in Visalia, California, January 10 and 11, 2002. The purpose of the meeting is to hear comments from the public and consider alternatives to the Proposed Action as presented by the Planning Team.

**DATES:** The meeting will be held Thursday and Friday, January 10 and 11, from 8 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Visalia Convention Center, 303 E. Acequia Avenue, Visalia, California, in room San Joaquin D.

**FOR FURTHER INFORMATION CONTACT:** To receive further information, contact Arthur L. Garrfrey, 559–784–1500.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. If you are planning to attend, please contact Arthur L. Gaffrey to ensure adequate seating. Guidelines for the public participation portion of the Scientific Advisory Board's meeting are as follows: The public will be allowed to address the Scientific Advisory Board during the first 30 minutes of the meeting on January 10; when registering, participants must provide 9 written copies of their presentation, one copy for each member of the Board and one copy to be included in the meeting minutes; oral presentations may be no more than 5 minutes in length, depending on the number of people wishing to address the Scientific Advisory Board; priority for presentations will be given to persons who did not make a presentation at a previous meeting; and all presentations must be related to the science surrounding the development of the Management Plan for the Giant Sequoia National Monument. Some members of the Scientific Advisory Board may participate in the meeting via telephone. In that event, arrangements will be made to enable the public to listen to all the members participating in the meeting.

Written comments for the Scientific Advisory Board may be submitted to Forest Supervisor Arthur L. Gaffrey, Sequoia National Forest, 900 West Grand Avenue, Porterville, California 93257.

A final agenda can be obtained by contacting Arthur L. Gaffrey or by visiting the Giant Sequoia National Monument web site at *www.r5.fs.fed.us/giant_sequoia*

Dated: December 11, 2001.

**Arthur L. Gaffrey,**

*Forest Supervisor, Sequoia National Forest.*

[FR Doc. 01–30966 Filed 12–14–01; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Oregon

**AGENCY:** Natural Resources Conservation Service (NRCS), Agriculture.

**ACTION:** Notice of availability of a proposed change in Section IV of the FOTG of the NRCS in Oregon for review and comment.

**SUMMARY:** It is the intention of NRCS in Oregon to issue a revision to Conservation Practice Standard 702, Agrichemical Handling Facility, in Section IV of the State Technical Guide in Oregon. This practice may be used in conservation systems that treat highly erodible land.

**DATES:** Comments will be received on or before January 16, 2002. Once the review and comment period is over and the standard is finalized, it will be placed in the individual Field Office Technical Guide in each field office.

**ADDRESSES:** Address all requests and comments to Roy M. Carlson, Jr., Leader for Technology, Natural Resources Conservation Service (NRCS), 101 SW Main Street, Suite 1300, Portland, Oregon 97204. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to *roy.carlson@or.usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Roy M. Carlson, Jr., 503–414–3231.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oregon will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Oregon regarding disposition of those comments and a final determination of changes will be made. In Oregon, ''technical guides'' refers to the Field Office Technical Guide maintained at each NRCS Field Office in Oregon.

Dated: November 30, 2001.

**Roy M. Carlson, Jr.,**

*Acting State Conservationist, Portland, Oregon.*

[FR Doc. 01–30955 Filed 12–14–01; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–848]**

### Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Final Results of New Shipper Review and Final Rescission of Review

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** On September 6, 2001, the Department of Commerce (the Department) published the preliminary results of its new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). *See Preliminary Results of Antidumping*

*Duty New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China,* 66 FR 46601 (September 6, 2001) (*Preliminary Results*). The new shipper review covers the period September 1, 1999 through September 30, 2000.

Based on our analysis of comments received, we have made changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

**EFFECTIVE DATE:** December 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Matthew Renkey or Mark Hoadley; Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–2312 and (202) 482–0666, respectively.

## Applicable Statute

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 provisions codified at 19 CFR part 351 (2000).

## Background

The company covered by this new shipper review is Shanghai Taoen International Trading Co., Ltd. (Shanghai Taoen). Since the publication of the Preliminary Results, the following events have occurred. On September 26, 2001, we received a timely submission of publicly available information on the surrogate values for whole live crawfish and crawfish scrap from the Crawfish Processors Alliance (petitioner) and the Louisiana Department of Agriculture & Forestry and Bob Odom, Commissioner. On October 9, 2001, we received a case brief from the petitioner. On October 15, 2001, we received a rebuttal brief from Shanghai Taoen. The Department has now completed this review in accordance with section 751 (a)(2)(B) of the Act.

## Scope of Review

The product covered by this review is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in mid-year 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

## Analysis of Comments Received

All issues raised in the briefs filed by parties to this new shipper review are addressed in the *Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III, to Faryar Shirzad, Assistant Secretary for Import Administration: Issues and Decision Memo for the Final Results of the Antidumping New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China,* dated December 7, 2001 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo,* is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the internet at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memo* are identical in content.

## Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. For a discussion of the issues and changes made, refer to the *Decision Memo.*

## Final Results of Reviews

We determine that the following weighted-average margin exists for the period September 1, 1999 through September 30, 2000:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Shanghai Taoen International Trading Co., Ltd ..... | 7.53 |

## Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific per kilogram assessment rates for Shanghai Taoen. We will direct the Customs Service to assess the per kilogram rate against the entered customs quantity for each entry of subject merchandise from Shanghai Taoen during the review period.

## Cash Deposit Requirements

The following deposit requirement will be effective upon publication of this notice of new shipper review for all shipments exported by Shanghai Taoen of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: the per kilogram cash deposit rate for Shanghai Taoen will be the total amount of dumping margins calculated for the POR divided by the total quantity it sold during the POR.

The following rates are in effect and remain unaffected by the results of this new shipper review: (1) For previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (2) for all other PRC exporters, the rate will be the current PRC-wide ad valorem rate, 201.63 percent, established in the most recently completed administrative review (*Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews,* and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001)); and (3) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent

assessment of double antidumping duties.

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

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: December 7, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

## Appendix

*List of Issues*

1. Surrogate Value for Whole, Live Crawfish,
2. Surrogate Value for Whole, Live Crawfish Based on Size-Specific Prices
3. Wet/Dry Conversion Factor for Scrap
4. Relevance of Chitin Extraction from Shrimp Shells

[FR Doc. 01–31020 Filed 12–14–01; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–423–808]**

### Stainless Steel Plate in Coils From Belgium: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of extension of time limit for preliminary results of administrative review.

**EFFECTIVE DATE:** December 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Sally C. Gannon at (202) 482–0162, Abdelali Elouaradia at (202) 482–1374, or Julio Fernandez at (202) 482–0190, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230.

### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

### Background

The Department of Commerce (the Department) received a request from ALZ N.V. (ALZ) and TrefilARBED, Inc., and from petitioners, on May 16, 2001, and May 31, 2001, respectively, for an administrative review of the antidumping duty order on stainless steel plate in coils from Belgium. On June 19, 2001, the Department published a notice of initiation of this administrative review covering the period of May 1, 2000 through April 30, 2001 (66 FR 32934).

### Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

In light of the complexity of analyzing ALZ's cost reconciliation, it is not practicable to complete this review by the current deadline of January 31, 2002.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results by 120 days, until no later than May 31, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: December 10, 2001.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 01–31019 Filed 12–14–01; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–834]**

### Stainless Steel Sheet and Strip From the Republic of Korea; Final Results and Partial Rescission of Antidumping Duty Administrative Review

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

**ACTION:** Notice of final results of antidumping duty administrative review of stainless steel sheet and strip from the Republic of Korea.

**SUMMARY:** On August 8, 2001, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results and partial rescission of its administrative review of the antidumping duty order on stainless steel sheet and strip from the Republic of Korea (66 FR 41530). This review covers imports of subject merchandise from Pohang Iron & Steel Co., Ltd. (''POSCO''), Samwon Precision Metals Co., Ltd. (''Samwon''), Daiyang Metal Co., Ltd. (''DMC''), and Sammi Steel Co. (''Sammi'') including any of its affiliates within the meaning of section 771(33) of the Tariff Act of 1930, as amended (''the Act''), or any successor or surviving company to Sammi. The period of review (''POR'') is January 4, 1999 through June 30, 2000.

Based on our analysis of the comments received, we have made changes in the margin calculations for POSCO. Therefore, the final results differ from the preliminary results of review. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.'' In addition, we are rescinding the review with respect to Sammi.

**EFFECTIVE DATE:** December 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Stephen Shin (''Samwon''), Catherine Bertrand (''DMC''), Brandon Farlander (''Sammi'') or Laurel LaCivita (''POSCO''), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0413, (202) 482–3207, (202) 482–0182, or (202) 482–4243, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute

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 Act by the Uruguay Round Agreements Act. 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 8, 2001, the Department published *Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review for Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 66 FR 41530 (August 8, 2001) (''*Preliminary Determination*''). We invited parties to comment on these preliminary results. The review covers imports of subject merchandise from POSCO, Samwon, DMC, and, at the request of petitioners,[1] Sammi. As we stated in that notice, we preliminarily rescinded this review with respect to Sammi, pursuant to its claim of no shipments of the subject merchandise during the POR. We are now rescinding this review with respect to Sammi, since no information has been developed on the record demonstrating that Sammi made any shipments during the POR. The POR is January 4, 1999 through June 30, 2000. We received written comments on September 17, 2001 from petitioners, POSCO and Samwon. On September 24, 2001, we received rebuttal comments from petitioners, POSCO and DMC. We have now completed the administrative review in accordance with section 751 of the Act.

**Scope of the Review**

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[2], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this review. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this review. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness

[1] Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC.

[2] Due to changes to the HTS numbers in 2001, 7219, 13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [3]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this review. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this review. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[7]

**Recission of Review**

In the *Preliminary Results,* we stated that Sammi reported, and the Department confirmed through independent U.S. Customs Service data, that it had no shipments of subject merchandise during the POR. Since Sammi did not report any shipments during the POR, we had no basis for determining a margin. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we preliminarily rescinded our review with respect to Sammi. Since we have received no information since the *Preliminary Results* that contradicts the decision made in the preliminary results of review, we are rescinding the review with respect to Sammi. Since Sammi did not participate in the original investigation, its cash deposit rate will remain at 12.12 percent, which is the all others rate established in the less than fair value (''LTFV'') investigation.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''*Decision Memorandum*'') from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Bernard Carreau, Acting Assistant Secretary for Import Administration, dated December 6, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum,* is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have made changes in the margin calculations for POSCO. The changes to POSCO's margin calculations are listed below:

- We adjusted POSCO's reported costs to include an amortized portion of its deferred foreign exchange losses.
- We adjusted POSCO's reported foreign exchange ratio to include gains and losses associated with cash, A/P, ''other'' accounts, and loans payable in the numerator.
- We reversed our position on affiliated party inputs from the preliminary results and, for these final results, we are not making an adjustment to POSCO's costs for affiliated party inputs.
- We revised the calculation of POSCO's per-unit G&A expense to apply POSCO's G&A ratio to the sum of the revised cost of manufacturing plus packing.
- We calculated an adjustment for warranty expense and included it as an adjustment to U.S. price.
- We have recalculated home market credit for POSCO's U.S. dollar home market sales using POSAM's U.S. dollar interest rate instead of POSCO's Korean won interest rate.
- We have recalculated POSAM's indirect selling expenses to adjust the amount of interest expense applicable to U.S. sales of subject merchandise and to take into account an offset for imputed credit.

[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[4] ''Gilphy 36'' is a trademark of Imphy, S.A.

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

• We have revised our calculations to deduct U.S. indirect selling expenses from U.S. starting price rather than add them.

• We have revised the total cost of production included in both our cost and constructed value calculations to include interest expenses (''INTEX''), which were erroneously omitted from the calculation in our preliminary results of review.

We made no changes to Daiyang's or Samwon's calculations for the final results of review.

**Final Results of Review**

We determine that the following percentage margin exists for the period January 4, 1999 through June 30, 2000:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM KOREA

| Manufacturer/exporter/reseller | Margin (percent) |
|---|---|
| POSCO | 0.03 |
| Samwon | 7.88 |
| DMC | 2.74 |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. For duty-assessment purposes, we will calculate importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the period of review.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for POSCO, Samwon and DMC will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the ''all others'' rate, which is 12.12 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

**Notification of Interested Parties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: December 6, 2001.

**Bernard T. Carreau,**

*Acting Assistant Secretary for Import Administration.*

**Appendix 1—Issues in Decision Memorandum**

A. Issues with Respect to POSCO

Comment 1: Indirect Selling Expenses for POSAM
Comment 2: Unrecognized Bad Debt
Comment 3: Duty Drawback
Comment 4: Export Warranty Expenses
Comment 5: G&A Calculation
Comment 6: Scrap Costs
Comment 7: Affiliated-Supplied Inputs
Comment 8: L-Grade Adjustment
Comment 9: Energy Costs
Comment 10: Financial Expenses
Comment 11: Home Market Credit
Comment 12: Programming Error with Respect to U.S. Indirect Selling Expenses
Comment 13: Imputed Credit Expenses in the Calculation of Indirect Selling Expenses
Comment 14: Deferred Foreign Exchange Losses in the Calculation of G&A

B.Issues with Respect to DMC

Comment 15: Indirect Selling Expenses
Comment 16: G&A Expenses
Comment 17: Marine Insurance and U.S. Inland Freight
Comment 18: Commission Offset for DMC
Comment 19: OMC's Indirect Selling Expense Ratio
Comment 20: Short-Term Borrowing Rate in the Home Market
Comment 21: Ministerial Errors

C.Issues with Respect to Samwon

Comment 22: Use of Partial Facts Available
Comment 23: Use of a Single Weighted-Average COP

[FR Doc. 01–31018 Filed 12–14–01; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 120701D]**

### North Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of committee meeting.

**SUMMARY:** The North Pacific Fishery Management Council's (Council) Observer Committee will meet in Seattle, WA.

**DATES:** The meeting will be held on January 7–8, 2002.

**ADDRESSES:** The meeting will be held at the Alaska Fisheries Science Center (Center), 7600 Sand Point Way NE, Seattle, WA.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Nicole Kimball, North Pacific Fishery Management Council; telephone: 907–271–2809.

**SUPPLEMENTARY INFORMATION:** The meeting will begin at 9 a.m. on Monday, January 7, continue through Monday, January 8. The committee's agenda includes the following issues:

1. Review draft analysis for three regulatory changes to the North Pacific Groundfish Observer Program, and

2. Review the goals and objectives of the North Pacific Groundfish Observer Program.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal

action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: December 10, 2001.

**Richard W. Surdi,**

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

[FR Doc. 01–31015 Filed 12–14–01; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 120701C]**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Multi-Year Management Committee (GMMC) will hold a work session, which is open to the public.

**DATES:** The GMMC will meet Thursday, January 10, 2002, from 10 a.m. until 5 p.m; and Friday, January 11, 2002, from 8 a.m. until business for the day is completed.

**ADDRESSES:** The work session will be held at the Pacific Fishery Management Council, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220; 503-326–6352.

*Council address*: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220; 503-326–6352.

**FOR FURTHER INFORMATION CONTACT:** Dan Waldeck or Don McIsaac, Pacific Fishery Management Council, 503-326–6352.

**SUPPLEMENTARY INFORMATION:** The formation of this ad hoc committee is in response to the Council's request for a committee to scope multi-year management approaches for the West Coast groundfish fishery. Multi-year management of the groundfish fishery would be synchronized with a multi-year groundfish stock assessment schedule. Full accommodation of federal notice and comment requirements would also be incorporated into the multi-year cycle. This is the second meeting of the committee, and the primary purpose of the meeting is to further develop the purpose and objectives of multi-year management, as well as alternative multi-year management approaches.

Although nonemergency issues not contained in the GMMC meeting agenda may come before the GMMC for discussion, those issues may not be the subject of formal GMMC action during the meeting. GMMC action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMMC's intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: December 10, 2001.

**Richard W. Surdi,**

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

[FR Doc. 01–31016 Filed 12–14–01; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 120701B]**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) and Scientific and Statistical Committee (SSC) Salmon Subcommittee will hold two joint work sessions, which are open to the public.

**DATES:** The work sessions will be held Thursday, January 3, 2002, from 8:30 a.m. to 5 p.m., and Wednesday, February 6, 2002, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** Both work sessions will be held at the Embassy Suites Hotel, 7900 NE 82nd Ave., Portland, OR 97220.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council (503) 326–6352.

**SUPPLEMENTARY INFORMATION:** The purpose of the work session is to brief the STT and SSC on changes made to or proposed for the coho Fishery Regulation Assessment Model (FRAM) and the Klamath Ocean Harvest Model (KOHM), review the scientific bases for those changes, and compare results from the updated model with those from the previous version. The coho FRAM will be reviewed on January 3, 2002 and the KOHM will be reviewed on February 6, 2002.

Although non-emergency issues not contained in the meeting agendas may come before the STT and the SSC subcommittee for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: December 10, 2001.

**Richard W. Surdi,**

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

[FR Doc. 01–31017 Filed 12–14–01; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### Technology Administration

### National Medal of Technology Program Nomination Applications

**AGENCY:** Technology Administration, Commerce.

**ACTION:** Proposed collection; Comment request.

**SUMMARY:** The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before February 15, 2002.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the attention of Mildred Porter, Director, National Medal of Technology Program, Technology Administration, 1401 Constitution Avenue, NW., Room 4226, Washington, DC 20230. In addition, written comments may be sent via fax, (202) 501–8153, and e-mail to mporter@ta.doc.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This information collection is critical for the Nomination Evaluation Committee to determine nomination eligibility and merit according to specified criteria or the annual selection of the Nation's leading technological innovators honored by the President of the United States. The information is needed to comply with Pub. L. 96–480 and Pub. L. 105.309. Comparable information is not available on a standardized basis.

#### II. Method of Collection

By mail, but the nomination forms and instructions are electronically posted on the National Medal of Technology web site so interested parties can review criteria and informational requirements.

#### III. Data

*OMB Number:* 0692–0001.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected Public:* Individuals or households; business or other for-profit organizations; not-for-profit institutions; and Federal Government.
*Estimated Number of Respondents:* 102.
*Estimated Time Per Response:* 25 hours.
*Estimated Total Annual Respondent Burden Hours:* 2550.
*Estimated Total Annual Respondent Cost Burden:* 0.

#### IV. Requests for Comments

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 12, 2001.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 01–30985 Filed 12–14–01; 8:45 am]

BILLING CODE 3510–18–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 02–13]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–13 with attached transmittal and policy justification.

Dated: December 10, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Office, Department of Defense.*

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

**29 NOV 2001**
**In reply refer to:**
**I-01/013537**

**The Honorable J. Dennis Hastert**
**Speaker of the House of**
**Representatives**
**Washington, D.C. 20515-6501**

**Dear Mr. Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-13 and under separate cover, the classified documents thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Austria for defense articles and services estimated to cost $1,739 million. Soon after this letter is delivered to your office, we plan to notify the news-media of the unclassified portion of this Transmittal.**

**Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.**

**Sincerely,**

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

**Attachments**

**Separate Cover:**
**Classified Annex**
**Offset certificate**

**Same ltr to: House Committee on International Relations**
**Senate Committee on Appropriations**
**Senate Committee on Foreign Relations**
**House Committee on Armed Services**
**Senate Committee on Armed Services**
**House Committee on Appropriations**

**Transmittal No. 02-13**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act**

(i) **Prospective Purchaser**: Austria

(ii) **Total Estimated Value**:

| | |
|---|---|
| Major Defense Equipment* | $1,294 million |
| Other | $ 445 million |
| TOTAL | $1,739 million |

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: Thirty F-16C/D Block 50/52 fighter aircraft with engines, three Pratt and Whitney F100-PW-229 or General Electronic F110-GE-129 spare engines, four AIM-120C Advance Medium Range Air-to-Air Missiles (AMRAAM), nine AIM-120C AMRAAM Air Vehicle Instrumented missiles, 20 AIM-9M-8/9 SIDEWINDER missiles, and 15 AIM-9M-8/9 SIDEWINDER practice/training missiles. Associated simulators, support equipment, software development/integration, logistics support, training missiles, ammunition, spare and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability.

(iv) **Military Department**: Air Force (SAE)

(v) **Prior Related Cases, if any**: none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex under separate cover

(viii) **Date Report Delivered to Congress**: 29 NOV 2001

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### Austria - F-16C/D Block 50/52 Fighter Aircraft

**The Government of Austria has requested a possible sale of 30 F-16C/D Block 50/52 fighter aircraft with engines, three Pratt and Whitney F100-PW-229 or General Electronic F110-GE-129 spare engines, four AIM-120C Advance Medium Range Air-to-Air Missiles (AMRAAM), nine AIM-120C AMRAAM Air Vehicle Instrumented missiles, 20 AIM-9M-8/9 SIDEWINDER missiles, and 15 AIM-9M-8/9 SIDEWINDER practice/training missiles. Associated simulators, support equipment, software development/integration, logistics support, training missiles, ammunition, spare and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability. The estimated cost is $1,739 million.**

**This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Europe.**

**The Austrian Air Force (AAF) currently operates SAAB JAS-35 Draken and SAAB-105 aircraft. These aging fighters are expensive to operate and maintain. This proposed sale will provide operational capabilities as the SAAB aircraft eventually are retired. It will also allow AAF to meet training requirements starting in early 2003. This proposed sale will not impact regional military balance of power.**

**The principal contractors will be Lockheed Martin Aeronautics Company in Fort Worth, Texas; Pratt and Whitney in East Hartford, Connecticut; General Electric in Cincinnati, Ohio, and Raytheon Corporation in Lexington, Massachusetts. One or more proposed offset agreements may be related to this proposed sale.**

**Implementation will require the assignment of approximately 12 each U.S. Government and contractor representatives for a period of up to four years to provide program support commencing with delivery of the aircraft to Austria.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

[FR Doc. 01–30948 Filed 12–14–01; 8:45 am]
BILLING CODE 5001–08–C

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Establishment of the Defense Business Practice Implementation Board**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of establishment.

**SUMMARY:** The Defense Business Practice Implementation Board (DSPIB) is being established in consonance with the public interest and in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act,'' title 5 U.S.C., Appendix 2. The DBPIB will make recommendations to the Secretary's Executive Council (SEC) on effective strategies to adopt best business practices of interest to the Department of Defense.

The Panel will consist of approximately 20 members selected on the basis of their preeminence in the fields of management, production, logistics, personnel leadership, and the defense industrial base. Consultants with special expertise also may be designated to assist the Board on and ad hoc basis.

**FOR FURTHER INFORMATION CONTACT:** Louis Douglas, Office of the Under Secretary of Defense (Comptroller/Chief Financial Officer), on 703–602–0193.

Dated: December 10, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01–30943 Filed 12–14–01; 8:45 am]
BILLING CODE 5001–00–MM

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Meeting of the DOD Advisory Group on Electron Devices**

**AGENCY:** Advisory Group on Electron Devices, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 0900, Wednesday, January 9, 2002.

**ADDRESSES:** The meeting will be held at Palisades Institute for Research Services, Inc. 1745, Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eliot Cohen, AGED Secretariat, 1745, Jefferson Davis Highway, Crystal Square

Four, Suite 500, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. sec. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(b)(1), and that accordingly, this meeting will be closed to the public.

Dated: December 10, 2001.

**L.M. Bynum,**

*Alternate, OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01–30944 Filed 12–14–01; 8:45 am]

**BILLING CODE 5001–08–M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the DOD Advisory Group on Electron Devices

**AGENCY:** Advisory Group on Electron Devices, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 0900, Tuesday, January 8, 2002.

**ADDRESSES:** The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, VA 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended (5 U.S.C. App. sec. 10(d) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: December 10, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01–30945 Filed 12–14–01; 8:45 am]

**BILLING CODE 5001–08–M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Change in Meeting Date of the DOD Advisory Group on Electron Devices

**AGENCY:** Advisory Group on Electron Devices, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

**DATES:** The meeting will be held at 1400, Wednesday, January 9, 2002.

**ADDRESSES:** The meeting will be held Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. sec. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: December 10, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Liason Officer, Department of Defense.*

[FR Doc. 01–30946 Filed 12–17–01; 8:45 am]

**BILLING CODE 5001–08–M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the DOD Advisory Group on Electron Devices

**AGENCY:** Advisory Group on Electron Devices, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 0900, Wednesday, January 30, 2002.

**ADDRESSES:** The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and

Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. sec. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: December 10, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01–30947 Filed 12–14–01; 8:45 am]

BILLING CODE 5001–00–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board; Meetings

**AGENCY:** Department of Defense

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board (DSB) Task Force on Enduring Freedom Lessons Learned will meet in closed session on January 5–15, 2002, at various locations within the U.S. Central Command's area of responsibility; and January 17–18, 2002, at IDA, 1801 N. Beauregard Street, Alexandria, VA. This Task Force will review current activities of Operation Enduring Freedom to determine both near and longer-term technical and operational considerations that could be used to improve this operation and future campaigns initiated in the War Against Terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review and evaluate operational policy and procedures, command and control, intelligence, combat support activities, weapon system performance, and science and technology requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: December 7, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01–30846 Filed 12–14–01; 8:45 am]

BILLING CODE 5001–08–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Office of the Secretary of Defense proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds a new category of records being maintained and a new purpose for these records.

**DATES:** The changes will be effective on January 16, 2002 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Bosworth at (703) 601–4722 x124.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being altered are set forth below followed by the notices, as amended, published in their entirety.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on October 24, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 4, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DPAD 12**

**SYSTEM NAME:**

DOD National Media Pool Files (February 22, 1993, 58 FR 10227).

**CHANGES:**

* * * * *

**SYSTEM NAME:**

Delete entry and replace with ''DoD National Media Pool and Pentagon Correspondent Files''.

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Add a new paragraph to entry ''Pentagon correspondents who may conduct interviews with Pentagon executive level personnel.''

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Add a new paragraph to entry ''Pentagon correspondents files consist of their photographs and biographies.''

* * * * *

**PURPOSE(S):**

Delete entry and replace with ''Media Pool Files are used to issue Pentagon building passes, Media Pool Press Passes, orders, to arrange foreign country clearances and visas, and to determine individual's suitability/preparedness for deployment with the media pool.

''Pentagon correspondent records are used by Pentagon executive level personnel to provide a brief summary of a correspondent's professional experience and background.''

* * * * *

**RETRIEVABILITY:**

Delete entry and replace with ''Paper records are retrieved by individual's last name, Social Security Number, bureau, or organization. Electronic records are retrieved by last name, Social Security Number and/or news organization.''

**SAFEGUARDS:**

Add to entry ''Electronic records are accessible only by the Directorate of

Defense Information administrative staff.''

* * * * *

**DPAD 12.0**

**SYSTEM NAME:**

DoD National Media Pool and Pentagon Correspondent Files.

**SYSTEM LOCATION:**

Office of the Assistant Secretary of Defense (Public Affairs), Directorate for Plans, Room 2D757, 1400 Defense Pentagon, Washington, DC 20301–1400 for Media Pool records.

Office of the Assistant Secretary of Defense (Public Affairs), Directorate of Defense Information, 1400 Defense Pentagon, Room 2E765, Washington, DC 20301–1400 for the Pentagon Correspondent records.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Civilian media representatives nominated by their respective bureaus to be members of the DoD National Media Pool.

Pentagon correspondents who may conduct interviews with Pentagon executive level personnel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

DoD National Media Pool files consist of accreditation and other questionnaires and forms soliciting the media correspondent's name, age, nationality, Social Security Number, office and home addresses and phone numbers, passport information, medical information, and person to be notified in an emergency effecting individual.

Pentagon correspondent files consist of their photographs and biographies.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 138; and E.O. 9397 (SSN).

**PURPOSE(S):**

Media Pool Files are used to issue Pentagon building passes, Media Pool Press Passes, orders, to arrange foreign country clearances and visas, and to determine individual's suitability/preparedness for deployment with the media pool.

Pentagon correspondent records are used by Pentagon executive level personnel to provide a brief summary of the correspondent's professional experience and background.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders and computerized electronic records.

**RETRIEVABILITY:**

Paper records are retrieved by individual's last name, Social Security Number, bureau, or organization. Electronic records are retrieved by last name, Social Security Number, and/or news organization.

**SAFEGUARDS:**

Records are accessed by authorized personnel with an official need-to-know who have been trained for handling Privacy Act information. Electronic records are accessible only by the Directorate of Defense Information administrative staff.

**RETENTION AND DISPOSAL:**

National media files are cut off annually and kept in the office for 5 years. Files are then transferred to the Washington National Records Center for 25 years. They are then offered to the National Archives for permanent retention after 25 years.

Pentagon correspondent files disposition pending (until NARA has approved a retention and disposition schedule, records will be treated as permanent).

**SYSTEM MANAGER(S) AND ADDRESS:**

For DoD National Media Pool files: Office of the Assistant Secretary of Defense (Public Affairs), Directorate for plans, Room 2D757, 1400 Defense Pentagon, Washington, DC 20301–1400.

**FOR PENTAGON CORRESPONDENT FILES:**

Deputy Director, Directorate for Defense Information, Office of the Assistant Secretary of Defense (Public Affairs), 1400 Defense Pentagon, Room 2E765, Washington, DC 20301–1400.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate System manager above.

The request should contain individual's full name, individual's Social Security Number, and bureau or organization where employed.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate System manager above.

The request should contain individual's full name, individual's Social Security Number, and bureau or organization where employed.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Accreditation and other questionnaires and forms completed or provided by the individual and information provided by the individual's employer or bureau.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 01–30495 Filed 12–14–01; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### Proposed Change in Acquisition Policy—Satellite Motor Surveillance Service

**AGENCY:** Headquarters, Military Traffic Management Command, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** The Military Traffic Management Command (MTMC) proposes to revise transportation services associated with the Defense Transportation Tracking System (DTTS) by requiring carriers to incorporate any charges for Satellite Motor Surveillance Service (SNS) into the basic linehaul transportation rate for motor freight shipments. This proposed revision applies to the movement of arms, ammunition and explosives (AA&E) shipments.

**DATES:** The policy proposed by this notice shall be effective no earlier than February 15, 2002. Interested parties are requested to submit comments on this notice. All comments submitted within 60 days of publication of this notice will be carefully considered before a final decision is made on the matter.

**ADDRESSES:** Comments should be addressed to Headquarters, Military Traffic Management Command, Hoffman Building II, 200 Stovall Street,

Room 10S07, Alexandria, VA 22332–5000, ATTN: MT–DAC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Galluzzo, (703) 428–2327.

**SUPPLEMENTARY INFORMATION:** The Defense Transportation Tracking System (DTTS) provides satellite tracking of domestic motor shipments while enroute (between origin and destination) and increases security and response capability for AA&E shipments in the event of accident or incident. SNS is a transportation protective service that permits Department of Defense (DOD) to obtain periodic in-transit reports and messages on shipment movements in the DTTS. Since its inception in February 1989, the DTTS has been expanded to cover a large number of shipments involving Security Risk Categorized (CAT) munitions. It is the DOD policy to track all CAT I through IV and Uncategorized Munitions shipments using SNS. Included in these categories are most types of arms, ammunition and explosives shipped by DOD or DOD contractor-sponsored shipments.

On July 6, 1993 MTMC published a **Federal Register** notice July 6, 1993 (58 FR 36188) stating that motor carriers would be required to include SNS charges for AA&E shipments in their transportation line haul rates, and that SNS charges as an accessorial service would no longer be accepted for these shipments. In response to industry comments MTMC stated in a **Federal Register** notice on January 3, 1994 (59 FR 75) that charges for SNS would continue to be expressed as a separate accessorial charge and considered along with linehaul rates and other accessorial charges to determine the overall low rate carrier for rating and routing purposes. The primary basis for the MTMC decision to continue separate SNS charges was stated to be that the SNS program objectives for AA&E shipments had not been completely implemented, but that MTMC's policy would continue to be procurement of services and selection of a carrier based on existing criteria.

MTMC has reconsidered the policy of separate SNS charges, and now proposes that SNS accessorial charges be discontinued for AA&E shipments. SNS services would still be required on AA&E shipments. However, in lieu of an accessorial charge, each carrier would include all costs of providing satellite tracking service in the carrier's basic linehaul transportation rate. At one time many munitions shipments did not require SNS service. Transportation Officers ordered SNS as needed, on a shipment-by-shipment basis. Thus, it was not logical or economical to include such charges in the linehaul rate. An agreed stipulation signed in December 1994 by the Munitions Carriers Conference and the United States provided that SNS would be continued at that time as a separate accessorial charge. Thee stipulation also provided that it would not prevent MTMC from making any policy change which it determines to be necessary to protect the public interest or the fiscal and operational requirements of the DOD.

MTMC now proposes to change this policy for AA&E shipments since it is expected to result in operational efficiencies and lower overall transportation costs to the public, thus furthering the public interest and protecting the fiscal requirement of the DOD. Satellite tracking devices are now in universal use by motor carriers. MTMC requires satellite tracking be provided routinely on all DOD motor freight shipments of arms, ammunition and similarly classified commodity categories. There is no longer any reason to maintain a separate accessorial charge for a service that is considered essential to these shipments and can be included in the carriers' basic linehaul rate.

MTMC requirements and standards for SNS and related services can be found at *www.mtmc.army.mil* in the MTMC Freight Traffic Rules Publication No. 1B dated October 19, 2001.

This proposed policy change applies only to the movement of AA&E shipments. MTMC will continue to maintain an accessorial service in the Freight Traffic Rules Publication No. 1Bb for shippers to order motor surveillance service (SNS) for certain types of shipments which require this type of surveillance. Typically these shipments may include historical and high value articles, one of a kind items or other items of a unique nature that require SNS during the transportation process. SNS for these articles will be ordered by the shipper on a case-by-case basis and only from carriers who provide this service and have a rate on file with MTMC. MTMC will develop and publish a in the Freight Traffic Rules Publication No. 1B an accessorial item for this service.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 01–31005 Filed 12–14–01; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Availability of Draft Supplemental Environmental Impact Statement (DSEIS) For Proposed Changes to the Chickamauga Lock Project, Hamilton County, TN

**AGENCY:** Army Corps of Engineers, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** The Corps of Engineers, Nashville District, and the Tennessee Valley Authority (Cooperating Agency) has prepared a Draft Supplemental Environmental Impact Statement (DSEIS) to the 1995 Environmental Impact Statement titled Chickamauga Dam—Navigation Lock Project Final Environmental Impact Statement (FEIS). This supplement is necessary to provide information unknown and not required at the time the FEIS was completed.

**DATES:** Written comments must be received by the Corps of Engineers on or before January 29, 2002.

**ADDRESSES:** Written comments on issues to be considered in the SEIS shall be mailed to: Wayne Easterling or Patty Coffey, Project Planning Branch, Nashville District Corps of Engineers, PO Box 1070 (PM–P), Nashville, Tennessee 37202–1070.

**FOR FURTHER INFORMATION CONTACT:** For additional information concerning the notice, please contact Wayne Easterling, Environmental Team, (615) 736–7847, or Patty Coffey, Environmental Team, (615) 736–7865.

**SUPPLEMENTARY INFORMATION:** 1. The intent of the Supplemental EIS is to provide National Environmental Policy Act coverage for the Chickamauga Lock project on issues that were unknown or not required when the original EIS was prepared. The original EIS for Chickamauga Lock was completed in 1995 and a Record of Decision signed in 1996. The original EIS considered four alternatives including no action (closing the existing lock), constructing a new 110 × 600 foot lock (preferred alternative), constructing a new 60 × 360 foot lock (replacement in kind) and constructing a new 75 × 400 foot lock. The SEIS now proposed will cover cumulative effects and compliance with section 106 of the Historic Preservation Act. Coordination with the U.S. Fish and Wildlife Service will include a Biological Assessment/Opinion for Endangered Species Act and a Fish and Wildlife Coordination Act Report.

2. This notice serves to solicit comments from the public; federal, state and local agencies and officials; Indian

Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received by us will be considered during the preparation of this Supplemental Environmental Impact Statement.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 01–31004 Filed 12–14–01; 8:45 am]

BILLING CODE 3710–GF–M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Correction notice.

**SUMMARY:** On December 4, 2001, a 60-day notice inviting comment from the public was published for ''An Assessment of the Rehabilitation Services Administration (RSA) Pre-Service Training Program'' in the **Federal Register** (Volume 66, Number 233) dated December 4, 2001. The title of this collection has been changed to ''An Evaluation of the Rehabilitation Services Administration (RSA) Training Program Responsiveness to State VR Agency Needs for Qualified Personnel''. The study title, as currently drafted, does not indicate the conduct of an evaluation nor does it reflect the full scope of the surveys and data collection. The first sentence of the abstract has also been changed to read, ''This study evaluates the impact of RSA's Training Program on the supply of qualified rehabilitation counselors needed by State agencies and will identify possible policy options.'' The second and last sentence of the abstract remains the same. The Leader, Regulatory Information Management, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: December 11, 2001.

**John Tressler,**

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

[FR Doc. 01–30959 Filed 12–14–01; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Notice of Wetlands Involvement for the Portsmouth Gaseous Diffusion Plant Reindustrialization Program

**AGENCY:** Office of Environmental Management, DOE.

**ACTION:** Notice of wetland involvement.

**SUMMARY:** The U.S. Department of Energy (DOE) is proposing to implement a Reindustrialization Program at the Portsmouth Gaseous Diffusion Plant (PORTS) in Piketon, Ohio. The PORTS facility contains a number of wetlands. The Reindustrialization Program would enable DOE to transfer real and personal property (*i.e.,* underutilized, surplus, or excess PORTS land and facilities) by lease and/or disposal (*e.g.,* sale, donation, transfer to another federal agency, or exchange). The Southern Ohio Diversification Initiative (SODI) is the local community reuse organization actively involved in seeking new uses of the DOE's PORTS excess or underutilized land and facilities. DOE is presently proposing to transfer a parcel of land (approximately 340 acres in size) to SODI for these purposes. The land in consideration includes several wetlands. More detail on these wetlands is provided in the supplementary information.

**DATES:** Comments are due to the address below no later than January 2, 2002.

**ADDRESSES:** Comments should be addressed to Ms. Kristi Wiehle, U.S. Department of Energy, Portsmouth Gaseous Diffusion Plant, PO Box 700, 3930 U.S. Route 23, Perimeter Road, Piketon, OH 45661–0700. Comments may be faxed to (740) 897–5020.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kristi Wiehle, U.S. Department of Energy, Portsmouth Gaseous Diffusion Plant, PO Box 700, 3930 U.S. Route 23, Perimeter Road, Piketon, OH 45661–0700, (740) 897–5020.

For Further Information on General DOE Wetland Environmental Review Requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 200585, (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** In accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and the DOE NEPA Implementing Regulations (10 CFR 1021), DOE has prepared a draft Environmental Assessment (EA) to evaluate the proposed action. The draft EA was issued for public review and comment on May 9, 2001, via a notice placed in three Portsmouth area newspaper. As a part of the EA (DOE/EA–1346), DOE is including a wetlands assessment to assess the existing wetlands environment as well as the potential impact of the proposed Reindustrialization Program implementation. (The wetlands assessment is available by contracting the PORTS representative named above.) DOE proposes to implement and conduct the Reindustrialization Program in a manner that avoids or minimizes potential adverse effects to the wetlands at the site. Reindustrialization would enable DOE to transfer real and personal property by lease and/or disposal. Under the program, DOE would transfer the property to a community reuse organization, to other federal agencies, or to other interested persons and entities, should DOE determine them suitable. Transferred land and facilities may then be developed or utilized for a range of industrial and commercial uses including, but not limited to manufacturing, warehousing, office/business park, rail and intermodal transportation, and retail and service operations.

Land and facilities presently available for transfer occupy approximately 526.1 hectares (ha) [1300 acres (ac)] or about 35% of the 1503 ha (3714 ac) of PORTS. For the most part, this area is comprised of previously industrialized areas, infrastructure corridors, roads, loading and parking areas, and open and forested buffer areas. Of the land available for transfer, there are 41 wetlands under the jurisdictional regulation of the U.S. Army Corps of Engineers and 4 non-jurisdictional wetlands totaling 13.92 ha (34.36 ac). In addition to regulation by the Corps, the State of Ohio also regulates wetlands in a ''tiered'' approach structured around avoidance, minimization, mitigation, and compensation, where avoidance is the most desirable means to protect and preserve the resource and compensation the least desirable. The majority of the wetlands are associated with wet fields, areas of previous disturbance, drainage ditches, or wet areas along roads and railway tracks.

The potential for and degree of impacts to the wetlands could result from a variety of actions that might occur, depending upon how the tenant or new owner proposes to use the land. Some or all of the wetlands could potentially experience impacts by development in the wetlands themselves or by Reindustrialization activities in nearby areas. The worst-case scenario would involve filling the wetlands. Other lesser impacts could result from siltation due to poor soil erosion control measures at nearby locations, spills or leaks of oil or other chemicals, overuse of pesticides or herbicides that could lead to contamination and potentially harm animal species that use the wetlands for cover or forage, etc., planting of exotic

species that could rapidly colonize and eventually choke-off the wetlands, such as purple loosestrife (*Lythrum salicaria*).

For purposes of the environmental restoration activities ongoing at PORTS, the site is divided into 4 ''Quadrants'' based on groundwater flow patterns. Quadrant I (the southern part of the site) has 13 jurisdictional wetlands totaling 5.22 ha (12.91ac). The wetlands in Quadrant I range in size from .093 ha (.0230 ac) in a drainage ditch to one that is 1.874 ha (4.626 ac), that is the former site of a never-completed building project. Of the 13 wetlands, 5 are associated with roadways and ditches and the remaining 8 are the result of site preparation, grading and drainage alternation for building construction. None of the wetlands are hydrologically connected although they do periodically support wetland plant species and may exhibit hydric soil conditions.

Quadrant II, the eastern part of the site, contains 3 jurisdictional wetlands with a total area of 5.2 ha (12.86 ac). The wetlands in Quadrant II range in size from the smallest, .182 ha (.45 ac), associated with an area of previous disturbance, to .821 ha (2.028 ac) in a radiologically contaminated area, to one that is 4.203 ha (10.378 ac), and that is within the Little Beaver Creek drainage. Only 1 of the 3 wetlands is within an area considered for Reindustrialization.

Quadrant III, the central and western part of the site, has 6 jurisdictional wetlands totaling 0.82 ha (2.02 ac). The smallest wetland in Quadrant III is .015 ha (.036 ac) and the largest is .486 ha (1.201 ac). Of the 6 wetlands, 4 are associated with roads and ditches, and the remaining 2 with previously disturbed areas, one of which is radiologically contaminated. Only 1 of these 6 wetlands is within an area proposed for Reindustrialization. None of the wetlands are hydrologically connected although they do periodically support wetland plant species and may exhibit hydric soil conditions.

Quadrant IV, the northern section of the site, has 19 jurisdictional wetlands and 4 non-jurisdictional wetlands totaling 2.66 ha (6.58 ac). The 4 non-jurisdictional wetlands are associated with active sludge lagoons. The smallest wetland in Quadrant IV is .005 ha (.012 ac) and 15 of the 19 jurisdictional wetlands are less than .1 ha (~¼ ac) in size. The largest wetland is .949 ha (2.32 ac) and is within an old borrow area. Of these 19 wetlands, all except 4 are the result of man-made disturbance including road and ditch construction, dams, and borrow areas. The 4 remaining wetlands are open fields, 3 of which have been disturbed by plant activities. Although 19 wetlands are in this Quadrant, proposed Reindustrialization activities, namely the proposed transfer of 340 acres to SODI, would only involve 6 of the wetlands. There are no other areas within Quad IV that contain wetlands that are being proposed for Reindustrialization. Of those 6 wetlands, 5 are ditches and within a borrow area and the remaining 1 is associated with a previously disturbed natural area.

In accordance with DOE regulations for compliance with wetlands environmental review requirements (10 CFR part 1022), a wetland assessment will be included within the Environmental Assessment for the Reindustrialization Program at the Portsmouth Gaseous Diffusion Plant (DOE/EA–1346).

Issued in Oak Ridge, Tennessee, on November 13, 2001.

**James L. Elmore,**

*Alternate NEPA Compliance Officer.*

[FR Doc. 01–30894 Filed 12–13–01; 8:45 am]

BILLING CODE 6450–50–01–M

## DEPARTMENT OF ENERGY

### Forest Products Visions of the Future

**AGENCY:** Idaho Operations Office, Department of Energy.

**ACTION:** Notice of availability of solicitation number DE–PS07–02ID14271.

**SUMMARY:** The American Forest and Paper Association in cooperation with the U.S. Department of Energy, is seeking applications for cost-shared research and development of technologies, which will reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts of the Forest Products Industry. The research is to address research priorities in the higher value through sustainable forestry, gasification, fiber modification and VOC and HAP emission technology areas.

**DATES:** The deadline for receipt of applications is 5 p.m. EST on April 15, 2002.

**ADDRESSES:** Applications should be submitted to: David Friedman, American Forest and Paper Association, 1111 19th Street, NW., Suite 800, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Carol Van Lente, Contract Specialist, at *vanlencl@id.doe.gov.*

**SUPPLEMENTARY INFORMATION:** The statutory authority for this program is the Federal Non-Nuclear Energy Research & Development Act of 1974 (P.L. 93–577). Approximately $2,000,000 in federal funds is expected to be available to fund the first year of selected research efforts. DOE anticipates making three cooperative agreement awards each being $500,000 to $700,000 per year with a duration of three to five years. Collaborations between industry, university, and National Laboratory participants are encouraged. The solicitation is available in full text via the Internet at the following address: *http://www.oit.doe.gov/cfm/fullSolicitation.cfm/id=123.*

Issued in Idaho Falls on December 10, 2001.

**R.J. Hoyles,**

*Director, Procurement Services Division.*

[FR Doc. 01–30981 Filed 12–14–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Fossil Energy

**[FE Docket No. 01–70–NG 01–74–NG 01–71–NG 01–73–NG 01–75–NG 01–81–NG 01–63–NG 01–78–NG 90–09–NG 01–82–NG 00–61–NG 01–77–NG 01–80–NG 01–79–NG]**

### Orders Granting, Amending, and Transferring Authority To Import and Export Natural Gas; San Diego Gas & Electric Co.; et al.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of orders.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that during November 2001, it issued Orders granting, amending, and transferring authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 11, 2001.

**Thomas W. Dukes,**

*Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.*

### Appendix—Orders Granting, Amending, and Transferring Import/Export Authorizations

DOE/FE Authority

| Order No. | Date issued | Importer/Exporter Fe Docket No. | Import volume | Export volume | Comments |
|---|---|---|---|---|---|
| 1733 | 11–8–01 | San Diego Gas & Electric Company 01–70–NG. | 74 Bcf | | Import natural gas from Canada beginning on December 1, 2001, and extending through November 30, 2003. |
| 1734 | 11–8–01 | Western Gas Resources, Inc. 01–74–NG | 73 Bcf | 73 Bcf | Import and export natural gas from and to Canada, beginning on November 26, 2001, and extending through November 25, 2003. |
| 1735 | 11–9–01 | Ontario Energy Savings Corp. 01–71–NG | 200 Bcf | | Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2001, and extending through October 31, 2003. |
| 1736 | 11–13–01 | Crestar Energy marketing Corp. 01–73–NG | 100 Bcf | | Import and export a combined total of natural gas from and to Canda, beginning on July 11, 2001, and extending through July 10, 2003. |
| 1737 | 11–15–01 | Toronto Hydro Energy Services 01–75–NG | 3 Bcf | 3 Bcf | Import and export natural gas from and to Canada, beginning on December 1, 2001, and ending on November 30, 2003. |
| 1738 | 11–27–01 | Murphy Gas Gathering Inc. 01–81–NG | 75 Bcf | | Import natural gas from Canada, beginning on December 12, 2001, and extending through November 30, 2003. |
| 1723–A | 11–27–01 | PC&E Energy Trading, Canada Corporation 01–63–NG. | | 150 Bcf | Amendment to import authority to include exports of natural gas to Canada, over a two-year term beginning on the date of first delivery of either the import or export. |
| 1739 | 11–29–01 | UtiliCorp United Inc. 01–78–NG | 200 Bcf | | Import natural gas from Canada, beginning on January 1, 2002, and extending through December 31, 2003. |
| 551–F | 11–29–01 | USGen New England, Inc. 90–09–NG | Amendment of volumes | | Reduction in volumes in long-term authority from 35,000 Mcf per day to 8,137 Mcf per day. |
| 1740 | 11–29–01 | Wisconsin Public Service Corporation 01–82–NG. | 6 Bcf | | Import natural gas from Canada, beginning on September 1, 2001, and extending through August 31, 2003. |
| 1623–A | 11–30–01 | Aquila, Inc. (Successor to Aquila Energy Marketing Corporation) 00–61–NG. | Transfer of authority | | Transfer of authority and name change. |
| 1741 | 11–30–01 | Mirant Americas Energy Marketing LP 01–77–NG. | 730 Bcf | | Import and export natural gas from and to Canada, beginning on December 1, 2001, and extending through November 3, 2003. |
| 1742 | 11–30–01 | Direct Energy Marketing Limited 01–80–NG | 400 Bcf | | Import and export natural gas from and to Canada, over a two-year term beginning on the date of first import or export. |
| 1743 | 11–30–01 | William Energy Marketing & Trading Company 01–79–NG. | 200 Bcf | | Import natural gas from Canada, beginning on November 1, 2001, and extending through October 31, 2003. |

[FR Doc. 01–30982 Filed 12–14–01; 8:45 am]
BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC02–30–000, et al.]**

## Northwest Natural Gas Company, et al.; Electric Rate and Corporate Regulation Filings

December 7, 2001.

Take notice that the following filings have been made with the Commission:

### 1. Northwest Natural Gas Company and Portland General Electric Company

[Docket No. EC02–30–000]

Take notice that on November 30, 2001, Northwest Natural Gas Company (NW Natural) and Portland General Electric Company (PGE) (collectively, the Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Northwest Natural Holding Company (NW Natural Holdco), a newly-formed holding company, will acquire all of the outstanding common stock of PGE.

The Applicants state that the transaction will not have an adverse effect on competition, will not have an adverse effect on rates, and will not have an adverse effect on competition.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 2. Entergy Power Ventures, L.P.

[Docket No. EG02–25–000]

Take notice that on December 5, 2001, Entergy Power Ventures, L.P., 20 Greenway Plaza, Suite 1025, Houston, Texas 77046, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale

generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended. The applicant is a limited partnership that will be engaged directly or indirectly and exclusively in the business of developing and ultimately owning and/or operating an interest in a 550 megawatt gas-fired, combined cycle electric generating facility located in Harrison County, Texas and selling electric energy at wholesale.

*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.

**3. Duke Energy Arlington Valley, LLC**

[Docket No. EG02–40–000]

Take notice that on November 30, 2001, Duke Energy Arlington Valley, LLC (Duke Arlington Valley) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

Duke Arlington Valley is a Delaware limited liability company 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 Maricopa County, Arizona. The eligible facilities will consist of an approximately 1,200 MW natural gas-fired, combined cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

*Comment date:* December 28, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**4. FPL Energy Marcus Hook, L.P.**

[Docket No. EG02–41–000]

Take notice that on November 30, 2001, FPL Energy Marcus Hook, L.P. (Applicant), with its principal office at 700 Universe Boulevard, Juno Beach, FL 33408, 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.

Applicant states that it is a Delaware limited partnership engaged directly and exclusively in the business of developing and operating an approximately 740 MW generating facility to be located in Marcus Hook, Pennsylvania. Electric energy produced by the facility will be sold at wholesale or at retail exclusively to foreign consumers.

*Comment date:* December 27, 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.

**5. ISO New England Inc.**

[Docket No. EL00–62–039]

Take notice that on December 3, 2001, ISO New England Inc. (the ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing in response to the August 28, 2001 order in the referenced proceeding.

*Comment date:* January 2, 2002, in accordance with Standard Paragraph E at the end of this notice.

**6. Liberty Electric Power, LLC**

[Docket No. ER01–2398–003]

Take notice that on December 4, 2001, Liberty Electric Power, LLC, which will own and operate a natural gas-fired electric generating facility in the Borough of Eddystone, Pennsylvania submitted for filing with the Federal Energy Regulatory Commission (Commission) its Supplement No. 1 to its FERC Electric Tariff Original Volume No. 1, in compliance with the Commission's November 20, 2001 letter order to include a code of conduct reflecting Liberty Electric's pending affiliation with Reliant HL&P.

*Comment date:* December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

**7. Colton Power L.P.**

[Docket Nos. ER01–2644–003]

Take notice that on December 4, 2001, Colton Power L.P. (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) a further amended market-based rate schedule under section 205 of the Federal Power Act in order to comply with the Federal Energy Regulatory Commission's Order Establishing Refund Effective Date and Proposing to Revise Market-Based Rate Tariffs and Authorization issued in Docket No. EL01–118 on November 20, 2001.

*Comment date:* December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

**8. New York Independent System Operator, Inc.**

[Docket No. ER01–3001–002]

Take notice that on December 4, 2001, the New York Independent System Operator, Inc. (NYISO) submitted with the Federal Energy Regulatory Commission (Commission) a report on the status of its demand side management programs and the status of the addition of new generation resources in New York State in compliance with the Commission's October 25, 2001 Order in this proceeding. The NYISO has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Market Administration and Control Area Services Tariff.

*Comment date:* December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

**9. Mid-Continent Area Power Pool**

[Docket No. ER02–163–001]

Take notice that on December 4, 2001, the Mid-Continent Area Power Pool (MAPP), tendered for filing with the Federal Energy Regulatory Commission (Commission) on behalf of its members that are subject to Commission jurisdiction as public utilities under section 201(e) of the Federal Power Act, tendered for filing, pursuant to Order No. 614, Cover Sheets for the termination of Short-Term and Non-Firm Point-To-Point Transmission Service Agreements between MAPP and El Paso Merchant Energy, L.P., formerly Coastal Merchant Energy, L.P. and originally Engage Energy US, L.P.

*Comment date:* December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

**10. New England Power Pool**

[Docket No. ER02–434–000]

Take notice that on November 30, 2001, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials (1) to permit NEPOOL to expand its membership to include Mohawk River Funding III, L.L.C. (Mohawk); and (2) to terminate the membership of IRATE, Inc (IRATE). The Participants Committee requests an effective date of February 1, 2002 for commencement of participation in NEPOOL by Mohawk and December 1, 2001 for the termination of IRATE.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**11. Progress Energy Inc. on behalf of Carolina Power & Light Company**

[Docket No. ER02–435–000]

Take notice that on November 29, 2001, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, Florida Power Corporation. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

CP&L requests an effective date of November 8, 2001 for this Service Agreement.

*Comment date:* December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

**12. Commonwealth Edison Company**

[Docket No. ER02–436–000]

Take notice that on November 29, 2001, Commonwealth Edison Company (ComEd) submitted for filing with the Federal Energy Regulatory Commission (Commission) a Form of Service Agreement for Short-Term Firm Point-To-Point Transmission Service and a Form of Service Agreement for Non-Firm Point-To-Point Transmission Service (Service Agreements) between ComEd and Dominion Nuclear Marketing II, Inc. (Dominion Nuclear) under the terms of ComEd's Open Access Transmission Tariff (OATT). Copies of this filing were served on Dominion Nuclear.

ComEd requests an effective date of November 1, 2001, and accordingly seeks waiver of the Commission's notice requirements.

*Comment date:* December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

**13. Wayne-White Counties**

[Docket No. ER02–437–000]

Electric Cooperative

Take notice that Wayne-White Counties Electric Cooperative (Wayne-White or Cooperative) on November 29, 2001, tendered for filing an executed Service Agreement for Firm Point-to-Point Transmission Service with Illinois Power Company. Under the Service Agreement, Wayne-White will provide firm point-to-point transmission service to Illinois Power Company under the Cooperative's Open Access Transmission Tariff. Wayne-White requests an effective date of January 1, 2002, the date service will be first provided.

A copy of the filing was served upon Illinois Power Company.

*Comment date:* December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

**14. Midwest Independent Transmission System Operator, Inc., Alliant Energy Corporate Services, Inc., et al.**

[Docket No. ER02–438–000]

Take notice that on November 30, 2001, the Midwest ISO Transmission Owners submitted their transmission loss factors that will be used in connection with the loss recovery methodology of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). The Midwest ISO Transmission Owners state that the loss factors are calculated in the same manner as those filed on April 28, 2000 in Docket No. ER98–1438–006 and approved by the Commission's Opinion No. 453, but have been revised and supplemented to reflect the significant changes in the composition of the membership of the Midwest ISO Transmission Owners since April 28, 2000.

In addition, the Midwest ISO and Midwest ISO Transmission Owners jointly submitted related changes to Attachment M of the Midwest ISO Open Access Transmission Tariff, to clarify the handling of losses for transmission transactions occurring solely within a single control area or within certain transmission zones that each will be treated as a ''control area'' for purposes of Attachment M.

The Midwest ISO and Midwest ISO Transmission Owners propose an effective date of January 1, 2002 for these tariff sheets, to ensure that loss factors that are compatible with the loss calculation methodology in the Midwest ISO tariff are effective on the same day that tariff becomes effective.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**15. Southern California Edison Company**

[Docket No. ER02–439–000]

Take notice, that on November 30, 2001, Southern California Edison Company (SCE) tendered for filing the Amended and Restated Winter Power Sales (Agreement) between SCE and PacifiCorp, which provides the terms to revise the pricing and scheduling provisions to the Winter Sale Power Agreement (Original Agreement) to take into account the changes in the market since the California Power Exchange closed and to provide for use of certain California Independent System Operator markets and/or scheduling protocols in the implementation of the Original Agreement for the delivery season beginning October 15, 2001.

SCE requests the Commission to assign an effective date October 15, 2001 to the Agreement.

Copies of this filing were served upon the Public Utilities Commission of California and PacifiCorp.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**16. Southern California Edison Company**

[Docket No. ER02–440–000]

Take notice that on November 30 , 2001, Southern California Edison Company (SCE) submitted a Letter Agreement between SCE and Whitewater Energy Corporation (Whitewater). The Letter Agreement specifies the terms and conditions under which SCE will provide pre-interconnection activities including engineering, design, and procurement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Whitewater.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**17. California Independent System Operator Corporation**

[Docket No. ER02–441–000]

Take notice that the California Independent System Operator Corporation, (ISO) on November 30, 2001, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and CalPeak Power—Panoche LLC for acceptance by the Commission.

The ISO states that this filing has been served on CalPeak Power—Panoche LLC and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective November 26, 2001.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**18. New England Power Company**

[Docket No. ER02–442–000]

Take notice that on November 30, 2001, New England Power Company (NEP) submitted Second Revised Service Agreement No. 4 (Service Agreement) between NEP and

Georgetown Municipal Light Department for network integration transmission service under NEP's open access transmission tariff—New England Power Company, FERC Electric Tariff, Second Revised Volume No. 9. This Service Agreement is an amended version of the First Revised Service Agreement that was filed on August 8, 2001, in Docket No. ER01–2802–000.

The terms of the amended agreement are identical to the terms of the original agreement, except for an address correction and a change in the agreement's expiration date. NEP requests an effective date of November 30, 2001.

NEP states that a copy of this filing has been served upon the Department of Telecommunications and Energy of the Commonwealth of Massachusetts and parties to the agreement.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**19. Duke Energy Arlington Valley, LLC**

[Docket No. ER02–443–000]

Take notice that on November 30, 2001, Duke Energy Arlington Valley, LLC (Duke Arlington Valley) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Arlington Valley seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Arlington Valley also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Arlington Valley seeks an effective date 60 days from the date of filing for its proposed rate schedules.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**20. Constellation Power Source Generation, Inc.**

[Docket No. ER02–444–000]

Take notice that on November 30, 2001, Constellation Power Source Generation, Inc. submitted for filing a First Amendment to Power Sales Agreement between Constellation Power Source Generation, Inc. and Constellation Power Source, Inc. effective November 1, 2001.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**21. Calvert Cliffs Nuclear Power Plant, Inc.**

[Docket No. ER02–445–000]

Take notice that on November 30, 2001, Calvert Cliffs Nuclear Power Plant, Inc. submitted for filing a First Amendment to Power Sales Agreement between Calvert Cliffs Nuclear Power Plant, Inc. and Constellation Power Source, Inc. effective November 1, 2001.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**22. California Independent System Operator Corporation**

[Docket No. ER02–446–000]

Take notice that on November 30, 2001, the California Independent System Operator Corporation, (ISO) tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and CalPeak Power—Panoche LLC for acceptance by the Commission.

The ISO states that this filing has been served on CalPeak Power—Panoche LLC and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective November 26, 2001.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**23. Midwest Energy, Inc.**

[Docket No. ER02–447–000]

Take Notice that on November 29, 2001, Midwest Energy, Inc. (Midwest) tendered for filing with the Federal Energy Regulatory Commission (Commission) the Transaction Service Agreement entered into between Midwest and Southwestern Public Service Company governing the sale of power under Midwest's Wholesale Service Tariff.

*Comment date:* December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

**24. Tucson Electric Power Company**

[Docket No. ER02–448–000]

Take notice that on November 29, 2001, Tucson Electric Power Company (Tucson), tendered for filing the Second Amended and Restated Wholesale Power Supply Agreement between Tucson Electric Power Company and Navajo Tribal Utility Authority dated November 1, 2001. The Second Amended and Restated Wholesale Power Supply Agreement is a result of a re-negotiation of the power supply arrangement between Tucson and the Navajo Tribal Utility Authority. Tucson has mailed a copy of the filing to the Navajo Tribal Utility Authority.

*Comment date:* December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

**25. PG&E Dispersed Generating Company, LLC**

[Docket No. ER02–449–000]

Take notice that on November 30, 2001, PG&E Dispersed Generating Company, LLC (PG&E Dispersed Gen) tendered for filing a service agreement for power sales (Service Agreement) with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) pursuant to which PG&E Dispersed Gen will sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**26. PJM Interconnection, L.L.C.**

[Docket No. ER02–450–000]

Take notice that on November 30, 2001, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed service agreement for firm point-to-point transmission service for ODEC.

Copies of this filing were served upon ODEC and the state commissions within the PJM control area.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**27. American Transmission Company LLC**

[Docket No. ER02–451–000]

Take notice that on November 30, 2001, American Transmission Company LLC (ATCLLC) tendered for filing an executed Distribution-Transmission Interconnection Agreement between ATCLLC and City of Menasha. ATCLLC requests an effective date of June 25, 2001.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**28. Exelon Generation Company, LLC**

[Docket No. ER02–452–000]

Take notice that on November 29, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and City of Rochelle under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 1.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**29. Conectiv Bethlehem, Inc.**

[Docket No. ER02–453–000]

Take notice that on November 30, 2001, Conectiv Bethlehem, Inc. (CBI), filed an application for market-based rate authority pursuant to section 205 of

the Federal Power Act. The application includes a market-based rate tariff (the Tariff). The application also includes a tolling agreement between CBI and Conectiv Energy Supply, Inc., which is a service agreement under the Tariff. Conectiv requests that the Tariff and the service agreement become effective on February 1, 2002, sixty days after the date of this filing.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**30. West Penn Power Company, Monongahela Power Company, The Potomac Edison Company, ba Allegheny Power**

[Docket No. ER02–454–000]

Take notice that on November 30, 2001, West Penn Power Company, Monongahela Power Company, and The Potomac Edison Company, all doing business as Allegheny Power filed a Network Integration Transmission Service Agreement and a Network Operating Agreement for service to Allegheny Electric Cooperative, Inc. and an unexecuted network integration transmission service agreement for service to Allegheny Electric Cooperative, Inc. Allegheny Power requests an effective date of December 1, 2001.

*Comment date:* December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

**31. Pacific Gas and Electric Company, PG&E Corporation, On Behalf of Its Subsidiaries ETrans LLC and Electric Generation LLC**

[Docket No. ES02–17–000]

Take notice that on November 30, 2001, Pacific Gas and Electric Company (PG&E) and PG&E Corporation (Parent), on behalf of its subsidiaries, ETrans LLC (ETrans) and Electric Generation LLC (Gen) (collectively, the Applicants), submitted for filing, pursuant to section 204 of the Federal Power Act, and part 34 of the Commission's regulations, an Application for the issuance of securities and the assumption of liabilities, and waiver of the Commission's competitive bidding and negotiated placement requirements under section 34.2 of the Commission's regulations, in connection with the proposed ''Plan of Reorganization under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company'' (Plan) jointly filed by PG&E and Parent with the Bankruptcy Court on September 20, 2001, as it may be amended from time-to-time.

Applicants require authority to issue long-term notes in an amount not to exceed $1.415 billion for ETrans, $2.59 billion for Gen and $5.585 billion for PG&E, as well as $345 million of long-term mortgage bonds for PG&E. Applicants also seek authority to issue short-term notes in an amount not to exceed $500 million for ETrans, $350 million for Gen and $2.0 billion for PG&E (the amount of these short-term notes, together with all long-term notes issued, also is not to exceed the amount listed above for long-term notes). Applicants further seek authority to make drawings and provide letters of credit pursuant to short-term working capital facilities in an amount not to exceed $380 million for ETrans, $180 million for Gen and $1.2 billion for PG&E. In addition, Applicants seek authority for assumptions of liabilities in an amount not to exceed $105 million for ETrans, $264 million for Gen and $401 million for PG&E. Finally, PG&E requests authority to issue up to 170 million shares of its common stock and to distribute stock purchase rights to each of its shareholders, and ETrans seeks authority to issue additional equity in an amount not to exceed $200 million.

Applicants request that the Commission's authorization be effective on the later of the date on which Applicants notify the Commission that the Bankruptcy Court has issued an order authorizing issuances of securities in connection with the Plan or the date of the Commission's order authorizing these transactions (which is requested to be issued no later than July 30, 2002) and extending for three years from the effective date of the authorization. Applicants provide pursuant to section 34.4 of the Commission's regulations historical financial statements for PG&E and projected financial statements for each of the Applicants.

*Comment date:* December 21, 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. 01–30960 Filed 12–14–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Sunshine Act; Meeting

December 12, 2001.

The following notice of meeting is published pursuant to section 3(A) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** December 19, 2001, 10:00 a.m.

**PLACE:** ROOM 2C, 888 First Street, N.E. Washington, D.C. 20426.

**STATUS:** OPEN.

**MATTERS TO BE CONSIDERED:** Agenda * Note—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Linwood A. Watson, Jr., Acting Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**78th—Meeting December 19, 2001; Regular Meeting 10 a.m. Markets, Tariffs and Rates Electric**

E–1.
DOCKET# EX02–7, 000, Transmission Constraints

E–2.
DOCKET# RM01–12, 000, Electricity Market Design and Structure

E–3.
DOCKET# ER02–162, 000, Erie Boulevard Hydropower, L.P.
OTHER#S ER00–2998, 001, Southern Company Services, Inc.

ER00–2999, 001, Southern Company Services, Inc.
ER00–3000, 000, Southern Company Services, Inc.
ER00–3001, 001, Southern Company Services, Inc.
E–4.
DOCKET# ER02–159, 000, GNE, LLC
E–5.
DOCKET# ER02–209, 000, New York Independent System Operator, Inc.
E–6.
DOCKET# ER01–2783, 000, ODEC Power Trading, Inc.
OTHER#S ER01–2783, 001, ODEC Power Trading, Inc.
E–7.
DOCKET# ER02–194, 000, New York Independent System Operator, Inc.
E–8.
DOCKET# ER01–812, 000, Geysers Power Company, LLC
OTHER#S ER01–812, 001, Geysers Power Company, LLC
E–9.
DOCKET# ER02–198, 000, Mirant Delta, LLC and Mirant Potrero, LLC
E–10.
DOCKET# ER02–185, 000, New England Power Pool
OTHER#S ER02–185, 001, New England Power Pool
E–11.
DOCKET# ER02–208, 000, Pacific Gas and Electric Company
E–12.
DOCKET# ER02–235, 000, PJM Interconnection, LLC
E–13.
DOCKET# ER02–246, 000, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company (NSTAR Companies)
E–14.
DOCKET# ER02–250, 000, California Independent System Operator Corporation
E–15.
DOCKET# ER02–240, 000, Duke Energy Oakland LLC
E–16.
DOCKET# ER02–236, 000, Geysers Power Company, LLC
E–17.
DOCKET# ER02–249, 000, ISO New England Inc.
OTHER#S ES02–7 000, ISO New England Inc.
ER02–233 000, ISO New England Inc.
E–18.
DOCKET# ER02–40, 000, Attala Generating Company, LLC
OTHER#S ER02–40, 001, Attala Generating Company, LLC
E–19.
DOCKET# ER02–269, 000, Mill Run Windpower, LLC
OTHER#S ER00–2998, 001, Southern Company Services, Inc.
ER00–2999, 001, Southern Company Services, Inc.
ER00–3000, 001, Southern Company Services, Inc.
ER00–3001, 001, Southern Company Services, Inc.
E–20.
DOCKET# ER02–270, 000, Somerset Windpower, LLC
OTHER#S ER00–2998, 001, Southern Company Services, Inc.
ER00–2999 001, Southern Company Services, Inc.
ER00–3000, 001, Southern Company Services, Inc.
ER00–3001, 001, Southern Company Services, Inc.
E–21.
DOCKET# ER02–275 000, Wisconsin Electric Power Company
OTHER#S ER02–285, 000, American Transmission Company, LLC
ER02–288, 000, Madison Gas and Electric Company
ER02–291, 000, Wisconsin Public Service Corporation
ER02–291, 001, Wisconsin Public Service Corporation
ER02–299, 000, Wisconsin Power and Light Company
E–22.
DOCKET# ER02–305, 000, Condon Wind Power, LLC
OTHER#S ER00–2998, 001, Southern Company Services, Inc.
ER00–2999, 001, Southern Company Services, Inc.
ER00–3000, 001, Southern Company Services, Inc.
ER00–3001, 001, Southern Company Services, Inc.
E–23.
DOCKET# RM02–1, 000, Standardizing Generator Interconnection Agreement and Procedures
E–24.
DOCKET# ER99–3144, 000, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation On behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
OTHER#S EC99–80, 000, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
EC99–80, 001, Alliance Companies, Ameren Cor-Poration, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
EC99–80, 002, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
EC99–80, 003, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
EC99–80, 004, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
EC99–80, 005, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
EC99–80, 006, Alliance Companies, Ameren Corporation, Union Electric

Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

EC99–80, 007, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

EC99–80, 008, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

EC99–80, 009, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

EC99–80, 010, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

EC99–80, 011, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

EC99–80, 012, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

EC99–80, 014, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 001, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 002, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 003, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 004, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 005, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 006, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 007, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus

Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 008, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 009, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 010, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 011, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 012, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER99–3144, 014, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

RT01–26, 000, Northern Indiana Public Service Company

RT01–37, 000, The Dayton Power and Light Company

RT01–84, 000, Illinois Power Company

RT01–84, 001, Illinois Power Company

RT01–88, 000, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

RT01–88, 001, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

RT01–88, 002, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

RT01–88, 003, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

RT01–88, 004, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

RT01–88, 006, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

RT01–88, 007, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

RT01–88, 008, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power

Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

RT01–88, 009, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

RT01–88, 010, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

RT01–88, 011, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company

ER01–123, 000, Illinois Power Company

ER01–123, 001, Illinois Power Company

ER01–123, 002, Illinois Power Company

ER01–123, 003, Illinois Power Company

ER01–123, 004, Illinois Power Company

ER01–2992, 000, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., First Energy Corporation on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Company

ER01–2993, 000, Virginia Electric and Power Company

ER01–2995, 000, American Electric Power Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company

ER01–2997, 000, The Dayton Power and Light Company

ER01–2999, 000, Illinois Power Company

RT01–37, 001, The Dayton Power and Light Company

RT01–26, 001, Northern Indiana Public Service Company

E–25.

DOCKET# ER01–1152, 000, PacifiCorp

OTHER#S ER01–1152, 001, PacifiCorp

ER01–1152, 002, PacifiCorp

ER01–1152, 003, PacifiCorp

E–26.

DOCKET# ER01–1938, 000, Southern Indiana Gas & Electric Company

E–27.

DOCKET# ER01–2566, 000, Public Service Company of New Mexico

OTHER#S ER01–2566, 001, Public Service Company of New Mexico

ER01–2566, 002, Public Service Company of New Mexico

ER01–2566, 003, Public Service Company of New Mexico

E–28.

DOCKET# ER01–2754, 000, Nevada Power Company

OTHER#S ER01–2754, 001, Nevada Power Company

ER01–2755, 000, Nevada Power Company

ER01–2755, 001, Nevada Power Company

ER01–2757, 000, Sierra Pacific Power Company and Nevada Power Company

ER01–2757, 001, Sierra Pacific Power Company and Nevada Power Company

ER01–2758, 000, Sierra Pacific Power Company and Nevada Power Company

ER01–2758, 001, Sierra Pacific Power Company and Nevada Power Company

ER01–2759, 000, Sierra Pacific Power Company and Nevada Power Company

ER01–2759, 001, Sierra Pacific Power Company and Nevada Power Company

E–29.

DOCKET# ER01–3000, 000, International Transmission Company

OTHER#S RT01–101, 000, International Transmission Company

EC01–146, 000, DTE Energy Company

E–30.

DOCKET# ER01–3066, 000, Southern Power Company

OTHER#S ER01–3067, 000, Southern Power Company

ER00–2998, 001, Southern Company Services, Inc.

ER00–2999, 001, Southern Company Services, Inc.

ER00–3000, 001, Southern Company Services, Inc.

ER00–3001, 001, Southern Company Services, Inc.

E–31.

DOCKET# ER02–42, 000, GWF Energy LLC

OTHER#S ER00–2998, 001, Southern Company Services, Inc.

ER00–2999, 001, Southern Company Services, Inc.

ER00–3000, 001, Southern Company Services, Inc.

ER00–3001, 001, Southern Company Services, Inc.

E–32.

DOCKET# ER02–22, 000, Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP and Troy Energy, LLC.

OTHER#S ER02–23, 000, Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP and Troy Energy, LLC.

ER02–24, 000, Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP and Troy Energy, LLC.

ER02–25, 000, Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP and Troy Energy, LLC.

ER02–300, 000, Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP and Troy Energy, LLC.

ER02–301, 000, Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP and Troy Energy, LLC.

E–33.

OMITTED

E–34.

DOCKET# RT01–87, 000, Midwest Independent Transmission System Operator, Inc.

OTHER#S RT01–87, 001, Midwest Independent Transmission System Operator, Inc.

ER02–106, 000, Midwest Independent Transmission System Operator, Inc.

ER02–108, 000, Midwest Independent Transmission System Operator, Inc.

E–35. DOCKET# EL00–95, 034, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange

OTHER#S EL00–95, 008, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange

EL00–95, 040, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange

EL00–98, 009, Investigation of Practices of the California Independent System Operator and the California Power Exchange

EL00–98, 033, Investigation of Practices of the California Independent System Operator and the California Power Exchange

EL00–98, 038, Investigation of Practices of the California Independent System Operator and the California Power Exchange

E–36.

DOCKET# EL01–111, 000, California Independent System Operator Corporation

E–37.

DOCKET# EL00–95, 025, San Diego Gas & Electric Company v. Sellers of Energy

and Ancillary Service into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
OTHER#S EL00–95, 022, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
EL00–95, 023, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
EL00–95, 024, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 021, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 022, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 023, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 024, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange

E–38.
DOCKET# ER98–3813, 007, DukeSolutions, Inc.

E–39.
DOCKET# OA96–161, 000, Puget Sound Energy, Inc.
OTHER#S ER96–697, 000, Puget Sound Energy, Inc.
ER96–697, 001, Puget Sound Energy, Inc.
ER96–1456, 000, Puget Sound Energy, Inc.
ER96–1456, 001, Puget Sound Energy, Inc.
ER97–4468, 000, Puget Sound Energy, Inc.

E–40.
DOCKET# EC02–2, 000, Commonwealth Atlantic Limited Partnership, and Commonwealth Atlantic Power, LLC
OTHER#S ER90–24, 002, Commonwealth Atlantic Limited Partnership, and Commonwealth Atlantic Power, LLC
ER91–215, 001, Commonwealth Atlantic Limited Partnership, and Commonwealth Atlantic Power, LLC

E–41.
DOCKET# EC01–137, 000, DTE Energy Company and International Transmission Company

E–42.
DOCKET# EC02–7, 000, Rockland Electric Company and PJM Interconnection, L.L.C.
OTHER#S ER02–109, 000, Rockland Electric Company and PJM Interconnection, L.L.C.

E–43. DOCKET# EC02–20, 000, Green Country Energy, LLC
OTHER#S EL02–17, 000, Green Country Energy, LLC

E–44.
OMITTED

E–45.
DOCKET# EL00–95, 048, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
OTHER#S EL00–95, 049, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange

E–46.
DOCKET# EG02–13, 000, Cinergy Power Investments, Inc.

E–47.
DOCKET# EL01–68, 000, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

E–48.
DOCKET# EL00–95, 045, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
OTHER#S
EL00–98, 042, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL01–36, 000. Coral Power, L.L.C., Enron Power Marketing, Inc., Arizona Public Service Company, Cargill Alliant, LLC, San Diego Gas & Electric Company, Avista Energy, Inc., Sempra Energy Trading Corporation, PacifiCorp and Constellation Power Source v. California Power Exchange Corporation
EL01–37, 000, Salt River Project Agricultural Improvement and Power District and Sacramento Municipal Utility District v. California Power Exchange Corporation
EL01–43, 000, Public Service Company of New Mexico v. California Power Exchange Corporation

E–49.
DOCKET# ER01–1136 004 Ameren Services Company

E–50.
DOCKET# ER01–1639, 003, Pacific Gas & Electric Company

E–51.
DOCKET# ER02–139, 000, Florida Power & Light Company

E–52. OMITTED

E–53.
DOCKET# EL01–7, 000, Pacific Gas and Electric Company v. Sunnyside Cogeneration Partners, L.P. RW Monterey, Inc., Ridgewood Electric Power Trust II and Ridgewood Power LLC
OTHER#S QF91–50, 000, Pacific Gas and Electric Company v. Sunnyside Cogeneration Partners, L.P. RW Monterey, Inc., Ridgewood Electric Power Trust II and Ridgewood Power LLC

E–54.
DOCKET# EL01–80 001 National Grid USA
OTHER#S EC99–80, 013 Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
EC99–80, 015, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
ER99–3144, 013, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
RT01–88, 005, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
RT01–88, 012, Alliance Companies, Ameren Corporation, Union Electric Company, Central Illinois Public Service Company, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison

Company and International Transmission Company
ER01–2995, 000, American Electric Power Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company
ER01–2992, 000, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., First Energy Corporation on behalf of: American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Company
ER01–2993, 000, Virginia Electric and Power Company
RT01–26, 000, Northern Indiana Public Service Company
RT01–37, 000, The Dayton Power and Light Company
RT01–84, 000, Illinois Power Company
ER01–123, 000, Illinois Power Company
ER01–2999, 000, Illinois Power Company

E–55.
DOCKET# EL02–22, 000, Allegheny Energy Supply Company, LLC

E–56.
DOCKET# EL00–99, 000, Maine Public Utilities Commission, United Illuminating Company and Bangor Hydro-Electric Company v. ISO New England, Inc.
OTHER#S EL00–100, 000, Maine Public Utilities Commission, United Illuminating Company and Bangor Hydro-Electric Company v. ISO New England, Inc.
EL00–112, 000, Maine Public Utilities Commission, United Illuminating Company and Bangor Hydro-Electric Company v. ISO New England, Inc.

E–57.
DOCKET# EL00–79 000 Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc. and Taylor Electric Cooperative, Inc. v. West Texas Utilities Company

E–58.
DOCKET# EL01–86, 000, Indeck Maine Energy, L.L.C. v. ISO New England Inc.

E–59.
DOCKET# EL01–92, 000, Bangor Hydro-Electric Company v. ISO New England Inc.

E–60.
DOCKET# EL01–106, 000, Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C.

E–61.
DOCKET# EL01–40, 000, Tucson Electric Power Company

E–62.
DOCKET# ER99–3426, 002, San Diego Gas & Electric Company

E–63.
DOCKET# ER99–4392, 001, Southwest Power Pool, Inc.

E–64.
DOCKET# ER00–1969, 002, New York Independent System Operator, Inc.
OTHER#S ER00–1969, 003 New York Independent System Operator, Inc.
EL00–57, 001 Niagara Mohawk Power Corporation v. New York Independent System Operator, Inc.
EL00–57, 002 Niagara Mohawk Power Corporation v. New York Independent System Operator, Inc.
EL00–60, 001, Orion Power New York GP, Inc. v. New York Independent System Operator, Inc.
EL00–60, 002, Orion Power New York GP, Inc. v. New York Independent System Operator, Inc.
EL00–63, 000, New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
EL00–63, 002, New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
EL00–64, 000, Rochester Gas and Electric Corporation v. New York Independent System Operator, Inc.
EL00–64, 002, Rochester Gas and Electric Corporation v. New York Independent System Operator, Inc.

E–65.
DOCKET# EL00–95, 001, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange
OTHER#S EL00–95, 004, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 005, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 006, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 007, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 010, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 011, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 019, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 039, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 046, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 047, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–97, 001, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc. and Southern Energy California, L.L.C. v. California Independent System Operator Corporation
EL00–98, 001, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 004, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 005, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 006, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 008, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 010, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 011, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 018, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 037, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 043, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 044, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–104, 001, California Electricity Oversight Board v. All Sellers of Energy and Ancillary Services into the Energy and Ancillary Services Markets Operated

by the California Independent System Operator and the California Power Exchange
EL00–107, 002, Public Meeting in San Diego, California
ER00–3461, 001, California Power Exchange Corporation
ER00–3673, 001, California Independent System Operator
EL01–1, 001, California Municipal Utilities Association v. All Jurisdictional Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange
EL01–2, 001, Californians for Renewable Energy, Inc. v. Independent Energy Producers, Inc. and All Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on behalf of the Above Sellers; California Independent System Operator Corporation and California Power Exchange Corporation
EL01–10, 001, Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, including Parties to the Western Systems Power Pool Agreement
EL01–34, 000, Southern California Edison Company and Pacific Gas and Electric Company
EL01–34, 001, Southern California Edison Company and Pacific Gas and Electric Company
EL01–68, 002, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
EL01–68, 008, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
RT01–85, 002, California Independent System Operator Corporation
RT01–85, 005, California Independent System Operator Corporation
ER01–607, 000, California Independent System Operator Corporation
ER01–607, 001, California Independent System Operator Corporation
ER01–1444, 001, Arizona Public Service Company
ER01–1445, 001, Automated Power Exchange, Inc.
ER01–1446, 001, Avista Energy, Inc.
ER01–1447, 001, California Power Exchange Corporation
ER01–1448, 002, Duke Energy Trading and Marketing, LLC
ER01–1449, 002, Dynegy Power Marketing, Inc.
ER01–1450, 001, Nevada Power Company
ER01–1451, 002, Portland General Electric Company
ER01–1452, 001, Public Service Company of Colorado
ER01–1453, 001, Reliant Energy Services, Inc.
ER01–1454, 002, Sempra Energy Trading Corporation
ER01–1455, 002, Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC
ER01–1456, 002, Williams Energy Services Corporation
ER01–1579, 001, California Independent System Operator Corporation
E–66.
DOCKET# ER01–2536, 002, New York Independent System Operator, Inc.
E–67.
DOCKET# ER01–312, 002, Alliant Energy Corporate Services, Inc.
E–68.
DOCKET# EL01–104, 001, Dynegy Power Marketing, Inc. v. Southwest Power Pool, Inc.
E–69.
DOCKET# EL00–62, 038, ISO New England Inc.
E–70.
DOCKET# EL01–93, 002, Mirant Americas Energy Marketing, L.P., Mirant New England, LLC, Mirant Kendall, LLC and Mirant, LLC v. ISO New England Inc.
E–71.
DOCKET# RM00–1, 000, Electronic Filing of FERC Form No. 423
E–72.
DOCKET# RM01–8, 000, Revised Public Utility Filing Requirements
E–73.
DOCKET# OA02–1, 000, Central Maine Power Company
E–74.
DOCKET# OA02–2, 000, Maine Electric Power Company, Inc.
E–75.
DOCKET# ER02–207, 000, Exelon Generation Company, LLC and Exelon Energy Company
OTHER#S ER00–2998 001 Southern Company Services, Inc.
ER00–2999, 001, Southern Company Services, Inc.
ER00–3000, 001, Southern Company Services, Inc.
ER00–3001, 001, Southern Company Services, Inc.
E–76.
DOCKET# EG02–14, 000, Nine Mile Point Nuclear Station, LLC
E–77.
DOCKET# EL01–122, 000, PJM Interconnection L.L.C.
OTHER#S IN01–7, 000, Exelon Corporation, PECO Energy Company, Exelon Generation Company, L.L.C. and Exelon Power Team
E–78.
DOCKET# EL01–73, 001 Northeast Texas Electric Cooperation, Inc., Rusk County Electric Cooperative, Inc., Upshur-Rural Electric Cooperative, Inc. and Wood County Electric Cooperative, Inc.
E–79.
DOCKET# ER01–2413, 001, American Electric Power Service Corporation

## Miscellaneous Agenda

M–1.
DOCKET# RM02–3, 000, Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities
M–2.
DOCKET# RM02–5, 000, Amendment to Rules Governing Off-the-Record Communications

## Markets, Tariffs and Rates—Gas Agenda

G–1.
DOCKET# RP00–328, 001, Algonquin LNG, Inc.
G–2.
DOCKET# RP01–169, 000, Northern Natural Gas Company
OTHER#S RP01–169, 001, Northern Natural Gas Company
G–3.
DOCKET# PR01–9, 000, Cranberry Pipeline Corporation
G–4.
DOCKET# RP00–395, 002, Panhandle Eastern Pipe Line Company
OTHER#S RP96–348, 010, Panhandle Eastern Pipe Line Company
RP00–613, 000, Panhandle Eastern Pipe Line Company
G–5.
DOCKET# RP00–332, 000, ANR Pipeline Company
OTHER#S RP00–597, 001, ANR Pipeline Company
RP00–332, 001, ANR Pipeline Company
RP00–597, 001, ANR Pipeline Company
G–6.
OMITTED
G–7.
DOCKET# RP00–406, 000, Great Lakes Gas Transport, L.L.C.
OTHER#S RP01–53, 001, Great Lakes Gas Transport, L.L.C.
G–8.
DOCKET# RP01–172, 003, Mojave Pipeline Company
G–9.
DOCKET# PR01–5, 000, Magic Valley Pipeline, L.P.
G–10.
DOCKET# PR01–7, 000, Transok, LLC
G–11.
DOCKET# RP01–262, 001, Columbia Gas Transmission Corporation
OTHER#S RP01–262, 002, Columbia Gas Transmission Corporation
G–12.
DOCKET# RP01–245, 005, Transcontinental Gas Pipe Line Corporation
G–13.
DOCKET# RP00–325, 006, Colorado Interstate Gas Company
OTHER#S RP01–38, 003, Colorado Interstate Gas Company
G–14.
DOCKET# RM96–1, 020, Standards for Business Practices of Interstate Natural Gas Pipelines
G–15.
DOCKET# RP00–241, 000, Public Utilities Commission of the State of California v. El Paso Natural Gas Company, El Paso Merchant Energy-Gas, L.P. and El Paso Merchant Energy Company
G–16.
DOCKET# RP00–390, 003, Granite State Gas Transmission, Inc.
OTHER#S RP00–390, 002, Granite State Gas Transmission, Inc.
G–17.
DOCKET# RP01–278, 003, Texas Gas Transmission Corporation

OTHER#S RP01–278, 002, Texas Gas Transmission Corporation

**Energy Projects—Hydro**

H–1.
DOCKET# P–11393, 009, City of Saxman, Alaska
H–2.
DOCKET# P–2069, 006, Arizona Public Service Company
H–3.
DOCKET# P–2342, 012, PacifiCorp
H–4.
DOCKET# P–137, 030, Pacific Gas and Electric Company
H–5.
DOCKET# P–2114, 102, Public Utility District No. 2 of Grant County, Washington

**Energy Projects—Certificates**

C–1.
DOCKET# CP01–4, 000, Maritimes & Northeast Pipeline, L.L.C.
OTHER#S CP01–5, 000, Algonquin Gas Transmission Company
CP01–5 001 Algonquin Gas Transmission Company
C–2.
DOCKET# CP01–87, 000, Dominion Transmission, Inc.
OTHER#S CP01–87, 002, Dominion Transmission, Inc.
C–3.
DOCKET# CP01–384, 000, Islander East Pipeline Company, L.L.C.
OTHER#S CP01–387, 000, Algonquin Gas Transmission Company
CP01–385, 000, Islander East Pipeline Company, L.L.C.
CP01–386, 000, Islander East Pipeline Company, L.L.C.
C–4.
DOCKET# CP01–406, 000, Transok, LLC
OTHER#S CP01–407, 000, Ozark Gas Transmission, L.L.C.
C–5.
DOCKET# CP01–375, 000, East Tennessee Natural Gas Company
C–6.
DOCKET# CP98–150, 000, Millennium Pipeline Company, L.P.
OTHER#S CP98–150, 002, Millennium Pipeline Company, L.P.
CP98–154, 000, Millennium Pipeline Company, L.P.
CP98–155, 000, Millennium Pipeline Company, L.P.
CP98–156, 000, Millennium Pipeline Company, L.P.
CP98–151, 000, Columbia Gas Transmission Corporation
C–7.
DOCKET# CP01–376, 000, Intermountain Municipal Gas Agency v. Questar Gas Company
C–8.
OMITTED
C–9.
DOCKET# CP01–103, 001, Transcontinental Gas Pipe Line Corporation
OTHER#S CP01–104, 001, Williams Gas Processing-Gulf Coast Company, L.P.
C–10.
DOCKET# CP01–368, 001, Transcontinental Gas Pipe Line Corporation
OTHER#S RP01–245, 004, Transcontinental Gas Pipe Line Corporation
CP01–369, 000, Williams Gas Processing-Gulf Coast Company, L.P.
C–11.
DOCKET# CP01–34, 002, Transcontinental Gas Pipe Line Corporation
OTHER#S CP01–32, 001, Williams Gas Processing-Gulf Coast Company, L.P.
C–12.
DOCKET# CP01–76, 001, Cove Point LNG Limited Partnership
OTHER#S CP01–156, 001, Cove Point LNG Limited Partnership
CP01–77, 001, Cove Point LNG Limited Partnership
RP01–217, 001, Cove Point LNG Limited Partnership
C–13.
DOCKET# CP97–315, 006, Independence Pipeline Company
OTHER#S CP97–319, 004, ANR Pipeline Company
C–14.
DOCKET# CP00–232, 000, Iroquois Gas Transmission System, L.P.
OTHER#S CP00–232, 001, Iroquois Gas Transmission System, L.P.
CP00–232, 002, Iroquois Gas Transmission System, L.P.

**Administrative Agenda**

A–1.
DOCKET# AD02–1, 000, Agency Administrative Matters
A–2.
DOCKET# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–31059 Filed 12–13–01; 10:13 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7118–8]**

## State Program Requirements; Revision of the Approved National Pollutant Discharge Elimination System (NPDES) Program in South Dakota

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

**ACTION:** Notice; Approval of revision of the South Dakota NPDES Program under the Clean Water Act.

**SUMMARY:** On October 22, 2001, the Acting Regional Administrator for Region VIII of the Environmental Protection Agency (EPA) approved a revision to the existing South Dakota Pollutant Discharge Elimination System program. With this revision, the State of South Dakota is now authorized to administer and enforce a sludge management (biosolids) program where the State has jurisdiction. This program will be administered by the South Dakota Department of Environment and Natural Resources (SDDENR).

**FOR FURTHER INFORMATION CONTACT:** Bob Brobst, Water Permits Team (8P–W–P), US EPA, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; telephone number (303) 312–6129; email address *brobst.bob@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under Section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, the EPA may issue permits allowing discharges of pollutants from point sources into waters of the United States, subject to various requirements of the CWA. These permits are known as National Pollutant Discharge Elimination System (NPDES) permits. Section 402(b) of the CWA, 33 U.S.C. 1342(b), allows states to apply to the EPA for authorization to administer their own NPDES permit programs. In 1993, South Dakota applied to the EPA for authority to administer the South Dakota Pollutant Discharge Elimination System (SDPDES) program. The EPA approved South Dakota's application on December 30, 1993, as described in a January 11, 1994 **Federal Register** notice (59 FR 1535).

Section 405 of the CWA, 33 U.S.C. 1345, authorizes the EPA to issue permits for the disposal of sewage sludge. Section 405(c) of the CWA, 33 U.S.C. 1345(c), authorizes any state desiring to administer its own permit program for the sludge disposal to do so in accordance with Section 402 of the CWA. On August 12, 1998, South Dakota submitted such an application to the EPA, requesting that the State's original NPDES authorization be amended to include a state sludge management program described in an accompanying proposal dated March 23, 1998.

The EPA, having found that South Dakota's application meets all pertinent requirements in the CWA and the EPA's regulations, particularly 40 CFR parts 123 and 501, has approved South Dakota's application for primary authority to administer a sludge management program.

### II. Public Comments

The EPA provided two periods for any interested member of the public to comment on this application. No comments were received.

Initially, the EPA described this application in a **Federal Register** notice dated October 5, 2000 (65 FR 59385), in notices published in the Rapid City Journal and the Sioux Falls Argus-Leader on October 20, 2000, and in individual mailings to persons known to be interested in such matters. In the October 5, 2000 **Federal Register** notice, the EPA stated it would consider any comments received on or before November 20, 2000. In a second **Federal Register** notice, which was dated January 18, 2001, the EPA extended the public comment period to March 5, 2001, because the first **Federal Register** notice had omitted mention of the fact that a public hearing could be requested on the application. No public hearing was requested, and none was held.

## III. Threatened and Endangered Species

On June 29, 2000, following discussions with representatives of the EPA, the Field Supervisor of the South Dakota Field Office of the United States Fish and Wildlife Service concurred with the EPA's determination that approving South Dakota's biosolids program application was unlikely either to jeopardize the continued existence of any species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, or to result in the adverse modification of any designated critical habitat for any such species.

## IV. Historic Preservation

On November 5, 1999, the South Dakota State Historical Society provided the EPA with a written determination that the addition of the biosolids program to the SDPDES program would have no effect on historic properties in South Dakota.

## V. Indian Country

South Dakota is not authorized to carry out its biosolids program in Indian Country, as defined in 18 U.S.C. 1151. This includes, but is not limited to: Lands within the exterior boundaries of the following Indian reservations located within the State of South Dakota:

A. Cheyenne River Indian Reservation,

B. Crow Creek Indian Reservation,

C. Flandreau Indian Reservation,

D. Lower Brule Indian Reservation,

E. Pine Ridge Indian Reservation,

F. Rosebud Indian Reservation,

G. Standing Rock Indian Reservation, and

H. Yankton Indian Reservation.

## VI. Administrative Requirements

The EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication, not a rulemaking. This is because an ''approval,'' as that term is used in the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, constitutes a ''license,'' which, in turn, is the product of an ''adjudication.'' Therefore, the requirements for rules that are established by the statutes and Executive Orders mentioned below would not apply to this action. Even if this action were considered a rulemaking, the statutes and Executive Orders discussed below would not apply for the following reasons.

### *A. Paperwork Reduction Act*

The EPA has determined that there is no need for an Information Collection Request under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this action would not impose any new federal reporting or record-keeping requirements. Because the State of South Dakota has adopted the EPA's sludge management regulation at 40 CFR part 503 by reference, the matters subject to reporting and record-keeping requirements will remain the same after the EPA's approval of South Dakota's program.

### *B. Regulatory Flexibility Act*

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

As Acting Regional Administrator for EPA Region VIII, I hereby certify, pursuant to 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

### *C. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA is generally required to prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The EPA's approval of South Dakota's program is not a ''Federal mandate,'' because there is no federal mandate for states to establish sludge management programs.

### *D. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, *e.g.,* material specifications, test methods, sampling procedures, and business practices, that are developed or adopted by voluntary consensus standards bodies. This action does not involve the use of technical standards subject to the NTTAA.

### *E. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether its regulatory actions are ''significant'' and therefore subject to review by the OMB. The EPA has determined that this approval action is not ''significant'' for purposes of Executive Order 12866 because, as mentioned above, South Dakota has adopted the EPA's sludge management regulations.

### *F. Executive Order No. 12898—Environmental Justice*

Executive Order No. 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' dated February 11, 1994, focuses federal attention on the environmental and human health conditions of minority populations and low-income populations with the goal of achieving environmental protection for all communities. Today's action will not diminish the health protection to minority and low-income populations because, as mentioned above, it will not impose any different requirements than those already in effect for sludge management facilities.

### *G. Executive Order No. 13045—Protection of Children*

Executive Order No. 13045, dated April 23, 1997 (62 FR 19885), applies to any rule that (1) is determined to be ''economically significant'' as defined in Executive Order No. 12866, and (2)

concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. This action is not subject to Executive Order No. 13045 because it is not economically significant as defined in Executive Order No. 12866.

*H. Executive Order No. 13175—Consultation with Tribes*

Under Executive Order No. 13175, no federal agency may issue a regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or the agency consults with tribal officials early in the process of developing the proposed regulation. This action will not significantly affect any Indian tribe. As indicated above, South Dakota is not authorized to implement its sludge management program in Indian Country. The EPA will continue to administer the existing sludge management program in Indian Country in South Dakota.

*I. Executive Order No. 13132—Federalism*

Executive Order No. 13132, entitled ''Federalism,'' dated August 10, 1999 (64 FR 43255), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The phrase ''policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government.'' This action does not have federalism implications. It will not have any substantial direct effects on the States, on the relationship between States and the national government, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order No. 13132. It will merely put in place a State regulatory program that is identical to the existing federal program.

*J. Executive Order No. 13211—Energy Effects*

Because it is not a ''significant regulatory action'' under Executive Order No. 12866, this action is not subject to Executive Order No. 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001).

Dated: December 4, 2001.

**Kerrigan Clough,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 01–31011 Filed 12–14–01; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1396–DR]**

## Puerto Rico; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–1396–DR), dated November 28, 2001, and related determinations.

**EFFECTIVE DATE:** November 28, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated November 28, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico, resulting from severe storms, flooding, mudslides and landslides on November 7, 2001, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Justo Hernández of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Puerto Rico to have been affected adversely by this declared major disaster:

Barranquitas, Bayamón, Ciales, Corozal, Jayuya, Juncos, Morovis, Naranjito, San Lorenzo, and Utuado Municipalities for Public Assistance.

All municipalities within the Commonwealth of Puerto Rico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 01–31021 Filed 12–14–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1396–DR]**

## Puerto Rico; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA–1396–DR), dated November 28, 2001, and related determinations.

**EFFECTIVE DATE:** November 29, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for

this disaster is closed effective November 9, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 01–31022 Filed 12–14–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Correction

In the **Federal Register** Notice published November 15, 2001 (66 FR 57467–57468), Notice of Ocean Transportation Intermediary License Revocations, incorrectly noticed revocation of license number 2581F, issued to Unitrans International Corporation of Inglewood, CA 90301. The notice is corrected to read:

*License Number:* 2581F.

*Name:* Unitrans International Corporation (S.F.).

*Address:* 461 Littlefield Ave., South San Francisco, CA 94080.

*Date Revoked:* July 30, 2001.

*Reason:* Surrendered License Voluntarily.

Licensee Unitrans International Corporation, License Number 1989F, address 709 S. Hindry Avenue, Inglewood, CA 90301 remains duly licensed by the Federal Maritime Commission with a branch office located at 461 Littlefield Avenue, South San Francisco, CA 94080.

Dated: December 11, 2001.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 01–30942 Filed 12–14–01; 8:45 am]

BILLING CODE 6730–01–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 January 10, 2002.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Mercantile Bancorp, Inc.,* Quincy, Illinois; to acquire 9 percent of the voting shares of NorthStar Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire voting shares of NorthStar Bank, N.A., Kansas City, Missouri.

**B. Federal Reserve Bank of Kansas City** (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Buerge Bancshares, Inc.,* Joplin, Missouri; to acquire 100 percent of the voting shares of Grand Lake Bancorp, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Grand Lake Bank, Tulsa, Oklahoma, and Sarcoxie Bancorp, Inc., Joplin, Missouri, and thereby indirectly acquire voting shares of Sarcoxie National Bank of Sarcoxie, Sarcoxie, Missouri.

Board of Governors of the Federal Reserve System.

Dated: December 11, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 01–30962 Filed 12–14–01; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–02–17]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

*Proposed Project:* Childhood Lead Poisoning Prevention Programs OMB No. 0920–0282—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC). Lead poisoning is the most common and societally devastating environmental disease of young children in the United States. The adverse health effects of lead on young children can be profound. Severe lead exposure can cause coma, convulsions, and even death. Lower levels of lead, which rarely cause symptoms, can result in decreased intelligence, developmental disabilities, behavioral

disturbances, and disorders of blood production. In 1992, CDC National Center for Environmental Health (NCEH) began the National Childhood Lead Surveillance Program. The goals of the childhood lead surveillance program are to (1) establish childhood lead surveillance systems at the state and national levels; (2) use surveillance data to estimate the extent of elevated blood-lead levels among children; (3) assess the follow-up of children with elevated blood-lead levels; (4) examine potential sources of lead exposure; and (5) help allocate resources for lead poisoning prevention activities. In 2001, CDC awarded 60 grants and cooperative agreements to fund childhood lead poisoning prevention programs. The quarterly report is designed to collect blood lead screening and test confirmation data from CDC-funded programs. The quarterly report consists of four data tables requiring the following information: (1) The number of children screened by age and Medicaid enrollment status; (2) The number of children screened and confirmed by blood lead level; (3) The number of children screened by ethnicity; and (4) The number of children screened by race. OMB approval for this package will expire on January 31, 2002. This request is for a 3-year revision with a change in the burden hours. There is no cost to respondents.

| Type of respondents | Number of respondents | Number of responses/ respondent | Average burden/response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|
| State and Local Grant and Cooperative Agreement Programs | 60 | 4 | 2 | 480 |
| Total | | | | 480 |

Dated: December 7, 2001.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation Centers for Disease, Control and Prevention.*

[FR Doc. 01–30949 Filed 12–14–01; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–02–18]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090. CDC is requesting an emergency clearance for this data collection and that OMB act on this package 3 weeks after the publication of this **Federal Register** Notice.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice.

*Proposed Project:* Program Evaluation of the Distribution of Antimicrobial Agents to Prevent Anthrax, Assessment of Adverse Events and Adherence—New—National Center for Infectious Disease (NCID), Centers for Disease Control and Prevention. A 60-day course of antimicrobial prophylaxis has been recommended for approximately 7,500 persons with exposures to Bacillus anthracis related to bioterrorist attacks. To provide the antimicrobial agents necessary to meet this need, the National Pharmaceutical Stockpile (NPS) and the Centers for Disease Control and Prevention (CDC) has continued to support state and local health departments in responding to a nationwide public health emergency. This support has consisted of both the provision of additional antimicrobial agents as well as technical assistance from CDC to ensure effective transfer and distribution of supplies and medications, assess ongoing needs, and assist in management of other issues arising from the distribution of stockpile materials.

In order to evaluate this program, a telephone interview will be administered to persons who were recommended to receive 60 days of antibiotics after potential exposure to anthrax. The purpose of this interview will be to assess the provision of stockpile medications at 60 days after initiation of prophylactic campaigns for inhalation anthrax, assess the number of antibiotic-related adverse events, and determine the adherence to antimicrobial regimens. Results of this evaluation will be an important tool to determine the level and characteristics of technical assistance that the NPS and CDC will need to provide with any future anthrax post-exposure prophylaxis campaigns. This systematic approach to evaluation of an essential organization practice in public health will be used to improve public health actions. There is no cost to the respondent.

| Respondents | Number of respondents | Number of responses/ respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| Telephone interview | 7,500 | 1 | 5/60 | 625 |
| Total | | | | 625 |

Dated: December 10, 2001.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control, and Prevention.*

[FR Doc. 01–30950 Filed 12–14–01; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01N–0174]**

### Agency Information Collection Activities; Announcement of OMB Approval; FDA Recall Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''FDA Recall Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 17, 2001 (66 FR 43263), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0249. The approval expires on October 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 7, 2001.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 01–30938 Filed 12–14–01; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Programs

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice of availability of funds for Health Professions Preparatory, Pregraduate, and Indian Health Professions Scholarship Programs for Fiscal Year (FY) 2002.

**SUMMARY:** The Indian Health Service (IHS) is publishing a Notice of Availability of Funds for Health Professions Preparatory, Pregraduate, and Indian Health Professions Scholarship Programs for Fiscal Year (FY) 2002.

The IHS announces the availability of approximately $3,750,800 to fund scholarships for the Health Professions Preparatory and Pregraduate Scholarship Programs for FY 2002 awards. These programs are authorized by section 103 of the Indian Health Care Improvement Act (IHCIA), Pub. L. 94–437, as amended by Pub. L. 100–713, Pub. L. 102–573, and Pub. L. 104–313.

The Indian Health Scholarship (Professions), authorized by section 104 of the IHCIA, Pub. L. 94–437, as amended by Pub. L. 100–713, by Pub. L. 102–573, and by Pub. L. 104–313 has approximately $8,215,500 available for FY 2002 awards.

Full-time and part-time scholarships will be funded for each of the three scholarship programs.

The Indian Health Professions Preparatory Scholarship is listed as No. 93.123 in the Office of Management and Budget *Catalog of Federal Domestic Assistance* (CFDA). The Health Professions Pregraduate Scholarship is listed as No. 93.971, and the Indian Health Scholarship (Professions) is listed as No. 93.972 in the CFDA.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010,* a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may obtain a copy of *Health People 2010,* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2010* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

**DATES:** The application deadline for both new and continuing applicants is April 1, 2002. If April 1 falls on the weekend, the application will be due on the following Monday. Applications shall be considered as meeting the deadline if they are received by the appropriate Scholarship Coordinator on the deadline date or postmarked on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) Applications received after the announced closing date will be returned to the applicant and will not be considered for funding.

**ADDRESSES:** Application packets may be obtained by calling or writing to the addresses listed below. The application form number is IHS 856, 856–2 through 856–8, 815, 816, 818 (approved under OMB No. 0917–0006).

**IHS Area Office and States/Locality Served; Scholarship Coordinator/Address:**

*Aberdeen Area IHS*

Iowa
Nebraska
North Dakota
South Dakota
Ms. Lila Topalian, Scholarship Coordinator, Aberdeen Area IHS, Federal Building, Room 309, 115 4th Avenue, SE, Aberdeen, SD 57401, Tele: 605–226–7553

*Alaska Area Native Health Service*

Alaska
Ms. Rea Bavilla, Scholarship Coordinator, Alaska Area IHS, 4141 Ambassador Drive, Rm. 349, Anchorage, Alaska 99508, Tele: 907–729–1332

*Albuquerque Area IHS*

Colorado
New Mexico
Ms. Alvina Waseta, Scholarship

Coordinator, Albuquerque Area IHS, 5300 Homestead Road, NE, Albuquerque, NM 87110, Tele: 505–248–4513

*Bemidji Area IHS*

Illinois
Indiana
Michigan
Minnesota
Wisconsin
Mr. Tony Buckanaga, Scholarship Coordinator, Bemidji Area IHS, 522 Minnesota Avenue, NW, Bemidji, MN 56601, Tele: 218–759–3415

*Billings Area IHS*

Montana
Wyoming
Mr. Sandy Macdonald, Scholarship Coordinator, Billings Area IHS, Area Personnel Office, P.O. Box 36600, 2900 4th Avenue, North, Billings, MT 59103, Tele: 406–247–7210

*California Area IHS*

California
Hawaii
Ms. Mona Celli, Scholarship Coordinator, California Area IHS, 650 Capitol Mall, 3rd Floor, Sacramento, CA 95814, Tele: 916–930–3981

*Nashville Area IHS*

Alabama
Arkansas
Connecticut
Delaware
Florida
Georgia
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Mississippi
New Hampshire
New Jersey
New York
North Carolina
Ohio
Pennsylvania
Rhode Island
South Carolina
Tennessee
Vermont
Virginia
West Virginia
District of Columbia
Ms. Alvina Waseta, Scholarship Coordinator, Nashville Area IHS, 5300 Homestead Road, NE, Albuquerque, NM 87110, Tele: 505–248–4513

*Navajo Area IHS*

Arizona
New Mexico
Utah
Ms. Roselinda Allison, Scholarship Coordinator, Navajo Area IHS, P.O. Box 9020, Window Rock, AZ 86515, Tele: 520–871–1358

*Oklahoma City Area IHS*

Kansas
Missouri
Oklahoma
Mr. Jim Ingram, Scholarship Coordinator, Oklahoma City Area IHS, Five Corporate Plaza, 3625 NW., 56th Street, Oklahoma City, OK 73112, Tele: 580–276–4801

*Phoenix Area IHS*

Arizona
Nevada
Utah
Lena Fasthorse, Scholarship Coordinator, Phoenix Area IHS, Two Renaissance Square, 40 North Central Avenue, Suite #600, Phoenix, AZ 85004, Tele: 602–364–5220

*Portland Area IHS*

Idaho
Oregon
Washington
Ms. Darlene Marcellay-Hyland, Scholarship Coordinator, Portland Area IHS, 1220 SW Third Avenue, Rm. 440, Portland, OR 97204–2892, Tele: 503–326–2015

*Tucson Area IHS*

Arizona
Texas
Ms. Malinda Paul, Scholarship Coordinator, Tucson Area IHS, 7900 South ''J.'' Stock Rd., Tucson, AZ 85746, Tele: 520–295–2441

**FOR FURTHER INFORMATION CONTACT:** Please address application inquiries to the appropriate Indian Health Service Area Scholarship Coordinator. Other programmatic inquiries may be addressed to Mr. Darrell Pratt, Team Leader, Health Professions Support, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland, 20852; Telephone 301–443–6197. (This is not a toll free number.) For grants information, contact Mr. Al Whiteman, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland, 20852; Telephone 301–443–5204. (This is not a toll-free number.)

A. *General Program Purpose:* These grants programs are intended to encourage American Indians and Alaska Natives to enter the health professions and to assure the availability of Indian health professionals to serve Indians.

B. *Eligibility Requirements:*

1. The Health Professions Preparatory Scholarship awards are made to American Indians or Alaska Natives who meet the criteria in section 4(c) of the IHCIA, as amended, who have successfully completed high school education or high school equivalency and who have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum. Support is limited to 2 years for full-time students and the part-time equivalent of 2 years not to exceed 4 years for part-time students.

2. The Health Professions Pregraduate Scholarship awards are made to American Indians or Alaska Natives who meet the criteria in section 4(c) of the IHCIA, as amended, who have successfully completed high school education or high school equivalency and who have been accepted for enrollment or are enrolled in an accredited pregraduate program leading to a baccalaureate degree in pre-medicine or pre-dentistry. Support is limited to 4 years for full-time students and the part-time equivalent of 4 years not to exceed 8 years for part-time students.

3. The Indian Health Scholarship (Professions) may be awarded only to an individual who is a member of a federally recognized tribe as provided by section 104, 4(c), and 4(d) of the IHCIA. Membership in a Tribe recognized only by a state does not meet this statutory requirement. To receive an Indian Health Scholarship (Professions) an otherwise eligible individual must be enrolled in an appropriately accredited school and pursuing a course of study in a health profession as defined by section 4(n) of the IHCIA. Support is limited to 4 years for full-time students and the part-time equivalent of 4 years not to exceed 8 years for part-time students.

Awards for the Indian Health Scholarships (Professions) will be made in accordance with 42 CFR 36.330. Recipients shall incur a service obligation prescribed under section 338C of the Public Health Service Act (43 U.S.C. 244m) which shall be met by service:

(1) In Indian Health Service;

(2) In a program conducted under a contract or compact entered into under the Indian Self-Determination Act;

(3) In a program assisted under title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; and

(4) In private practice of his or her profession, if the practice (a) is situated in a health professional shortage area, designated in regulations promulgated

by the Secretary and (b) addresses the health care needs of a substantial number of Indians as determined by the Secretary in accordance with guidelines of the Service;

Pursuant to the Indian Health Amendments of 1992 (Pub. L. 104–313), a recipient of an Indian Health Professions Scholarship may, at the election of the recipient, meet his/her active duty service obligation prescribed under section 338c of the Public Health Service Act (42 U.S.C. 254m) by a program specified in options (1)—(4) above that:

(i) Is located on the reservation of the Tribe in which the recipient is enrolled; or

(ii) Serves the Tribe in which the recipient is enrolled.

In summary, all recipients of the Indian Health Scholarship (Professions) are reminded that recipients of this scholarship incur a service obligation. Moreover, this obligation shall be served at a facility determined by the Director, IHS, consistent with IHCIA, Pub. L. 94–437, as amended by Pub. L. 100–713, and Pub. L. 102–573.

C. *Fund Availability.* Both part-time and full-time scholarship awards will be made in accordance with regulations at 42 CFR 36.320, incorporated in the application materials, for Health Professions Preparatory Scholarship Program for Indians and 42 CFR 36.370, incorporated in the application materials, for Health Professions Pregraduate Scholarship Program for Indians. Approximately 238 awards, 100 of which are continuing, will be made under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians. The awards are for 10 months in duration and the average award to a full-time student is approximately $18,000. In FY 2002, approximately $1,500,000 is available for continuation awards and approximately $2,250,000 is available for new awards.

Approximately 393 awards, 179 of which are continuing, will be made under the Indian Health Scholarship (Professions) Program. Awards will be made to both full-time and part-time students. The awards are for 12 months in duration and the average award to a full-time student is for approximately $23,000. In FY 2002, approximately $3,410,000 is available for continuation awards, and $4,485,000 is available for new awards.

No more than 20% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of 6 hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status.

D. *Criteria for Evaluation.* Applications will be evaluated against the following criteria:

1. Needs of the IHS. Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health manpower needs. Applications for each health career category are reviewed and ranked separately.

2. Academic Performance. Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are asked to provide a personal judgment of the applicant's achievement. Health Professions applicants with a cumulative GPA below 2.0 are not eligible to apply.

3. Faculty/Employer Recommendations. Applicants are rated according to evaluations by faculty members and current and/or former employers regarding the applicant's potential in the chosen health related professions.

4. Stated Reasons for Asking for the Scholarship and Stated Career Goals. Applicants must provide a brief written explanation of reasons for asking for the scholarship and of career goals. The applicant's narrative will be judged on how well it is written and content.

5. Applicants who are closest to graduation or completion are awarded first. For example, senior and junior applicants under the Health Professions Pregraduate Scholarship receive funding before freshmen and sophomores.

*E. Priority Categories:* Regulations at 42 CFR 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Indian Health Professions Preparatory and Pregraduate Scholarships and Indian Health Scholarships (Professions). Section 104(b)(1) of the IHCIA, as amended by the Indian Health Care Amendment of 1988, Pub. L. 100–713, authorizes the IHS to determine specific health professions for which Indian Health Scholarships will be awarded. The list of priority health professions that follow, by scholarship program, and based upon the needs of the IHS as well as upon the needs of the American Indians and Alaska Natives for additional service by specific health profession.

1. Health Professions Preparatory Scholarship Scholarships (Below is the list of disciplines to be supported and priority is based on academic level.)

A. Pre-Dietetics.
B. Pre-Engineering.
C. Pre-Medical Technology.
D. Pre-Nursing.
E. Pre-Pharmacy.
F. Pre-Physical Therapy.
G. Pre-Social Work (Jr and Sr undergraduate years).

2. Health Professions Pregraduate Scholarships. (Below is the list of disciplines to be supported and priority is based on academic level: Senior, Junior, Sophomore, Freshman).

A. Pre-Dentistry.
B. Pre-Medicine.

3. Indian Health Scholarships (Professions). (Below is a list of disciplines to be supported and priority is based on academic level, unless specified: Graduate, Senior, Junior, Sophomore, Freshman.

A. Associate Degree Nurse.
B. Chemical Dependency Counseling.
C. Civil Engineering: B.S.
D. Clinical Psychology: Ph.D. only
E. Coding Specialist: Certificate
F. Counseling Psychology: Ph.D. only
G. Dental Hygiene: B.S.
H. Dentistry: B.S, and M.S.
I. Dietitian: B.S.
J. Environmental Engineering: B.S.
K. Health Care Administration: B.S. and M.S.
L. Health Education: Masters level only.
M. Health Records: R.H.I.T and R.H.I.A.
N. Injury Prevention Specialist
O. Medical Social Work: Masters level only.
P. Medical Technology: B.S.
Q. Medicine: Allopathic and Osteopathic.
R. Nurse: B.S.*
S. Nurse: M.S.*
T. Nurse: R.N.A.
* (Priority consideration will be given to Registered Nurses employed by the Indian Health Service; in a program assisted under a contract entered into under the Indian Self-Determination Act; or in a program assisted under Title V of the Indian Health Care Improvement Act.)
U. Optometry.
V. Para-Optometric.
W. Pharmacy: B.S., Pharm D.
X. Physician Assistant.
Y. Physical Therapy.
Z. Podiatry: D.P.M.
AA. Public Health: M.P.H. only (Applicants must be enrolled or accepted in a school of public health in specialty areas such as Dietetics and Community Development in health).

BB. Public Health Nutrition: Masters level only.
CC. Radiologic Technology: Certificate, Associate, and B.S.
DD. Respiratory Therapy: Associate.
EE. X-Ray/Ultrasonography.

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for the 2002–2003 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

Dated: December 7, 2001.

**Michael H. Trujillo,**

*Assistant Surgeon General, Director, Indian Health Service.*

[FR Doc. 01–30939 Filed 12–14–01; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

*National Survey on Drug Use and Health: Clinical Validation Study of the Substance Dependence and Abuse Measures*—(New)—The Substance Abuse and Mental Health Services Administration's (SAMHSA) National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse, is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, the Office of National Drug Control Policy, other Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

From 2001–2003, the NSDUH plans a two-phase Clinical Validation Study of Substance Dependence and Abuse Measures. Specific aims are to achieve the best overarching format, and the best wording and ordering for the assessment questions. The goal is quicker administration time, improved validity, and reduced respondent burden.

Half of all subject will be between 12 and 17, and half 18 years of age or older; subjects will be recruited from the Research Triangle and the Triad areas of North Carolina. In Phase 1, subjects, recruited through fliers and newspaper ads, will be asked (1) demographic information and (2) questions from two self-administered sections of the NSDUH questionnaire: questions about the quantity and frequency of use of drugs and alcohol, and questions about symptoms of substance dependence and abuse. A semi-structured clinical interview will then be administered to these same subjects by a trained clinician to determine the presence or absence of substance dependence and abuse. The clinical instruments used to assess subjects will be the substance abuse modules from the Structured Clinical Interview for DSM–IV (SCID) (for adults) and the Kiddie Schedule for Affective Disorders and Schizophrenia (K–SADS ) (for those between 12 and 17 years of age). The correspondence of the diagnosis of substance dependence and abuse between the clinical and survey interview will then be compared.

Information from Phase 1 will then be used to assess if a lack of correspondence exists between the clinical and survey measures. If there is a lack of sufficient correspondence, we will then examine reasons for any lack of correspondence, and make decisions about how to modify the NSDUH questions on substance dependence and abuse to achieve better correspondence. This information will then be used to develop a revised NSDUH substance dependence and abuse module.

In Phase 2, a second clinical validation study will be conducted using the same procedures as Phase 1. This will allow a determination of the correspondence (kappa) between the revised diagnosis obtained from the NSDUH substance dependence and abuse module and the diagnosis from the structured clinical interviews. Final revisions to the survey instrument will be made based on findings from Phase 2. All decisions about final revisions to the module will balance the need for correspondence across different groups. The following table summarizes the total burden associated with this two-year project.

| | Number of respondents | Responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Phase I: | | | | |
| Screener only | 150 | 1 | .08 | 12 |
| Screener and Interview | 345 | 1 | 1.5 | 518 |
| Phase II: | | | | |
| Screener only | 300 | 1 | .08 | 24 |
| Screener and Interview | 595 | 1 | 1.5 | 892 |
| Total | 1,390 | | | 1,446 |
| Annual Average | 695 | | | 723 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 11, 2001.

**Richard Kopanda,**

*Executive Officer, Substance Abuse and Mental Health Administration.*

[FR Doc. 01–30967 Filed 12–14–01; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of Receipt of Applications for Permit

### Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

*Applicant:* Steven Paul Dupuy, Addis, LA, PRT–050470.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: November 30, 2001.

**Michael S. Moore,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 01–30994 Filed 12–14–01; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of Receipt of Applications for Permit

### Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

*Applicant:* Jeffrey L. Meyerl, Mars, PA, PRT–050657.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Jonathan Evans, Littleton, CO, PRT–050612.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* George Carden Circus Intl., Inc., Springfield, MO, PRT–784521.

The applicant requests the re-issuance of its permit to re-export and re-import Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

*Applicant:* Rick Thomas, dba Thomas Production, Las Vegas, NV, PRT–037177.

The applicant requests a permit to export and re-import captive-born tigers (Panthera tigris) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

*Applicant:* Miller Equipment Company, Inc. dba Carson Barnes Circus, Hugo, OK, PRT—050703 & 050708.

The applicant requests a permit to re-export and re-import Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

*Applicant:* U.S. Geological Survey, College Station, TX, PRT–050834.

The applicant requests a permit to import 50 non-viable eggs/egg shells of Aplomado falcons (*Falco femoralis septentrionalis*) from Mexico for the purpose of scientific research.

*Applicant:* International Center for Gibbon Studies, Santa Clarita, CA, PRT–048712.

The applicant requests a permit to import 1.1 hoolock gibbons (Hylobates hoolock) of wild origin from the Yangon Zoological Garden, Myanmar, for the purpose of scientific research and enhancement of the propagation of the species and enhancement of the survival of the species through conservation education.

*Applicant:* New Marine World Foundation, Vallejo, CA, PRT–048985.

The applicant requests a permit to import 0.2 Asian elephants (Elephas maximus) of captive bred origin from India for the purpose of scientific research and enhancement of the propagation of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: December 7, 2001.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 01–30995 Filed 12–14–01; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Application for Endangered Species Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt.

The following applicant has applied for a permit to conduct certain activities with an endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended.

*Applicant:* U.S. Geological Survey, Silvio O. Conte Anadromous Fish Research Center, Turners Falls, Massachusetts, PRT–TE050317–0.

The applicant requests authorization to take (harm, harass, and kill) 12,000 eyed eggs of the Atlantic salmon (Salmo salar). The eggs were captively bred at the U.S. Fish and Wildlife Service's Craig Brook National Fish Hatchery, East Orland, Maine, and will be transferred to the Conte Anadromous Fish Research Center, Turners Falls, Massachusetts to conduct specific research activities.

Written data or comments should be submitted to the Regional Permits Coordinator, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts, 01035, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. Attention: Diane Lynch, Regional Permits Coordinator. Telephone: 413–253–8628; Fax: 413–253–8482.

Dated: November 21, 2001.

**Richard O. Bennett,**

*Acting Regional Director.*

[FR Doc. 01–31105 Filed 12–14–01; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Issuance of Permit for Marine Mammals

On September 25, 2001, a notice was published in the **Federal Register** (66 FR 49035), that an application had been filed with the Fish and Wildlife Service by Clayton Green for a permit (PRT–048095) to import one polar bear (*Ursus maritimus*) taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on November 21, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: December 7, 2001.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 01–30996 Filed 12–14–01; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Service Regulations Committee Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Fish and Wildlife Service (hereinafter Service) will conduct an open meeting on January 24, 2002, to identify and discuss preliminary issues concerning the 2002–03 migratory bird hunting regulations.

**DATES:** The meeting will be held January 24, 2002.

**ADDRESSES:** The Service Regulations Committee will meet at the Arlington Square Building, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 200 A/B, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Andrew, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

**SUPPLEMENTARY INFORMATION:** Representatives from the Service, the Service's Migratory Bird Regulations Committee, and Flyway Council Consultants will meet on January 24, 2002, at 8:30 a.m. to identify preliminary issues concerning the 2002–03 migratory bird hunting regulations for discussion and review by the Flyway Councils at their March meetings.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee attended by any person outside the Department, these meetings are open to public observation. Members of the public may submit written comments on the matters discussed to the Director.

Dated: November 27, 2001.

**Kevin R. Adams,**

*Acting Deputy Director, U.S. Fish and Wildlife Service.*

[FR Doc. 01–30997 Filed 12–14–01; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Presidential Task Force on Employment of Adults With Disabilities; Notice of Open Meeting

#### Background and Authority

The Presidential Task Force on Employment of Adults with Disabilities (Task Force) was established by Executive Order 13078. The primary purpose of the Task Force is "* * * to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population."

Task Force membership includes the following Executive Branch positions: Secretary of Labor; Secretary of Education, Secretary of Veterans Affairs; Secretary of Health and Human Services; Commissioner of the Social Security Administration; Secretary of the Treasury; Secretary of Commerce; Secretary of Transportation; Secretary of Housing and Urban Development, Secretary of the Interior, Secretary of Agriculture, the Attorney General of the United States; Director of the Office of Personnel Management; Administrator of the Small Business Administration; Chair of the Equal Employment Opportunity Commission; Chair of the Federal Communications Commission; and Chair of the National Council on

Disability. The Secretary of Labor has been designated as Task Force Chair.

**Notice of Meeting Including Specifications as to Time and Place**

An open meeting of the Task Force will take place on Monday, January 28, 2002 from 9 a.m. to 12 noon at the U. S. Chamber of Commerce, 1615 H Street, NW., Washington, DC 20062.

**Agenda Items**

This being the first Task Force meeting since the introduction of the President's *New Freedom Initiative,* the agenda will include: (1) Reports on the implementation of the President's *New Freedom Initiative* to date, (2) discussion of the interagency coordination needed to expand upon the *New Freedom Initiative,* (3) future actions departments or agencies will undertake to further the goals of the *New Freedom Initiative,* and (4) a demonstration of assistive technology products.

**Special Accommodations**

Any individuals wishing to attend the Task Force meeting who need special accommodations or require further information should contact Mr. Paul Bennett at 202/693–4939 (voice), 202/693–4929 (fax), or 202/693–4920 (TTY) by Friday, January 18, 2001.

Signed in Washington, DC, this 7th day of December, 2001.

**William R. McKinnon,**

*Acting Executive Director, Presidential Task Force on Employment of Adults with Disabilities.*

[FR Doc. 01–30986 Filed 12–14–01; 8:45 am]

BILLING CODE 4510–23–P

## DEPARTMENT OF LABOR

## Mine Safety and Health Administration

## Summary of Decisions Granting in Whole or in Part Petitions for Modification

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

**ACTION:** Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

**SUMMARY:** Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term ''FR Notice'' appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

**FOR FURTHER INFORMATION:** Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated at Arlington, Virginia this 10th day of December 2001.

**David L. Meyer,**

*Director, Office of Standards, Regulations, and Variances, Enclosures.*

**Affirmative Decisions on Petitions for Modification**

*Docket No.:* M–2000–104–C.
*FR Notice:* 65 FR 58819.
*Petitioner:* West Ridge Resources, Inc.
*Regulation Affected:* 30 CFR 75.901
*Summary of Findings:* The petitioner's proposal is to use an alternative method of grounding a diesel generator. The petitioner proposes to use a 480-volt, wye connected, 320 KW portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine. This is considered an acceptable alternative method for the West Ridge Mine. MSHA grants the petition for modification for the 480-volt, three-phase, 320KW diesel powered generator (DPG) set, Serial No. 31545, used to supply power to a 400 KVA autotransformer and three-phase 480- and 995-volt power circuits for the West Ridge Mine with conditions.

*Docket No.:* M–2000–113–C.
*FR Notice:* 65 FR 58820.
*Petitioner:* Blue Mountain Energy, Inc.
*Regulation Affected:* 30 CFR 75.350.
*Summary of Findings:* Petitioner's proposal is to use air coursed through conveyor belt entries to ventilate working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the Deserado Mine. MSHA grants the petition for modification for the Deserado Mine with conditions.

*Docket No.:* M–2000–118–C.
*FR Notice:* 65 FR 58821.
*Petitioner:* West Ridge Resources, Inc.
*Regulation Affected:* 30 CFR 75.1002–1(a)
*Summary of Findings:* Petitioner's proposal is to use nonpermissible low-voltage or battery-powered electronic testing and diagnostic equipment within 150 feet of pillow workings, and limited to laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressures and flow measurements devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers. Other testing and diagnostic equipment may be used if approved by the District Manager. This is considered an acceptable alternative method for the West Ridge Mine. MSHA grants the petition for modification for the use of low-voltage or battery-powered nonpermissible electronic testing and diagnostic equipment within 150 feet of pillar workings at the West Ridge Mine with conditions.

*Docket No.:* M–2000–125–C.
*FR Notice:* 65 FR 64261.
*Petitioner:* Snyder Coal Company.
*Regulation Affected:* 30 CFR 75.1405.
*Summary of Findings:* The petitioner's proposal is to use bar and pin or link and pin couplers on underground haulage equipment. This is considered an acceptable alternative method for the Rattling Run Slope Mine. MSHA grants the petition for modification for the Rattling Run Slope Mine with conditions.

*Docket No.:* M–2000–126–C.
*FR Notice:* 65 FR 64261.
*Petitioner:* Three W–M Coal Company.
*Regulation Affected:* 75.1400(c).
*Summary of Findings:* The petitioner's proposal is to use stronger rope and secondary safety rope connections in place of safety catches or other no less effective devices on a slope conveyance (gunboat) in transporting persons. This is considered an acceptable alternative method for the Orchard Slope Mine. MSHA grants the

petition for modification for the Orchard Slope Mine with conditions.

*Docket No.:* M–2000–128–C.

*FR Notice:* 65 FR 64261.

*Petitioner:* Girdner Mining Company, Inc.

*Regulation Affected:* 30 CFR 75.380(f)(4)(i).

Summary of Findings: The petitioner's proposal is to use one twenty-or two ten-pound portable chemical fire extinguishers on each Mescher Jeep, to have the fire extinguishers readily accessible to the equipment operator, to instruct the equipment operator to inspect each fire extinguisher on a daily basis and replace all defective fire extinguishers prior to entering the mine, and to maintain records of all inspections. This is considered an acceptable alternative method for the Mine No. 1. MSHA grants the petition for modification for the Mine No. 1 with conditions.

*Docket No.:* M–2000–131–C.

*FR Notice:* 65 FR 64262.

*Petitioner:* Mountain Coal Company, L.L.C.

*Regulation Affected:* 30 CFR 75.1002.

*Summary of Findings:* The petitioner's proposal is to use high-voltage (2,400-volt) cables within 150 feet of pillar workings for continuous miners. This is considered an acceptable alternative method for the West Elk Mine. MSHA grants the petition for modification for the West Elk Mine with conditions.

*Docket No.:* M–2000–134–C.

*FR Notice:* 65 FR 64262.

*Petitioner:* Aracoma Coal Company.

*Regulation Affected:* 30 CFR 75.1002.

*Summary of Findings:* The petitioner's proposal is to use 4,160-volt longwall mining system. This is considered an acceptable alternative method for the Aracoma Alma Mine No. 1. MSHA grants the petition for modification for the Aracoma Alma Mine No. 1 with conditions.

*Docket No.:* M–2000–139–C.

*FR Notice:* 65 FR 75974.

*Petitioner:* R & R Coal Company.

*Regulation Affected:* 30 CFR 75.335.

*Summary of Findings:* The petitioner's proposal is to use wooden materials of moderate size and weight to construct seals, due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings. This is considered an acceptable alternative method for the R & R Coal Company Mine. MSHA grants the petition for modification for the R & R Coal Company Mine with conditions.

*Docket No.:* M–2001–140–C.

*FR Notice:* 65 FR 75974.

*Petitioner:* R & R Coal Company.

*Regulation Affected:* 30 CFR 75.1200(d) and (i).

*Summary of Findings:* The petitioner's proposal is to use cross-sections in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined. This is considered an acceptable alternative method for the R & R Coal Company Mine. MSHA grants the petition for modification for the R & R Coal Company Mine with conditions.

*Docket No.:* M–2001–141–C.

*FR Notice:* 65 FR 75974.

*Petitioner:* R & R Coal Company.

*Regulation Affected:* 30 CFR 75.1202–1(a).

*Summary of Findings:* The petitioner's proposal is to revise and supplement mine maps annually instead of every six (6) months, and to update the maps daily by hand notations. This is considered an acceptable alternative method for the R & R Coal Company Mine. MSHA grants the petition for modification for the R & R Coal Company Mine with conditions.

*Docket No.:* M–2000–148–C.

*FR Notice:* 65 FR 75975.

*Petitioner:* D & F Deep Mine Buck Drift.

*Regulation Affected:* 30 CFR 49.2(b).

*Summary of Findings:* The petitioner's proposal is to reduce its mine rescue teams to two teams with three members and one alternate for either team instead of two teams with five members and one alternate each. This is considered an acceptable alternative method for the Buck Drift Mine. MSHA grants the petition for modification for the Buck Drift Mine with conditions.

*Docket No.:* M–2000–149–C.

*FR Notice:* 65 FR 75975.

*Petitioner:* D & F Deep Mine Buck Drift.

*Regulation Affected:* 30 CFR 75.335(a)(1).

*Summary of Findings:* The petitioner's proposal is to use wooden materials of moderate size and weight to construct seals due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings. This is considered an acceptable alternative method for the Buck Drift Mine. MSHA grants the petition for modification for the Buck Drift Mine with conditions.

*Docket No.:* M–2001–151–C.

*FR Notice:* 65 FR 75975.

*Petitioner:* D & F Deep Mine Buck Drift.

*Regulation Affected:* 30 CFR 75.1200(d) and (i).

*Summary of Findings:* The petitioner's proposal is to use cross-sections in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined. This is considered an acceptable alternative method for the Buck Drift Mine. MSHA grants the petition for modification for the Buck Drift Mine with conditions.

*Docket No.:* M–2000–152–C.

*FR Notice:* 65 FR 75975.

*Petitioner:* D & F Deep Mine Buck Drift.

*Regulation Affected:* 30 CFR 75.1202–1(a).

*Summary of Findings:* The petitioner's proposal is to revise and supplement mine maps annually instead of every six(6) months, and update the maps daily by hand notations. This is considered an acceptable alternative method for the Buck Drift Mine. MSHA grants the petition for modification for the Buck Drift Mine with conditions.

*Docket No.:* M–2000–154–C.

*FR Notice:* 65 FR 75976.

*Petitioner:* Canyon Fuel Company, LLC.

*Regulation Affected:* 30 CFR 75.350.

*Summary of Findings:* The petitioner's proposal is to use belt air to ventilate active working places. This is considered an acceptable alternative method for the Skyline Mine No. 3. MSHA grants the petition for modification to allow air coursed through conveyor belt haulage entries to be used to ventilate working places at the Skyline Mine No. 3 with conditions.

*Docket No.:* M–2000–156–C.

*FR Notice:* 65 FR 75976.

*Petitioner:* Oxbow Carbon and Minerals, Inc.

*Regulation Affected:* 30 CFR 75.701.

*Summary of Findings:* The petitioner's proposal is to use an alternative method of grounding a diesel generator. The petitioner proposes to use a 480-volt, wye connected, 260 KW portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine. This is considered an acceptable alternative method for the Sanborn Creek Mine. MSHA grants the petition for modification for the 480-volt, three-phase, 260KW/325KVA diesel powered generator (DPG) set, Serial No. 31475–1/01, used to supply power to a three-phase wye connected 300 KVA auto-transformer and three-phase 480-volt and 995-volt power circuits for the Sanborn Creek Mine with conditions.

*Docket No.:* M–2000–157–C.

*FR Notice:* 65 FR 75976.

*Petitioner:* Oxbow Carbon and Minerals, Inc.

*Regulation Affected:* 30 CFR 75.901.

*Summary of Findings:* The petitioner's proposal is to use an alternative method of grounding a diesel generator. The petitioner proposes to use a 480-volt, wye connected, 260 KW portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine. This is considered an acceptable alternative method for the Sanborn Creek Mine. MSHA grants the petition for modification for the 480-volt, three-phase, 260KW/325KVA diesel powered generator (DPG) set, Serial No. 31475–1/01, used to supply power to a three-phase wye connected 300 KVA transformer and three-phase 480-volt and 995-volt power circuits for the Sanborn Creek Mine with conditions.

*Docket No.:* M–2000–158–C.
*FR Notice:* 66 FR 18660.
*Petitioner:* Newtown Energy, Inc.
*Regulation Affected:* 30 CFR 75.350.
*Summary of Findings:* The petitioner's proposal is to use belt air to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide monitoring system as an early warning fire-detection system all belt entries used to course air to a working place. This is considered an acceptable alternative method for the Eagle Mine No. 1. MSHA grants the petition for modification to allow air coursed through conveyor belt entries to be used to ventilate working places for the Eagle Mine No. 1 with conditions.

*Docket No.:* M–2000–159–C.
*FR Notice:* 66 FR 18660.
*Petitioner:* G & P Contractors, Inc.
*Regulation Affected:* 30 CFR 75.380(f)(4)(i).
*Summary of Findings:* The petitioner's proposal is to use two ten-pound portable chemical fire extinguishers on each Mescher Jeep, to have the fire extinguishers readily accessible to the equipment operator, to instruct the equipment operator to inspect each fire extinguisher daily prior to entering the mine and replace all fire extinguishers that are defective. This is considered an acceptable alternative method for the Powers Branch Mine. MSHA grants the petition for modification for the Powers Branch Mine with conditions.

*Docket No.:* M–2000–160–C.
*FR Notice:* 66 FR 18660.
*Petitioner:* G & P Contractors, Inc.
*Regulation Affected:* 30 CFR 75.342.
*Summary of Findings:* The petitioner's proposal is to use hand-held methane and oxygen indicators instead of machine-mounted methane monitors on three-wheel tractors with drag bottom buckets. This is considered an acceptable alternative method for the Powers Branch Mine. MSHA grants the petition for modification to use hand-held continuous multi-gas detectors for the Mescher permissible three-wheel battery-powered tractors used to load coal at the Powers Branch Mine with conditions.

*Docket No.:* M–2000–161–C.
*FR Notice:* 66 FR 18660.
*Petitioner:* Rosebud Mining Company.
*Regulation Affected:* 30 CFR 75.1100–2(e)(2).
*Summary of Findings:* The petitioner's proposal is to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using 240 pounds of rock dust. This is considered an acceptable alternative method for the Clementine Mine. MSHA grants the petition for modification for the temporary electrical installations provided the petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) at each of the temporary electrical installations for the Clementine Mine.

*Docket No.:* M–2001–162–C.
*FR Notice:* 66 FR 18660.
*Petitioner:* Penn American Coal L.P.
*Regulation Affected:* 30 CFR 75.350.
*Summary of Findings:* The petitioner's proposal is to use air ventilating the belt entry and associated entries in common with the belt, to ventilate a working section or sections. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to ventilate active working places. This is considered an acceptable alternative method for the Burrell Mine. MSHA grants the petition for modification for the Burrell Mine with conditions.

*Docket No.:* M–2000–163–C.
*FR Notice:* 66 FR 18660.
*Petitioner:* T.J.S. Mining, Inc.
*Regulation Affected:* 30 CFR 75.1100–2(e)(2).
*Summary of Findings:* The petitioner's proposal is to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using 240 pounds of rock dust. This is considered an acceptable alternative method for the T.J.S. #1 Mine, T.J.S. No. 4 Mine, Darmac #3 Mine, and Darmac #2 Mine. MSHA grants the petition for modification for the temporary electrical installations provided the Petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) at each of the temporary electrical installations for the T.J.S. #1 Mine, T.J.S. No. 4 Mine, Darmac #3 Mine, and Darmac #2 Mine.

*Docket No.:* M–2000–166–C.
*FR Notice:* 66 FR 18661.
*Petitioner:* Straight Fork Mining, Inc.
*Regulation Affected:* 30 CFR 75.503 (18.41(f) of Part 18).
*Summary of Findings:* The petitioner's proposal is to use a permanently installed spring-loaded device on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles instead of using padlocks. This is considered an acceptable alternative method for the Skullfork Mine. MSHA grants the petition for modification for the Skullfork Mine with conditions.

*Docket No.:* M–2000–167–C.
*FR Notice:* 66 FR 18661.
*Petitioner:* Big Ridge, Inc.
*Regulation Affected:* 30 CFR 75.1700.
*Summary of Findings:* The petitioner's proposal is to plug oil and gas wells and then mine in close proximity or through the plugged wells using the specific procedures outlined in its petition for modification. This is considered an acceptable alternative method for the Willow Lake Portal Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil or gas wells penetrating the Illinois No. 5 seam and other minable coal seams at the Willow Lake Portal Mine with conditions.

*Docket No.:* M–2000–168–C.
*FR Notice:* 66 FR 18661.
*Petitioner:* D & R Coal Company, Inc.
*Regulation Affected:* 30 CFR 75.342.
*Summary of Findings:* The petitioner's proposal is to use hand-held, continuous-duty methane and oxygen indicators on three-wheel tractors with drag bottom buckets instead of using machine-mounted monitors. This is considered an acceptable alternative method for the Mine No. 2. MSHA grants the petition for modification for the Mescher permissible three-wheel battery-powered tractors used to load coal in the Mine No. 2 with conditions.

*Docket No.:* M–2000–169–C.
*FR Notice:* 66 FR 18661.
*Petitioner:* D & R Coal Company, Inc.
*Regulation Affected:* 30 CFR 75.380(f)(4)(i).
*Summary of Findings:* The petitioner's proposal is to install two five-pound or one ten-pound portable

chemical fire extinguisher in the operator deck of each Mescher tractor, to have the fire extinguishers readily accessible to the equipment operator, to instruct the equipment operator to inspect each fire extinguisher on a daily basis and replace all defective fire extinguishers prior to entering the mine, and to maintain records of all inspections. This is considered an acceptable alternative method for the Mine No. 2. MSHA grants the petition for modification for Mescher three-wheel tractors to be operated in the primary intake escapeway at the Mine No. 2 with conditions.

*Docket No.:* M–2000–170–C.
*FR Notice:* 66 FR 9724.
*Petitioner:* Aracoma Coal Company.
*Regulation Affected:* 30 CFR 75.1700.
*Summary of Findings:* The petitioner's proposal is to plug and mine through oil or gas wells using the specific procedures outlined in this petition for modification. This is considered an acceptable alternative method for the Aracoma Alma Mine No. 1. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil or gas wells penetrating the Alma Coal Seam and other minable coal seams at the Aracoma Alma Mine No. 1 with conditions.

*Docket No.:* M–2000–173–C.
*FR Notice:* 66 FR 18661.
*Petitioner:* Penn View Mining, Inc.
*Regulation Affected:* 30 CFR 75.1100–2(e)(2).
*Summary of Findings:* The petitioner's proposal is to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using 240 pounds of rock dust. This is considered an acceptable alternative method for the Penn View Mine. MSHA grants the petition for modification for the temporary electrical installations provided the petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for portable fire extinguisher in 30 CFR 75.1100–1(e) at each of the temporary electrical installations for the Penn View Mine with conditions.

*Docket No.:* M–1999–044–C.
*FR Notice:* 64 FR 32553.
*Petitioner:* Energy West Mining Company.
*Regulation Affected:* 30 CFR 75.326 (Now 75.350 and 75.352).
*Summary of Findings:* The petitioner's proposal is to amend the Decision and Order (D&O) for its previously granted petition for modification because the requirements in the previous D&O have proven to be outdated due to changes in circumstances that originally supported the terms and conditions of the D&O. This is considered an acceptable alternative method for the Deer Creek Mine. MSHA grants the petition for modification to the Deer Creek Mine for a two-entry mining system, based on compliance with the stipulations from the original D&O as modified and supplemented by additional special terms and conditions.

*Docket No.:* M–1999–046–C.
*FR Notice:* 64 FR 32554.
*Petitioner:* Twentymile Coal Company.
*Regulation Affected:* 30 CFR 75.500(d).
*Summary of Findings:* The petitioner's proposal is to use low-voltage or battery operated non-permissible electronic testing and diagnostic equipment into and inby the last open crosscut and in its continuous miner development sections. This is considered an acceptable alternative method for the Foidel Creek Mine. MSHA grants the petition for modification, under controlled conditions, for the Foidel Creek Mine upon compliance with the terms and conditions.

*Docket No.:* M–1999–095–C.
*FR Notice:* 64 FR 57662.
*Petitioner:* Wabash Mine Holding Company.
*Regulation Affected:* 30 CFR 75.332(a)(2).
*Summary of Findings:* The petitioner's proposal is to use two continuous miners within the same split of air. The petitioner proposes to allow one continuous miner to clean up the working face cut it previously mined while a second continuous miner on the section starts to cut and load coal from another working face on the same working section, all on the same single split of intake air. This is considered an acceptable alternative method for the Wabash Mine. MSHA grants the petition for modification for the Wabash Mine with conditions.

*Docket No.:* M–1999–122–C.
*FR Notice:* 64 FR 70732.
*Petitioner:* McElroy Coal Company.
*Regulation Affected:* 30 CFR 75.364(b)(1).
*Summary of Findings:* The petitioner's proposal is to conduct weekly examinations of designated monitoring stations instead of traveling and conducting weekly examinations in certain intake and return entries of the McElroy Mine. The petitioned areas are the same as those already granted modifications of the standard (old standard 30 CFR 75.305 for weekly examinations now addressed under 30 CFR 75.364) to allow daily evaluations of unsafe-for-travel aircourse segments at monitoring stations in lieu of travel in previous Proposed Decisions and Orders (PDOs) Docket Number M–91–078–C issued June 16, 1992; Docket Number M–92–142–C issued June 2, 1993; and Docket Number M–93–007–C issued October 28, 1993, and Amended December 8, 1997. This is considered an acceptable alternative method for the McElroy Mine. MSHA grants the petition for modification for evaluation of one unsafe-for-examination intake aircourse segment and two unsafe-for-travel segments of designated return aircourses, one of which includes the B North Mine seals near the Fish Creek air shaft for the McElroy Mine with conditions.

*Docket No.:* M–1999–123–C.
*FR Notice:* 64 FR 70732.
*Petitioner:* Blue Mountain Energy, Inc.
*Regulation Affected:* 30 CFR 75.500(d).
*Summary of Findings:* The petitioner's proposal is use low-voltage non-permissible electronic testing or diagnostic equipment in or inby the last open crosscut. This is considered an acceptable alternative method for the Deserado Mine. MSHA grants the petition for modification for the use of low voltage or battery powered non-permissible electronic testing and diagnostic equipment taken into or inby the last open crosscut for the Deserado Mine with conditions.

*Docket No.:* M–1999–150–C.
*FR Notice:* 64 FR 5701.
*Petitioner:* Perry County Mining Company.
*Regulation Affected:* 30 CFR 75.364(b)(1).
*Summary of Findings:* The petitioner's proposal is to establish four check points in certain areas of the intake aircourse as air measurement stations, due to deteriorating roof conditions. This is considered an acceptable alternative method for the Eas No. 1 Mine. MSHA grants the petition for modification for the examination of approximately 5,600 feet of unsafe-to-travel intake aircourse beginning in the mains inby the Big Creek Fan and into the Rolls Mains to allow effective evaluation of air flow quantity and quality entering and leaving the petitioned, unsafe-for-travel, intake aircourse segment of for the Eas No. 1 Mine with conditions.

*Docket No.:* M–2000–007–M.
*FR Notice:* 65 FR 58821.
*Petitioner:* Sierra Minerals Corporation.

*Regulation Affected:* 30 CFR 57.17010.

*Summary of Findings:* The petitioner's proposal is to eliminate the use of cap lamp during daylight hours at its quarry operation because there is enough natural lighting in all working areas of the quarry to provide illumination under all operating conditions and for safe exit from the working areas and that quarry work is done only in daylight hours. The petitioner will use cap lamps if it is necessary to extend work into hours of darkness. This is considered an acceptable alternative method for the Yule Quarry Mine. MSHA grants the petition for modification for the Yule Quarry Mine with conditions.

*Docket No.:* M–2000–009–M.

*FR Notice:* 65 FR 64262.

*Petitioner:* Echo Bay Minerals Company.

*Regulation Affected:* 30 CFR 49.8(b).

*Summary of Findings:* The petitioner's proposal is to participate in the Central Mine Rescue (CMR) of Wallace, Idaho, which consists of four training sessions per year, once per quarter, for the team in addition to annual Refresher and Competition training. This is considered an acceptable alternative method for the Echo Bay Minerals, Kettle River Operations, comprised of the K–2 Mine Site, and the Lamefoot Mine Site. MSHA grants the petition for modification with conditions provided that all mine rescue members receive at least 40 hours of refresher training annually, that any member that is unable to attend a training session make up that training within the 30 days following the session missed or the mine rescue member will not be eligible until that training is made up.

[FR Doc. 01–30941 Filed 12–14–01; 8:45 am].

**BILLING CODE 4510–43–P**

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Wabash Mine Holding Company**

[Docket No. M–2001–098–C]

Wabash Mine Holding Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.332(a)(2) (working sections and working places) to its Wabash Mine (I.D. No. 11–00877) located in Wabash County Illinois. The petitioner requests that Item 29 of the Proposed Decision and Order for its previously granted petition for modification, docket number M–1999–095–C be amended to permit the scrubber system to be operational and maintained to provide 6,500 cfm instead of 7,500 cfm of output capacity while cleanup is being performed. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**2. Hopkins County Coal, LLC**

[Docket No. M–2001–099–C]

Hopkins County Coal, LLC, P.O. Box 711, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Island Mine No. 1 (I.D. No. 15–17515) located in Hopkins County, Kentucky. The petitioner requests a modification of the standard to permit evaluation points (A, inby and B, outby) in lieu of traveling approximately 75 feet of the return air course. The petitioner states that due to deteriorating roof conditions, traveling the affected area would be unsafe. The petitioner proposes to: (1) Establish evaluation points outby the #3 entry at/near spad #22+21/3 and inby at/near spad #23+21/3, to provide ingress/egress to the outby evaluation point (B) at crosscut #43 and to provide ingress/egress to the inby evaluation point (A) at crosscut #51; (ii) post signs in strategic locations that would direct personnel to each evaluation point; and (iii) have a certified person examine the evaluation points on a weekly basis to determine methane and oxygen concentrations, quantity of air, and to determine if the air is moving in the proper direction and record the results of the examinations in a book maintained on the surface. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**3. San Juan Coal Company**

[Docket No. M–2001–100–C]

San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421 has filed a petition to modify the application of 30 CFR 75.362(d)(2) (on-shift examination) to its San Juan South Mine (I.D. No. 29–02170) and San Juan Deep Mine (I.D. No. 29–02201) both located in San Juan County, New Mexico. The petitioner proposes to: (i) Equip each continuous miner with a General Monitor S800 Methane Monitor with detection sensors near the cutter drum and one sensor on each side of the machine; (ii) equip each roof-bolting machine with a General Monitors S800 Methane Monitor that would have detection sensors on ATRS for a total of one sensor; and (iii) to conduct tests every twenty minutes at the operator's station while operating the roof-bolting machine on or inby the last open crosscut. The petitioner states that the methane monitor would provide a visual alert when the methane concentration reaches 1 percent and provide automatic shutdown when the methane concentration reaches 2 percent at any of the sensors, the monitors would provide continuous monitoring of the methane content rather than just testing every twenty minutes and would test for methane near the roof where methane is likely to be found, the monitors would calibrated with a known concentration of methane at intervals not to exceed 31 days, and that calibration would be performed by a certified person. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**4. Canyon Fuel Company, LLC**

[Docket No. M–2001–101–C]

Canyon Fuel Company, LLC, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment) to its Dugout Canyon Mine (I.D. No, 42–01890) located in Carbon County, Utah. The petitioner proposes to use the following non-permissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open crosscut: Lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, and may use other testing and diagnostic equipment if approved by the District Office. The petitioner states that all other tests and diagnostic equipment use in or inby the last open crosscut will be permissible. The petitioner has listed in this petition for modification specific procedures that would be followed when using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**5. Canyon Fuel Company, LLC**

[Docket No. M–2001–102–C]

Canyon Fuel Company, LLC, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.1001–1(a) (location of other electric equipment; requirements for permissibility) to its Dugout Canyon Mine (I.D. No. 42–01890) located in Carbon County, Utah. The petitioner proposes to use the following non-permissible low-voltage or battery powered electronic testing and diagnostic equipment in by the last open crosscut: Lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, and may use other testing and diagnostic equipment if approved by the District Office. The petitioner states that all other test and diagnostic equipment use in or in by the last open crosscut will be permissible. The petitioner has listed in this petition for modification specific procedures that would be followed when using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**6. Consol Pennsylvania Coal Company**

[Docket No. M–2001–103–C]

Consol Pennsylvania Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.312 (c) and (d) (main mine fan examinations and records) to its Enlow Fork Mine (I.D. No. 36–07416) located in Greene County, Pennsylvania. The petitioner requests a modification of the standard to permit testing of the automatic closing door(s) and the automatic fan signal device at least every 31 days without shutting down the fan and without removing miners from the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**7. Oxbow Mining, Inc.**

[Docket No. M–2001–104–C]

Oxbow Mining, Inc., 3737 Hwy 133, P.O. Box 535, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Elk Creek Mine (I.D. No. 05–04674) located in Gunnison County, Colorado. The petitioner proposes to use a 2,400-volt longwall power circuit in the active pillar workings. The petitioner has listed in this petition specific procedures for implementing its proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and has listed specific procedures in this petition for modification for implementing the alternative method.

**8. Oxbow Mining, Inc.**

[Docket No. M–2001–105–C]

Oxbow Mining, Inc., 3737 Hwy 133, P.O. Box 535, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Elk Creek Mine (I.D. No. 05–04674) located in Gunnison County, Colorado. The petitioner requests a modification of the standard to allow the use of a No. 16 A.W.G. ground check conductor in a high-voltage cable. The petitioner proposes to use the following flame-resistant cables on the high-voltage longwall system(s): Anaconda Type SHD+GC, Pirelli Type SHD–Center–GC, Tiger Brand Type SHD–CGC, and other brands of cable of identical construction. The petitioner asserts that these brands of cable utilize a flexible No. 16 A.W.G. ground check conductor for the ground continuity check circuit and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**9. FMC Westvaco**

[Docket No. M–2001–005–M]

FMC Westvaco, FMC Corporation, Box 872, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 (approved equipment (III mines)) to its FMC Trona Mine (I.D. No. 48–00152) located in Sweetwater County, Wyoming. The petitioner requests a modification of the standard to permit the use of portable low power 0.5–2.0 watt radios for communication in face areas. The petitioner proposes to use (Audiovox, or equivalent) radios inby the last open break or face areas of the time to improve communications, conduct examinations to test for methane in the mine atmosphere at least every ten minutes before using the radios in the face area, and instruct all mine employees in the petition requirements and complete training forms before using the radios. The petitioner states that these radios would not be used where methane is 1.0 percent or more, or in the same mining section where blasting is taking place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**Request for Comments**

Persons interested in these petitions are encouraged to submit comments via e-mail to ''*comments@msha.gov,*'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4014 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 16, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 10th day of December 2001.

**David L. Meyer,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 01–30940 Filed 12–14–01; 8:45 am]

BILLING CODE 4510–43–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Nixon Presidential Historical Materials; Opening of Materials

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of opening of materials.

**SUMMARY:** This notice announces the opening of additional Nixon presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and section 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access approximately 494 hours of Nixon White House tape recordings among the Nixon Presidential historical materials.

**DATES:** The National Archives and Records Administration (NARA) intends to make the materials described in this notice available to the public beginning February 28, 2002. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege,

or defense on or before January 16, 2002.

**ADDRESSES:** The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland, beginning at 8:45 a.m. on February 28, 2002.

In accordance with 36 CFR 1275.44, petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

**FOR FURTHER INFORMATION CONTACT:** Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–713–6950.

**SUPPLEMENTARY INFORMATION:** NARA is proposing to open approximately 4,125 conversations which were recorded at the Nixon White House from January 1972 to June 1972. These tape segments total approximately 425 hours of listening time. In addition, the National Archives is proposing to open 360 declassified segments of conversations recorded in the Cabinet Room at the Nixon White House from February 1971—July 1973. These segments total approximately 69 hours of listening time. These previously restricted segments were reviewed for release and declassified in accordance with the mandatory review provisions of Executive Order 12958 and 36 CFR 1275.56 (Public Access Regulations.).

This is the ninth opening of Nixon White House tapes since 1980. Previous releases included conversations constituting ''abuses of governmental power'' and conversations recorded in the Cabinet Room of the Nixon White House. The tapes now being proposed for opening consist of the third of five segments comprising the remaining hours of conversations, processed for release in chronological order starting with February 1971.

There are no transcripts for these tapes. Tape logs, prepared by NARA, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each segment of conversation released. Self-service copying of the tapes will be permitted. Researchers must bring their own recording equipment and blank tapes. Each tape log entry includes the names of participants; date, time, and location of the conversation; and an outline of the content of the conversation.

The tape recordings will be made available to the general public in the research room at 8601 Adelphi Road, College Park, Maryland, Monday through Friday between 8:45 a.m. and 4:30 p.m. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility. Listening stations will be available for public use on a first come, first served basis. NARA reserves the right to limit listening time in response to heavy demand. Copies of the tape log will be available for a fee in accordance with 36 CFR 1258.12.

Dated: December 11, 2001.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 01–30983 Filed 12–14–01; 8:45 am]

**BILLING CODE 7515–01–U**

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–277 and 50–278]**

## Exelon Generation Company, LLC, PSEG Nuclear LLC, Peach Bottom Atomic Power Station, Units 2 and 3; Exemption

### 1.0 Background

Exelon Generation Company, LLC (Exelon) and PSEG Nuclear LLC (the licensees) are the holders of Facility Operating Licenses Nos. DPR–44 and DPR–56, which authorize operation of the Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom or the facilities). The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facilities consist of two boiling water reactors located at the licensees' site in York County, Pennsylvania.

### 2.0 Request/Action

Section III.F of Appendix R to Title 10 of the Code of Federal Regulations (10 CFR), part 50, requires that automatic fire detection systems (capable of operating with or without offsite power) be installed in all areas of the plant that contain or present an exposure fire hazard to safety-related or safe shutdown systems or components. By letter dated June 15, 2001, Exelon requested an exemption from Section III.F of Appendix R regarding the provisions for an automatic fire detection capability in room 222, a Unit 2 feedwater heater room in the turbine building, and room 429, the Unit 2 and Unit 3 turbine generator hall in the turbine building.

### 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to reasonably assure the capability to achieve and maintain safe shutdown in the event of a fire.

The NRC staff examined Exelon's rationale to support the exemption request and concluded that notwithstanding the absence of an automatic fire detection system in rooms 222 and 429, given the circumstances discussed below, the underlying purpose of 10 CFR 50, Appendix R, section III.F would still be met with respect to those rooms.

*Room 222*

Room 222 is a feedwater heater room located in the Unit 2 turbine building on elevation 135. Exelon has determined that the only safe shutdown or safety-related systems or components located in this room susceptible to fire damage are circuits associated with offsite power. This room has not been provided with automatic fire detection in accordance with the provisions specified in section III.F of Appendix R. The fire hazards in this room consist solely of electrical cables located in three cable trays that are, or will be provided with metal covers. There are no transient combustibles stored in this area during plant operation. When hot work is performed in this room, a continuous fire watch is stationed in the room. The cables located in the trays are either qualified in accordance with the flame test provisions specified in Institute of Electrical and Electronics Engineers (IEEE) Standard 383, ''Standard for Type Test of Class 1E Electric Cables, Field Splices, and Connections for Nuclear Power Generating Stations,'' or qualified to a flame test equivalent to the one adopted by IEEE–383. There are no fire protection systems or features provided in this room. Due to the high radiation field present in this area during plant operation, this room is normally locked

with restricted personnel access. The cable associated with offsite power is routed in a cable tray which passes vertically through the room along the north wall. This cable tray (2BV080) is separated from the other cable trays (2BV070 & 2BV090) by a minimum horizontal distance of 24 inches. Exelon has determined that the failure of the cables in this room will not adversely impact the availability of offsite power to the 4kV safeguard switchgear required to achieve and maintain safe shutdown following a fire event. Exelon has determined that the only combustibles located in this room consist of a limited quantity of cables qualified in accordance with the criteria specified in IEEE 383 or a test equivalent to that specified in IEEE 383. Cables qualified in accordance with the provisions specified in IEEE–383 are less susceptible to self-ignition or ignition from an external source and have a lower flame spread than non-qualified cables. These qualified cables also remain operable at a higher temperature than non-qualified cables. In the event of a fire involving the adjacent cable trays (2BV070 & 2BV090), the spatial separation of the trays (24 inches to 96 inches) and the metal covers provided on all the trays reduces the potential for damage to the cables located in tray 2BV080. The addition of fire detection in this room would provide little benefit for a self-ignited cable fire in tray 2BV080, as damage would likely occur prior to the response of the plant fire brigade. In the event that damage does occur, either due to a self-ignited cable fire in tray 2BV080 or an exposure fire from the other trays due to hot work, Exelon has determined that an alternate offsite power supply to the 4kV safeguard switchgear is available and will remain free of fire damage. The transfer from the #343–SU offsite power located in room 222 to the #2–SU offsite power is automatic; therefore the transfer does not require any additional operator actions. Hot work performed in this area requires a continuous fire watch, in accordance with plant procedures, which can provide for rapid detection of a fire in this room and the prompt notification of the plant fire brigade. Based on the lack of significant fire hazards in this room (IEEE–383 qualified cables only), the separation of the cable trays in the room, the enclosure of the cables in the tray with metal covers, and the restricted access during plant operation, the NRC staff concludes that the lack of fire detection in room 222 does not present an undue risk to the public health and safety, fire detection specified by the rule is not necessary to achieve the underlying purpose of Section III.F of Appendix R, and that the NRC's principles of defense-in-depth are satisfied without the addition of fire detection capability.

*Room 429*

Room 429 is located in the common area of the Peach Bottom turbine building, elevation 165, and Exelon has determined that the only safe shutdown and/or safety-related systems or components located in this room susceptible to fire damage are circuits associated with the #343–SU offsite power to the 4kV safeguard switchgear, and reactor vessel pressure and level instrumentation. This room has not been provided with full area automatic fire detection in accordance with the provisions specified in Section III.F of Appendix R. The fire hazards in this area consist of turbine lube oil, hydrogen used for generator cooling, two maintenance office/shop structures, electrical cabinets and cable trays. The circuits associated with offsite power are located in three conduits routed along the west wall of room 429. Exelon has determined that the circuits in this room related to reactor vessel pressure and level instrumentation identified in a previous submittal dated December 31, 1998, as supplemented on January 14 and April 14, 2000, are ''associated circuits'' as defined in Generic Letter 81–12, ''Fire Protection Rule,'' dated February 20, 1981, and Exelon has committed to perform an analysis to ensure that the failure of these circuits (i.e. hot shorts, open circuits, or shorts to ground) will not adversely impact the operation of the instrumentation required to achieve and maintain safe shutdown following a fire event. Exelon has committed to make a physical plant change if necessary to assure safe shutdown capability following the completion of the analysis. However, the instrumentation circuits are not within the scope of Section III.F of Appendix R and thus are not being assessed by the NRC staff in this exemption request. Fire protection systems and features in this room include sprinkler protection on the turbine bearings, smoke detection over each turbine bearing lift pump, hydrogen pressure monitoring, and sprinkler systems in the maintenance office and shops. The conduits containing the offsite power cables are located at least 30 feet horizontally from the significant fire hazards in this room. Exelon has determined that in the event that fire damages the conduits located in this room, a separate offsite power source is available to achieve and maintain safe shutdown. The conduits of interest in this area are adjacent to the entrance to the main control room and this is a high-traffic area for plant personnel. Due to the personnel passing through, a fire would not go undetected for very long. The spatial separation of over 30 feet from the conduits to the significant fire hazards present in this room, the high ceilings and large volume above the turbine operating floor, the fire protection provided on the significant hazards present in this room (i.e. turbine bearings, lift pumps, offices/shops and hydrogen system), and the high-personnel traffic through the area provide reasonable assurance that a fire that has the potential to damage the conduits associated with offsite power located on the west wall will be detected by the existing fire protection systems, or plant personnel prior to damaging the offsite power cables. The existing fire suppression systems in conjunction with the plant fire brigade should be effective in controlling and extinguishing fires prior to damage occurring to the conduits located on the west wall of room 429. In the event that the existing fire suppression systems, or the plant fire brigade is not able to prevent damage to the conduits containing the cables related to offsite power, Exelon has determined that an alternate offsite power supply to the 4kV safeguard switchgear is available and will remain free of fire damage. The transfer from the #343–SU offsite power located in room 429, to the #2–SU offsite power is automatic; therefore the transfer does not require any additional operator actions. Therefore, based on the information provided by Exelon, the NRC staff concludes that pursuant to 10 CFR 50.12(a)(2)(ii) additional fire detection in room 429 is not necessary to achieve the underlying purpose of section III.F of Appendix R, the NRC's principles of defense-in-depth are satisfied without the addition of full area fire detection capability, and the lack of full area fire detection in room 429 does not present an undue risk to the public health and safety.

## 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Therefore, the

Commission hereby grants Exelon an exemption from the requirements of 10 CFR part 50, Appendix R, section III.F, for rooms 222 and 429, for Peach Bottom Units 2 and 3, with the provision that metal covers are installed on all cable trays in room 222.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 50696).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of December 2001.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–30968 Filed 12–14–01; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–272]**

## PSEG Nuclear LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–70, issued to PSEG Nuclear LLC (the licensee), for operation of the Salem Nuclear Generating Station, Unit No. 1 (Salem Unit 1), located in Salem County, New Jersey.

The proposed amendment would allow a one-time change to the Technical Specification (TS) Action Statement for the Service Water System (SWS). The proposed change would revise TS 3/4.7.4, ''Service Water System,'' by increasing the allowed outage time for one nuclear header out of service from 72 hours to 10 days. The proposed amendment would modify the present Action Statement for TS 3.7.4.1, to include a note that would allow operation with only the 11 SWS loop for up to 10 days. This note would be applicable for one-time use during Salem Unit 1, Cycle 15.

The licensee has requested that this amendment be approved under exigent circumstances. On November 30, 2001, PSEG operations personnel noted water rising up through the gravel in front of the Service Water intake structure. The water was located approximately 5 feet from the building. The 12 SWS nuclear header is located below the location where the water was observed, and was considered to be a likely source of the leak.

The licensee subsequently determined that the leak is associated with the 12 SWS nuclear supply header. PSEG is currently postulating that the leak is coming from an underground mechanical joint or mechanical connection associated with the buried portion of the 12 SWS nuclear supply header located near the service water structure. In the area where the leak is suspected, the service water nuclear supply header is 24'' nominal diameter buried piping. This piping design is pre-stressed concrete cylindrical water pipe, which uses either standard flanged fittings, or flexible tied extensible bell bolt type joints for the major connections.

While the 12 SWS nuclear supply header is currently considered operable, PSEG believes that repairs will be required before the next scheduled refueling outage. Approval of this license amendment request under exigent circumstances would allow the licensee to repair the leaking header during more advantageous weather and river water temperature conditions. This, in turn, would likely minimize the duration that the 12 SWS header would be inoperable.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The Service Water System (SWS) will remain capable of performing its required safety function. The proposed change results in an insignificant increase in the incremental conditional core damage probability and so does not involve a significant increase in the probability of an accident. The proposed change to extend the allowed outage time from 72 hours to 10 days does not significantly increase consequences of an accident previously evaluated, since the capability of SWS is maintained.

Therefore, the proposed change will not significantly increase the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously analyzed?

*Response:* No.

The completion of the maintenance activity, the post maintenance testing, and the surveillance testing associated with demonstrating OPERABILITY of 12 service water nuclear header will not result in the plant being operated in a manner that will create the possibility of a new or different kind of accident from any previously evaluated. While repair to the buried portion of the 12 service water nuclear header is in progress, the service water system will be operated as described in the Updated Final Safety Analysis Report. This configuration does not create a new failure mechanism, malfunction or accident initiator.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The 11 service water nuclear header will remain operational and capable of performing its required safety functions. Sufficient safety-related equipment and systems will remain available to ensure that the consequences of design basis transients and accidents are mitigated as assumed in the Salem UFSAR. Preventive maintenance activities that could adversely affect the reliability of the Unit 1 service water system, Emergency Diesel Generators, 4kv vital buses or offsite A.C. electrical power sources will be controlled during the extended allowed outage time.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 16, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at *http://www.access.gpo.gov/nara/cfr*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeffrie J. Keenan, Esquire, PSEG Nuclear—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Further details with respect to this action, see the application for amendment dated December 10, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor),

Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm.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 Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 11th day of December 2001.

For the Nuclear Regulatory Commission,

**Richard B. Ennis,**

*Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–30972 Filed 12–14–01; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–244, License No. DPR–18]**

## Order Approving Application Regarding Proposed Corporate Acquisition

In the Matter of Rochester Gas and Electric Corporation (R.E. Ginna Nuclear Power Plant).

### I

Rochester Gas and Electric Corporation (RG&E or the licensee) is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to possess, maintain, and operate the R. E. Ginna Nuclear Power Plant (Ginna) under Facility Operating License No. DPR–18, issued by the Commission on December 10, 1984. The facility is located in Wayne County, New York.

### II

By application dated June 22, 2001, RG&E requested that the Commission consent to the indirect transfer of the facility operating license for Ginna. The indirect transfer would result from the planned acquisition of RG&E's parent company, RGS Energy Group, Inc. (RGS), by Energy East Corporation (Energy East).

According to the application, on February 16, 2001, RGS and Energy East entered into an agreement pursuant to which RGS would be merged with and into a wholly owned subsidiary of Energy East. After the planned merger transaction, RG&E will continue to exist as a wholly owned indirect subsidiary of Energy East. RG&E would continue to own Ginna following approval of the proposed indirect transfer of the license, and would continue to be exclusively responsible for the operation, maintenance, and eventual decommissioning of the facility. No physical changes to the facility or operational changes were proposed in the application.

Approval of the indirect transfer of the operating license was requested by RG&E pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 14, 2001 (66 FR 42687). No hearing requests or written comments were received.

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. After reviewing the information in the application from RG&E and other information before the Commission, the NRC staff has determined that the acquisition by Energy East of RGS resulting in the establishment of Energy East as the new ultimate indirect parent of RG&E will not affect the qualifications of RG&E as the holder of the license, and that the indirect transfer of the license, to the extent effected by the foregoing transaction, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The foregoing findings are supported by a safety evaluation dated December 10, 2001.

### III

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the application regarding the indirect transfer of the license referenced above is approved, subject to the following conditions:

(1) RG&E shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from RG&E to any direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of RG&E's consolidated net utility plant, as recorded on RG&E's books of account.

(2) Should the planned acquisition by Energy East of RGS not be completed by December 31, 2002, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended. This Order is effective upon issuance.

### IV

For further details with respect to this action, see the application dated June 22, 2001, and the safety evaluation dated December 10, 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.*

Dated at Rockville, Maryland, this 10th day of December, 2001.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–30973 Filed 12–14–01; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–390]**

## Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–90 issued to Tennessee Valley Authority (TVA or the licensee) for operation of Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

The proposed amendment would revise the Final Safety Analysis Report to reflect a change in the spent fuel pool (SFP) cooling analysis methodology. TVA proposes to increase the existing WBN SFP heat load limit from its current value of 32.6 MBTU/HR to 47.4 MBTU/HR. The proposed change would give TVA the capability to off-load the core during outages as early as 100 hours after shutdown. In addition, the change would compensate for the projected increase in SFP decay heat from tritium production activities.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed methodology change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The spent fuel pool cooling and cleanup system (SFPCCS) will see higher heat loading for the spent fuel as a result a 100[-]hour core offload as well as tritium producing burnable rod (TPBAR) irradiation. The analysis methodology change takes advantage of operating data as input into the SFP cooling analysis assumptions. Specifically, by taking credit for actual (lower) fouling of the SFPCCS heat exchangers and using actual component cooling system (CCS) temperatures, higher allowable heat loads can be safely placed within the SFP without exceeding existing design limitations. The increased quantity of heat being rejected to the CCS system is well within the system's design capability. The actual SFP cooling system is not being modified from what was previously evaluated and will continue to provide cooling as previously described. Existing maximum SFP temperatures will not be exceeded. Should loss of all cooling (loss of two trains) occur, ample time and sources for providing makeup water, are available, therefore there is no increased probability for SFP boil-off to uncover the stored spent fuel. Since the stored fuel will remain covered, there is no increase in radiological effects of such an event.

Therefore, the proposed methodology change does not increase the probability or consequences of an accident previously evaluated.

B. The proposed methodology change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SFP cooling system will see higher heat loading for the spent fuel as a result a 100 hour core offload as well as TPBAR irradiation, the methodology change takes advantage of operating data as input into the SFP cooling analysis assumptions. The actual SFP cooling system is not being modified from what was previously evaluated and will continue to provide cooling as previously described. The current UFSAR [Updated Final Safety Analysis Report] recognizes that a complete loss of SFP cooling (loss of two trains) would ultimately result in a SFP boiling condition. However, the revised analysis has shown that even with higher allowable decay heat loads placed in the SFP, adequate sources for makeup exists to allow reasonable time (over three days) to mitigate such an event, without reducing the SFP water level to unacceptable levels (10 feet above fuel storage racks).

Loss of one train of cooling remains within the piping design analysis basis and the pool liner structural analysis since the peak temperatures projected are the same.

An error in the determination of the heat exchanger fouling factor would be detected by comparing trends from past determinations and through measured pool temperature.

Therefore, the proposed methodology change does not create a new or different kind of accident from any accident previously evaluated.

C. The proposed methodology change does not involve a significant reduction in a margin of safety.

This methodology change further refines assumptions made in the SFP cooling analysis based upon operating data. The SFP cooling system is not being modified and will continue to provide cooling as previously described. The current UFSAR recognizes that a complete loss of SFP cooling (loss of two trains) would ultimately result in a SFP boiling condition. However, the revised analysis has shown that even with higher allowable decay heat loads placed in the SFP, adequate sources for makeup exist to allow adequate time (over three days) to mitigate such an event, without reducing the SFP water level to unacceptable levels (10 feet above fuel storage racks). While the revised analysis has shown a decrease in the time to react to a complete loss of SFP cooling, the resulting time available to mitigate such an event is acceptable. Additionally, the analyses for loss of cooling events all considered steady state heat loads from the fuel. Since a loss of two trains must first be postulated, over three days exists to restore cooling, heat load decreases over the three days, and multiple sources of makeup (one qualified) exist, adequate assurance is provided that the proposed change will not involve a significant reduction in any margin of safety related to SFPCCS operation or storage of spent fuel.

The higher heat loads rejected to the CCS system are well within its design basis allowable heat loads experienced in other operating modes, therefore the CCS system can safety remove the increased decay heat from the SFP.

Therefore, this proposed methodology change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 16, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should

consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC web site (*http://www.nrc.gov*). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 20, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC web site *(http://www.nrc.gov).*

Dated at Rockville, Maryland, this 11th day of December 2001.

For the Nuclear Regulatory Commission.

**L. Mark Padovan,**

*Project Manager, Project Directorate II–2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–30969 Filed 12–14–01; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–327 and 50–328]**

## Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License Nos. DRP–77 and DRP–79 issued to the Tennessee Valley Authority (TVA or the licensee) for operation of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, located in Soddy-Daisy, Tennessee.

The proposed amendments would change Technical Specifications (TSs) to allow SQN to provide incore irradiation services for the U.S. Department of Energy (DOE). This change would allow TVA to insert up to 2256 tritium-producing burnable absorber rods (TPBARs) into the reactor cores to support DOE in maintaining its tritium inventory for national defense purposes. Each SQN core contains 193 fuel assemblies and each fuel assembly contains 264 fuel rods. In this amendment request, TVA proposes to insert up to 24 TPBARs in selected fuel assemblies (adjacent to but not in place of the 264 fuel rods). The TPBARS absorb neutrons and are similar to (and would replace) normal burnable neutron absorber rods that serve to shape neutron flux in the core. The TPBARs

contain no fissile material and will be installed in fuel assemblies where burnable absorber rods are normally placed in selected fuel assemblies. Therefore, the TPBARs would fill the same role as burnable absorber rods in the operation of the reactor. However, most of the neutron absorber (lithium) in the TPBARs still remains at the end of core life as compared to normal burnable neutron absorbers (boron or gadolinium). Therefore, the proposed license amendments involve (1) revising the measurement range for the source range neutron monitors specified in TS Table 3.3–9, (2) increasing the required boron concentration for both the cold leg accumulators (TS 3/4.5.1) and the refueling water storage tank (RWST) (TS 3/4.5.5), (3) deleting the boron concentration and spent fuel storage requirements and associated Bases for the cask pit pool in TS Section 3/4.7.14 and Section 5.6, (4) establishing a limit on the number of TPBARs that can be irradiated in TS Section 5.3.1, (5) providing storage requirements for spent fuel assemblies that contain TPBARs after irradiation in TS Section 5.6 and the Bases for TS Section 3/4.7.13, and (6) implementing a TPBAR consolidation activity. This submittal also provides proposed revisions to the associated TS Bases in Section 3/4.6.4 regarding combustible gas control. Changes (1) and (2) above are necessary because the uranium-235 (U–235) enrichment of fuel assemblies containing TPBARs must be increased (to no more than 4.95 weight percent) to compensate for the higher neutron absorbing properties of the lithium-7 in the TPBARs. The NRC has previously approved maximum U–235 fuel enrichments of 4.95 ± 0.05 weight percent for SQN Units 1 and 2. Five percent enrichment is the NRC's upper limit for reactor licensing. Therefore, enrichments resulting from the proposed amendments are bounded by the current SQN Operating License and licensing basis.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration in its application dated September 21, 2001, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

1.TS Table 3.3–9—Remote Shutdown Monitoring Instrumentation—Revised Source Range Monitor Range

The backup source range monitors are for indication of unit shutdown conditions only and do not perform any trip or mitigation functions. The monitors are not active components such that they could initiate a postulated accident and are not considered a contributor to accident generation. Therefore, the lowering of the indication range for this monitor will not increase the probability of an accident.

Since the monitor has only an indication function, it does not serve to mitigate postulated accidents. While the indications from this monitor can help to identify changing core conditions and promote actions to prevent undesired conditions, this is not a mitigation function credited in the accident analysis and is considered a diverse capability of the plant instrumentation system. Therefore, the proposed change will not impact any credited accident mitigation functions, and by improving shutdown monitoring capability, will not [involve a significant] increase [in] the [probability or] consequences of an accident [previously evaluated].

2.TS 3/4.5.1—Cold Leg Injection Accumulators—Boron Concentration Increase

The accumulator boron concentration does not affect any initiating event for accidents currently evaluated in the Updated Final Safety Analysis Report (UFSAR). The increased concentrations will not adversely affect the performance of any system or component which is placed in contact with the accumulator water. The integrity and operability of the stainless steel surfaces in the accumulator and affected nuclear steam supply system (NSSS) components/systems will be maintained. The decrease in solution pH is small and will not degrade the stainless steel. Also, the integrity of the Class 1E instrumentation and control equipment will be maintained since the lower sump pH, resulting from the increased boron concentrations, is still within the applicable equipment qualification limits. These limits are set to preclude the possibility of chloride[-]induced stress corrosion cracking and assure that there is no significant degradation of polymer materials. The design, material and construction standards of all components which are placed in contact with the accumulator water remain unaffected. Therefore, the possibility [probability] of an accident has not been increased.

The consequences of an accident previously evaluated in the UFSAR will not be increased. The change in the concentrations increase the amount of boron in the sump during a loss-of-coolant accident (LOCA). The increased boron in the sump is sufficient to maintain the core in a subcritical condition. Testing has indicated that TPBARs can experience cladding breach at Large Break LOCA (LBLOCA) conditions if the cladding temperature and internal pressure of the TPBARs reach limiting values. Consequently, the post-LOCA critical boron calculations account[ed] for the potential loss of a LiAlO2 [lithium aluminate] pencil, as well as partial leaching of lithium from the remaining pencils. Based on conservative assumptions, the calculations confirm that the tritium production core will remain subcritical following a LOCA. Also, a revised hot leg switchover time has been calculated and will be implemented in the plant emergency operating procedures (EOPs). Thus, there will be no added post-LOCA long-term cooling problems associated with boron precipitation in the core following a large break LOCA (LBLOCA).

An evaluation of the non-LOCA events shows that the accumulators do not actuate. An increase in accumulator boron concentration would have no effect on either the steam line break (SLB) at hot zero power event, the feedwater line break event, or the spurious operation of safety injection (SI) system event (events in which an SI signal does occur). Therefore, there is no increase in consequences of the non-LOCA events associated with the proposed increase in accumulator boron concentration.

The accumulators are not assumed to actuate in the steam generator tube rupture (SGTR) event analysis, and the SLB mass and energy (M&E) release evaluation relies on control rods for shutdown margin and assumes a minimum boron concentration. In addition, the increase in accumulator boron concentrations and subsequent slight decrease in containment sump and spray pH does not impact the LOCA dose evaluation since the analysis of record does not credit sump pH as an input or assumption regarding volatile iodine removal efficiencies. Therefore, the present analysis remains bounding. Also, the slight decrease in sump, core and spray fluid pH has been evaluated to not significantly impact the corrosion rate (and subsequent generation of hydrogen) of aluminum and zinc inside containment. Further, the decreased sump, core and spray fluid pH has been evaluated to not affect the amount of hydrogen generated from the post-LOCA radiolytic decomposition of the sump and core solution. The likelihood of containment failure due to hydrogen deflagration is therefore not impacted by pH changes.

In view of the preceding, it is concluded that the proposed change in accumulator boron concentration will not increase the radiological [probability or] consequences of an accident previously evaluated in the UFSAR.

3. TS 3/4.5.5—Refueling Water Storage Tank—Boron Concentration Increase

The RWST boron concentration does not affect any initiating event for accidents

currently evaluated in the UFSAR. The increased concentration will not adversely affect the performance of any system or component which is placed in contact with the RWST water. The integrity and operability of the stainless steel surfaces in the RWST and affected NSSS components/systems will be maintained. The decrease in solution pH is small and will not degrade the stainless steel. Also, the integrity of the Class 1E instrumentation and control equipment will be maintained since the lower sump pH, resulting from the increased boron concentrations, is still within the applicable equipment qualification limits. These limits are set to preclude the possibility of chloride induced stress corrosion cracking and assure that there is no significant degradation of polymer materials. The design, material and construction standards of all components which are placed in contact with the RWST water remain unaffected. Therefore, the probability of an accident has not changed.

The consequences of an accident previously evaluated in the UFSAR will not be increased. The change in the RWST boron concentration increases the amount of boron in the sump following a LOCA. The increased boron in the sump is sufficient to maintain the core in a subcritical condition. Testing has indicated that TPBARs can experience cladding breach at Large Break LOCA (LBLOCA) conditions if the cladding temperature and internal pressure of the TPBARs reach limiting values. Consequently, the post-LOCA critical boron calculations accounted for the potential loss of a $LiAiO_2$ pencil, as well as partial leaching of lithium from the remaining pencils. Based on conservative assumptions, the calculations confirm that the tritium production core will remain subcritical following a LOCA. Also, a revised hot leg switchover time has been calculated and will be implemented in the plant EOPs. Thus, there will be no added post-LOCA long-term cooling problems associated with boron precipitation in the core following a LOCA.

An evaluation of the non-LOCA events indicates that an SI initiation occurs in the SLB at hot zero power event, the feedwater line break event, and the spurious operation of the SI system event. An increase in the RWST boron concentration would effectively reduce the return to power subsequent to a SLB. Boration is not credited in the feedwater line break analysis and the proposed boron increase is conservatively bounded by the boron inputs to the spurious SI system operation analysis. Therefore, there is no increase in consequences of the non-LOCA events associated with the proposed increase in RWST boron concentration.

The SLB M&E release evaluation relies on control rods for shutdown margin and assumes a minimum boron concentration. For the SGTR, the boron concentration in the accumulators and the RWST are not modeled. In addition, the increase in RWST boron concentrations and subsequent slight decrease in containment sump and spray pH does not impact the LOCA dose evaluation. While higher pH helps maintain volatile iodine in solution and lower pH drives the equilibrium to favor volatile iodine in a gaseous state, the change in sump pH is not sufficient to result in any measurable change in post-LOCA releases.

Furthermore, current radiological analyses do not take credit for volatile iodine removal efficiencies based on sump pH. Therefore, since the change in pH is minimal, and no credit is taken in release analysis, the present analysis remains bounding. Also, the slight decrease in sump, core and spray fluid pH has been evaluated to not significantly impact the corrosion rate (and subsequent generation of hydrogen) of aluminum and zinc inside containment and the present analysis remains bounding. Further, the decreased sump, core and spray fluid pH has been evaluated to not affect the amount of hydrogen generated from the radiolytic decomposition of the sump and core solution and therefore will not challenge containment integrity.

In view of the preceding, it is concluded that the proposed change in RWST boron concentration will not increase the radiological [probability or] consequences of an accident previously evaluated in the UFSAR.

4. TS 3/4.7.14 and Bases—Cask Pit Pool Minimum Boron Concentration—Deletion of Requirements

This change removes the provisions that allow and support the storage of spent fuel in the cask pit pool. By eliminating this provision, the potential for criticality events associated with stored fuel in the cask pit pool is no longer credible. Not having boron concentration requirements for the cask pit for storage considerations is acceptable based on the removal of TS provisions that would allow such storage. The boron concentration requirement is not considered a contributor to accident generation and therefore, this deletion does not increase the potential [probability] for accident generation because spent fuel will not be stored in this location. Likewise, the consequences of an accident [previously evaluated] will not be [significantly] increased because the dose generation source, in the form of spent fuel stored in the cask pit, will not be allowed.

5. TS 5.3.1—Design Features/Reactor Core/Fuel Assemblies

The insertion of TPBARs into the SQN reactor core does not adversely affect reactor neutronic or thermal-hydraulic performance; therefore, they do not significantly increase the probability of accidents or equipment malfunctions while in the reactor. The neutronic behavior of the TPBARS mimics that of standard burnable absorbers with only slight differences which are accommodated in the core design. The reload safety analysis performed for SQN Units 1 and 2 prior to each refueling cycle will confirm that any minor effects of TPBARS on the reload core will be within fuel design limits.

As described in the [Department of Energy's] tritium production core (TPC) topical [report, NDP–98–181, Revision 1], the TPBAR design is robust to all accident conditions except the large break LOCA (LBLOCA) where the rods are susceptible to failure. However, the failure of TPBARs has been determined to have an insignificant effect on the thermal hydraulic response of the core to this event, and analysis has shown that the core will remain subcritical following a LOCA.

The impacts of TPBARs on the radiological consequences for all evaluated events are very small, and they remain within [well below] 10 CFR 100 regulatory limits. The additional offsite doses due to tritium are small with respect to LOCA source terms and are well within regulatory limits.

The TPBAR[s] could result in an increase in combustible gas released to the containment in a LBLOCA. This increase was found to be approximately 1495 scf which remains within the capability of the recombiners.

Analysis has shown that TPBARs are not expected to fail during Condition I through IV events [as described in Chapter 15 of the UFSAR, Condition I being normal operation and operational transients, Condition II being faults of moderate frequency, Condition III being infrequent faults, and Condition IV being limiting faults] with the exception of a LBLOCA and a fuel handling accident. The radiological consequences of these events are [well] within 10 CFR 100 limits. Therefore, there is no significant increase in the [probability or] consequences of these previously evaluated accidents.

6. TS 5.6 and TS 3/4.7.13 Bases—Design Features/Fuel Storage and Spent Fuel Pool Minimum Boron Concentration—Revised Storage Requirements for Fuel Assemblies Containing TPBARs

A specified amount of soluble boron is needed in the spent fuel pool to provide margin to criticality sufficient to mitigate the effects of the most serious spent fuel pool accident condition. Previous spent fuel pool criticality safety analyses (for Type A fuel) [spent fuel that has not hosted TPBARs] determined the required amount of soluble boron to be 700 parts per million (ppm). The new spent fuel pool criticality safety analysis accounting for storage of Type T fuel [spent fuel that has hosted TPBARS] confirmed that 700 ppm soluble boron still provides the required margin to criticality. Therefore, there is no significant increase in the consequences of previously evaluated accidents postulated for the spent fuel pool. Additionally, the administrative controls for loading the spent fuel pool are not changed and will continue to maintain acceptable storage configurations consistent with the analysis. Therefore, the proposed change will not [involve a significant] increase [in] the probability [or consequences] of an accident [previously evaluated].

7. TPBAR Consolidation Activity

TPBAR consolidation and associated handling activities are designed to be consistent with the existing fuel handling and heavy load handling processes and equipment currently utilized at the facility, and are designed to preclude increased probability of an accident previously evaluated.

Consequences of a fuel handling accident for fuel containing TPBARs is evaluated and does not result in exceeding [or even approaching]10 CFR Part 100 limits for off-site dose. All consolidation and heavy load handling activities are designed such that the current fuel handling accident scenario

remains bounding. Therefore the [probability or] consequences of an accident previously evaluated [will not be significantly increased] remains within acceptable limits.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

1. TS Table 3.3–9—Remote Shutdown Monitoring Instrumentation—Revised Source Range Monitor Range

The backup source range monitors are for indication of unit shutdown conditions only and do not perform any trip or mitigation functions. The monitors are not active components such that they could initiate a postulated accident and are not considered a contributor to accident generation. Therefore, the lowering of the indication range for this monitor will not create the possibility of a new or different kind of accident [from any accident previously evaluated].

2. TS 3/4.5.1—Cold Leg Injection Accumulators—Boron Concentration Increase

The change to the accumulator concentration does not cause the initiation of any accident nor create any new credible limiting single failure. The change does not result in a condition where the design, material, and construction standards of the accumulators and other potentially affected NSSS components, that were applicable prior to the changes, are altered. The integrity and operability of the stainless steel surfaces in the accumulator and affected NSSS components/systems will be maintained. The decrease in solution pH is small and will not degrade the stainless steel. Also, the integrity of the Class 1E instrumentation and control equipment will be maintained during a LOCA since the lower sump pH, resulting from the increased boron concentrations, is still within the applicable equipment qualification limits. These limits are set to preclude the possibility of chloride[-]induced stress corrosion cracking and assure that there is no significant degradation of polymer materials.

The changes in the concentrations increase the amount of boron in the sump following a LOCA. The increased boron in the sump is sufficient to maintain the core in a subcritical condition. Also, a revised hot leg switchover time has been calculated and will be implemented in the plant EOPs. Thus, there will be no boron precipitation in the core following a LOCA.

All systems, structures, and components previously required for the mitigation of an event remain capable of fulfilling their intended design function. The proposed change has no adverse a[e]ffect on any safety-related system or component and does not challenge the performance or integrity of any safety[-]related system. Therefore, the proposed increase in accumulator boron concentration does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. TS 3/4.5.5—Refueling Water Storage Tank—Boron Concentration Increase

The change to the RWST concentration does not cause the initiation of any accident nor create any new credible limiting single failure. The change does not result in a condition where the design, material, and construction standards of the RWST and other potentially affected NSSS components, that were applicable prior to the changes, are altered. The integrity and operability of the stainless steel surfaces in the RWST and affected NSSS components/systems will be maintained. The decrease in solution pH is small and will not degrade the stainless steel. Also, the integrity of the Class 1E instrumentation and control equipment will be maintained during a LOCA since the lower sump pH, resulting from the increased boron concentrations, is still within the applicable equipment qualification limits. These limits are set to preclude the possibility of chloride[-]induced stress corrosion cracking and assure that there is no significant degradation of polymer materials.

The changes in the concentrations increase the amount of boron in the sump following a LOCA. The increased boron in the sump is sufficient to maintain the core in a subcritical condition. Also, a revised hot leg switchover time has been calculated and will be implemented in the plant EOPs. Thus, there will be no boron precipitation in the core following a LOCA.

All systems, structures, and components previously required for the mitigation of an event remain capable of fulfilling their intended design function. The proposed change has no adverse affect on any safety-related system or component and does not challenge the performance or integrity of any safety[-]related system. Therefore, the proposed increase in RWST boron concentration does not create the possibility of a new or different kind of accident from any accident previously evaluated.

4. TS 3/4.7.14 and Bases—Cask Pit Pool Minimum Boron Concentration—Deletion of Requirements

This change removes the provisions that allow and support the storage of spent fuel in the cask pit pool. By eliminating this provision, the potential for criticality events associated with stored fuel in the cask pit pool is no longer credible. The boron concentration requirement for the cask pit pool is not considered a contributor to accident generation and therefore, this deletion does not increase the [possibility of] potential for [a new or different kind of] accident [from any accident previously evaluated] generation because spent fuel will not be stored in this location.

5. TS 5.3.1—Design Features/Reactor Core/Fuel Assemblies

TPBARS have been designed to be compatible with existing fuel assemblies supplied by Framatome-ANP and its predecessor Framatome Cogema Fuels and with conventional Burnable Poison Rod Assembly (BPRA) handling tools, equipment, and procedures. Therefore, no new [or different kind of] accidents or equipment malfunctions are created by the handling of TPBARs. * * *

TPBARs use materials with known and predictable performance characteristics and are compatible with pressurized water reactor coolant. The TPBAR design has specifically included material similar to those used in standard burnable absorber rods with the exception of internal assemblies used in the production and retention of tritium. As described in the TPC Topical Report, these materials are compatible with the reactor coolant system (RCS) and core design. Therefore, no new accidents or equipment malfunctions are created by the presence of the TPBARs in the RCS.

Mechanical design criteria have been established to ensure that TPBARs will not fail during Condition I or II events. Analysis has shown that TPBARs, appropriately positioned in the core, operate within the established thermal-hydraulic criteria. Due to the expected high reliability of TPBAR components, the frequency of TPBAR cladding failures is very small, such that multiple adjacent TPBAR failures in limiting locations is not considered credible. In addition, analysis has shown that if a single TPBAR fails catastrophically in a high power location during normal operation and the lithium is leached out, the global reactivity increase is negligible and the local power peaking is small enough that DNBR [departure from nucleate boiling ratio] limits and fuel rod integrity are not challenged. Therefore, no new [or different kind of] accidents or equipment malfunctions are created by the presence of the TPBARs in the reactor.

Analysis has shown that TPBARs will not fail during Condition III and IV events with the exception of a LBLOCA and a fuel handling accident. The radiological consequences of these events are within 10 CFR 100 limits. Therefore, there is no significant increase in consequences of these previously evaluated accidents.

TPBARs do not adversely affect reactor neutronic [or] thermal-hydraulic performance, therefore they do not create the possibility of [new or different kinds of] accidents or equipment malfunctions of a different type [of accident] than previously evaluated while in the reactor.

6. TS 5.6 and TS 3/4.7.13 Bases—Design Features/Fuel Storage and Spent Fuel Pool Minimum Boron Concentration—Revised Storage Requirements for Fuel Assemblies Containing TPBARs

The storage in the spent fuel pool of spent fuel that has contained TPBARs is not a fundamental change in the use of the spent fuel pool. Specific provisions have been made for burnup and cooling time requirements in allowable configurations to ensure safe storage. The same administrative program to control storage requirements in the spent fuel pool will be utilized to handle Type A and Type T spent fuel. Therefore, the possibility of a new or different [kind of] accident than [any accident] previously evaluated has not been created.

7. TPBAR Consolidation Activity

The consolidation and handling systems are designed to preclude the possibility of a consolidating and/or handling event which could damage more than 24 TPBARs. Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any [accident] previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

1. TS Table 3.3–9—Remote Shutdown Monitoring Instrumentation—Revised Source Range Monitor Range

The backup source range monitors are for indication of unit shutdown conditions only and do not perform any trip or mitigation functions. The lowering of the monitor's range does allow improved indication of core conditions with the TPCs. While this monitor does not have any trip or accident mitigation functions, this change will improve the ability to assess the conditions of the unit such that necessary actions can be initiated to prevent undesired conditions. Therefore, the proposed change will not reduce [does not involve a significant reduction in] a margin of safety.

2. TS 3/4.5.1—Cold Leg Injection Accumulators—Boron Concentration Increase

The change does not invalidate any of the non-LOCA safety analysis results or conclusions, and all of the non-LOCA safety analysis acceptance criteria continue to be met. The licensing basis small break LOCA (SBLOCA) analysis does not credit the accumulator boron and is not affected by the proposed change. Therefore, there is no reduction in the margin to the peak clad temperature (PCT) limit for the SBLOCA. There is no increase in the LBLOCA PCT; therefore, the ECCS acceptance criteria limit, dictated by 10 CFR 50.46, is not exceeded with regard to the LBLOCA analysis. The increased boron concentration is sufficient to maintain subcriticality during the LBLOCA, and a post-LOCA long-term core cooling analysis demonstrated that the post-LOCA sump boron concentration is sufficient to prevent recriticality. The revised hot leg switchover time, which will be implemented in the EOPs, will prevent long-term cooling problems associated with boron precipitation in the reactor vessel and core. The licensing analyses for containment, equipment qualification, and environmental consequences remain bounding and applicable and the acceptance criteria of the related events continue to be met. The proposed increase in accumulator boron concentration, therefore, does not involve a significant reduction in a margin of safety.

3. TS 314.5.5—Refueling Water Storage Tank—Boron Concentration Increase

The change does not invalidate any of the non-LOCA safety analysis results or conclusions, and all of the non-LOCA safety analysis acceptance criteria continue to be met. The licensing basis SBLOCA analysis does not credit the RWST boron and is not affected by the proposed change. Therefore, there is no reduction in the margin to the PCT limit for the SBLOCA. There is no increase in the LBLOCA PCT; therefore, the ECCS acceptance criteria limit, dictated by 10 CFR 50.46, is not exceeded with regard to the LBLOCA analysis. The increased boron concentration is sufficient to prevent recriticality. The revised hot leg switchover time, which will be implemented in the EOPs, will prevent boron precipitation. The licensing analyses for containment, equipment qualification, and environmental consequences remain bounding and applicable and the acceptance criteria of the related events continue to be met. The proposed increase in RWST boron concentration, therefore, does not involve a significant reduction in a margin of safety.

4. TS 3/4.7.14 and Bases—Cask Pit Pool Minimum Boron Concentration—Deletion of Requirements

This change removes the provisions that allow and support the storage of spent fuel in the cask pit pool. This change will not alter plant systems, operating methods, or plant setpoints that maintain the margin of safety. Boron concentration will continue to be properly maintained for the storage of spent fuel in the spent fuel pool as required by the analysis to control inadvertent criticality events. Therefore, this change will not reduce [does not involve a significant reduction in] the margin of safety.

5. TS 5.3.1—Design Features/Reactor Core/Fuel Assemblies

TPBARs have been designed to be compatible with existing fuel assemblies. TPBARs do not adversely affect reactor neutronic or thermal-hydraulic performance. Analysis indicates that reactor core behavior and offsite doses remain relatively unchanged. For these reasons, the proposed amendment does not involve a significant reduction in a margin of safety.

6. TS 5.6 and TS 3/4.7.13 Bases—Design Features/Fuel Storage and Spent Fuel Pool Minimum Boron Concentration—Revised Storage Requirements for Fuel Assemblies Containing TPBARs

Addition of fuel assemblies containing TPBARs to the spent fuel pool is consistent with the pool design function. Specific provisions have been made as a result of reanalysis of spent fuel pool criticality safety analysis to limit storage configurations and burnup or cooling time requirements to those that will provide for safe storage of fresh and spent fuel. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

7. TPBAR Consolidation Activity

The changes do not affect the safety-related performance of any plant operations, system, structures, or components. Therefore, there is no [it does not involve a] significant reduction in the margin of safety.

The NRC staff has reviewed the no significant hazards consideration analysis provided by TVA with respect to the three criteria listed in 10 CFR 50.92(c). The staff's safety evaluation is in its early stages and will require several months to complete. However, in terms of 10 CFR 50.92(c), the staff finds that the TVA application addresses all applicable accidents discussed in the UFSAR, including LOCAs, SGTRs, and fuel handling considerations. Insertion of the TPBARS for the purpose of producing tritium (which is sealed inside the TPBARs) requires a higher degree of fuel enrichment with uranium-235. Because the TPBARs neither contain fissile material nor replace normal reactor fuel, and because the TPBARs will not adversely affect reactor neutronic or thermal-hydraulic performance, their presence in the core should have no effect upon the probability or consequences of previously analyzed accidents, including fuel handling accidents. For the same reasons, the possibility of a new or different kind of accident would not be expected to result from irradiation of the TPBARS in the SQN reactor cores. TVA's analysis of a possible reduction in safety margins addressed PCT limits resulting from an SBLOCA and the increased boron concentration to maintain subcriticality.

Based on the NRC staff's review of the analysis provided by the licensee, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 16, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10

CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by E-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley Authority, ET 11A, 400 West Summit Hill Drive, Knoxville, TN 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Further details with respect to this action may be found in the application for amendment dated September 21, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* 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 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 11th day of December 2001.

For the Nuclear Regulatory Commission.

**Ronald W. Hernan,**

*Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–390]**

### Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–90 issued to the Tennessee Valley Authority (TVA or the licensee) for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

The proposed amendment would change Technical Specifications (TSs) to allow WBN to provide incore irradiation services for the U.S. Department of Energy (DOE). This change would allow TVA to insert up to 2304 tritium-producing burnable absorber rods

(TPBARs) into the reactor core to support DOE in maintaining the nation's tritium inventory for national defense purposes. Each WBN core contains 193 fuel assemblies and each fuel assembly contains 264 fuel rods. In this amendment request, TVA proposes to insert up to 24 TPBARs in selected fuel assemblies (adjacent to but not in place of the 264 fuel rods). The TPBARS absorb neutrons and are similar to (and would replace) normal burnable neutron absorber rods that serve to shape neutron flux in the core. The TPBARs contain no fissile material and will be installed in fuel assemblies where burnable absorber rods are normally placed in selected fuel assemblies. Therefore, the TPBARs would fill the same role as burnable absorber rods in the operation of the reactor. However, most of the neutron absorber (lithium) in the TPBARs still remains at the end of core life as compared to normal burnable neutron absorbers (boron or gadolinium). Therefore, the proposed license amendment involves increasing the required boron concentration for both the cold-leg accumulators (TS 3.5.1) and the refueling water storage tank (TS 3.5.4), removing the Region 2 burnup credit racks in the spent fuel pool and clarifying fuel storage restrictions (TSs 3.7.15 and 4.3.3), adding a limit on the number of TPBARs that can be irradiated (TS Section 4.2.1), and implementing a TPBAR consolidation activity. This submittal also provides proposed revisions to the associated TS Bases to modify the switchover time for containment sump to hot leg recirculation (TS B3.5.2) and to modify the hydrogen recombiner section to properly describe the possible sources of hydrogen gas (TS B3.6.7). The uranium-235 (U–235) enrichment of fuel assemblies containing TPBARs must be increased to no more than 4.95 weight percent to compensate for the higher neutron absorbing properties of the lithium-7 in the TPBARs. The NRC has previously approved maximum U–235 fuel enrichments of 5.0 weight percent for WBN Unit 1. Five percent enrichment is the NRC's upper limit for reactor licensing. Therefore, enrichments resulting from the proposed amendment are bounded by the current WBN Operating License and licensing basis.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration in its application dated August 20, 2001, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

1. TS 3.5.1—Cold Leg Accumulator—Boron Concentration Increase

The accumulator boron concentration does not affect any initiating event for accidents currently evaluated in the Updated Final Safety Analysis Report (UFSAR). The increased concentrations will not adversely affect the performance of any system or component which is placed in contact with the accumulator water. The integrity and operability of the stainless steel surfaces in the accumulator and affected Nuclear Steam Supply System (NSSS) components/systems will be maintained. The decrease in solution pH is small and will not degrade the stainless steel. Also, the integrity of the Class 1E instrumentation and control equipment will be maintained since the lower sump pH, resulting from the increased boron concentrations, is still within the applicable equipment qualification limits. These limits are set to preclude the possibility of chloride[-]induced stress corrosion cracking and assure that there is no significant degradation of polymer materials. The design, material and construction standards of all components which are placed in contact with the accumulator water remain unaffected. Therefore, the possibility [probability] of an accident has not been [significantly] increased.

The consequences of an accident previously evaluated in the UFSAR will not be [significantly] increased. The change in the concentrations increase the amount of boron in the sump during a Loss of Coolant Accident (LOCA). The increased boron in the sump is sufficient to maintain the core in a subcritical condition. Testing has indicated that TPBARs can experience cladding breach at Large Break LOCA (LBLOCA) conditions if the cladding temperature and internal pressure of the TPBARs reach limiting values. Consequently, the post-LOCA critical boron calculations account[ed] for the potential loss of a $LiAlO_2$ [lithium aluminate] pencil, as well as partial leaching of lithium from the remaining pencils. Based on conservative assumptions, the calculations confirm that the tritium production core will remain subcritical following a LOCA. Also, a revised hot leg switchover time has been calculated and will be implemented in the plant Emergency Operating Procedures (EOPs). Thus, there will be no boron precipitation in the core following a LBLOCA.

The only non-LOCA event that assumes accumulator actuation is the Major Rupture of a Main Steamline event, however, it assumes a minimum amount of boron. Furthermore, there is no impact on the SGTR [steam generator tube rupture] event since the accumulators are not assumed to be actuated, and the SLB [steam line break] M&E [mass and energy] release evaluation relies on control rods for shutdown margin and assumes a minimum boron concentration.

In addition, the increase in accumulator boron concentrations and subsequent slight decrease in containment sump and spray pH does not impact the LOCA dose evaluation since the analysis of record does not credit sump pH as an input or assumption regarding volatile iodine removal efficiencies. Therefore, the present analysis remains bounding. Also, the slight decrease in sump, core and spray fluid pH has been evaluated to not significantly impact the corrosion rate (and subsequent generation of Hydrogen) of Aluminum and Zinc inside containment. Further, the decreased sump, core and spray fluid pH has been evaluated to not affect the amount of hydrogen generated from the post-LOCA radiolytic decomposition of the sump and core solution. The likelihood of containment failure due to hydrogen deflagration is therefore not impacted by pH changes.

In view of the preceding, it is concluded that the proposed change will not [significantly] increase the radiological [probability or] consequences of an accident previously evaluated in the FSAR.

2. TS 3.5.4 and the Associated TS Bases Page—Refueling Water Storage Tank (RWST)—Boron Concentration Increase

The RWST boron concentration does not affect any initiating event for accidents currently evaluated in the UFSAR. The increased concentration will not adversely affect the performance of any system or component which is placed in contact with the RWST water. The integrity and operability of the stainless steel surfaces in the RWST and affected NSSS components/systems will be maintained. The decrease in solution pH is small and will not degrade the stainless steel. Also, the integrity of the Class 1E instrumentation and control equipment will be maintained since the lower sump pH, resulting from the increased boron concentrations, is still within the applicable equipment qualification limits. These limits are set to preclude the possibility of chloride[-induced stress corrosion cracking and assure that there is no significant degradation of polymer materials. The design, material and construction standards of all components which are placed in contact with the RWST water remain unaffected. Therefore, the probability of an accident has not changed.

The consequences of an accident previously evaluated in the UFSAR will not be [significantly] increased. The change in the concentrations increases the amount of

boron in the sump following a LOCA. The increased boron in the sump is sufficient to maintain the core in a subcritical condition. This analysis assumes partial leaching. Testing has indicated that TPBARs can experience cladding breach at LBLOCA conditions if the cladding temperature and internal pressure of the TPBARs reach limiting values. Consequently, the post-LOCA critical boron calculations accounted for the potential loss of a $LiAlO^2$ pencil, as well as partial leaching of lithium from the remaining pencils. Based on conservative assumptions, the calculations confirm that the tritium production core will remain subcritical following a LOCA. Also, a revised hot leg switchover time has been calculated and will be implemented in the plant EOPs. Thus, there will be no boron precipitation in the core following a LOCA.

The Inadvertent Operation of Emergency Core Cooling System (ECCS) event is the only non-LOCA event which assumes the maximum RWST boron concentration, and an evaluation has shown that the proposed increase does not cause an adverse impact on this transient.

The Steam Line Break (SLB) mass and energy (M&E) release evaluation relies on control rods for shutdown margin and assumes a minimum boron concentration. For the Steam Generator Tube Rupture (SGTR) event, the increased boron concentration will help maintain adequate shutdown margin, which will be evaluated as part of the reload process.

In addition, the increase in RWST boron concentrations and subsequent slight decrease in containment sump and spray pH does not impact the LOCA dose evaluation. While higher pH helps maintain volatile iodine in solution and lower pH drives the equilibrium to favor volatile iodine in a gaseous state, the change in sump pH is not sufficient to result in any measurable change in post LOCA releases.

Furthermore, current radiological analyses do not take credit for volatile iodine removal efficiencies based on sump pH. Therefore, since the change in pH is minimal, and no credit is taken in release analysis, the present analysis remains bounding. Also, the slight decrease in sump, core and spray fluid pH has been evaluated to not significantly impact the corrosion rate (and subsequent generation of Hydrogen) of Aluminum and Zinc inside containment and the present analysis remains bounding. Further, the decreased sump, core and spray fluid pH has been evaluated to not affect the amount of hydrogen generated from the radiolytic decomposition of the sump and core solution and therefore will not challenge containment integrity.

In view of the preceding, it is concluded that the proposed change will not [significantly] increase the radiological probability or consequences of an accident previously evaluated in the FSAR.

3. TS 3.7.15 and the Associated TS Bases Pages—Plant Systems/Spent Fuel Assembly Storage

The Region 2 burnup credit racks described in TS section 4.3.3 are not currently installed in the plant. Since the time that these racks were licensed, TVA has determined not to install or utilize this storage option. Therefore, since they are not installed, there is no [significant] increase in the probability or consequences of an accident previously evaluated.

4. TS 4.2.1—Design Features/Reactor Core/Fuel Assemblies

The insertion of TPBARs into the WBN reactor core does not adversely affect reactor neutronic or thermal-hydraulic performance; therefore, they do not significantly increase the probability of accidents or equipment malfunctions while in the reactor. The neutronic behavior of the TPBARS mimics that of standard burnable absorbers with only slight differences which are accommodated in the core design. The reload safety analysis performed for WBN Unit 1 prior to each refueling cycle will confirm that any minor effects of TPBARS on the reload core will be within fuel design limits.

As described in the [Department of Energy's] TPC [Tritium Production Core] Topical [Report, NDP–98–181, Revision 1], the TPBAR design is robust to all accident conditions except the large break LOCA where the rods are susceptible to failure. However, the failure of TPBARs has been determined to have an insignificant effect on the thermal hydraulic response of the core to this event, and analysis has shown that the core will remain subcritical following a LOCA.

The impacts of TPBARs on the radiological consequences for all evaluated events are very small, and they remain within [well below]10 CFR 100 regulatory limits. The additional offsite doses due to tritium are small with respect to LOCA source terms and are well within regulatory limits.

The TPBAR could result in an increase in combustible gas released to the containment in a large break LOCA. This increase was found to be approximately 1474 scf [standard cubic feet] which remains within the capability of the recombiners.

Analysis has shown that TPBARs are not expected to fail during Condition I through IV events [as described in Chapter 15 of the UFSAR, Condition I being normal operation and operational transients, Condition II being faults of moderate frequency, Condition III being infrequent faults, and Condition IV being limiting faults]. TPBARs may fail during a LBLOCA or as a result of fuel handling accident. The radiological consequences of these events are [well] within 10 CFR 100 limits. Therefore, there is no significant increase in the [probability or] consequences of these previously evaluated accidents.

5. TS 4.3.3—Design Features/Fuel Storage/Capacity

The Region 2 burnup credit racks described in this TS section are not currently installed in the plant. Since the time that these racks were licensed, TVA has determined not to install or utilize this storage option. Due to the deletion of the Region 2 racks, the additional detail provided clarifies existing storage restrictions. Therefore, since they are not installed, there is no [significant] increase in the probability or consequences of an accident previously evaluated.

6. TS Bases 3.5.2—Emergency Core Cooling Systems/ECCS Operating

Due to the increase of the boron concentration in the RWST and the accumulators, initial mixed boron concentrations are higher and the precipitation concentration is reached sooner. As a result, the hot leg switchover is being shortened. However, the time being shortened does not change the switchover function. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

7. TS Bases 3.6.7—Hydrogen Recombiners

This change is administrative in nature and involves only identifying another source of hydrogen gas (tritium) to the bases. The functions for the hydrogen recombiners remain the same. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

8. TPBAR Consolidation Activity

TPBAR consolidation and associated handling activities are designed to be consistent with the existing fuel handling and heavy load handling processes and equipment currently utilized at the facility, and are designed to preclude increased probability of an accident previously evaluated.

Consequences of a fuel handling accident for fuel containing TPBARs is evaluated and does not result in exceeding [or even approaching] 10 CFR Part 100 limits for off-site dose. All consolidation and heavy load handling activities are designed such that the current fuel handling accident scenario remains bounding. Therefore the consequences of an accident previously evaluated remains within acceptable limits.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

1. TS 3.5.1—Cold Leg Accumulator—Boron Concentration Increase

The change to the accumulator concentration does not cause the initiation of any accident nor create any new credible limiting single failure. The change does not result in a condition where the design, material, and construction standards of the accumulators and other potentially affected NSSS components, that were applicable prior to the changes, are altered. The integrity and operability of the stainless steel surfaces in the accumulator and affected NSSS components/systems will be maintained. The decrease in solution pH is small and will not degrade the stainless steel. Also, the integrity of the Class 1E instrumentation and control equipment will be maintained during a LOCA since the lower sump pH, resulting from the increased boron concentrations, is still within the applicable equipment qualification limits. These limits are set to preclude the possibility of chloride[-]induced stress corrosion cracking and assure that there is no significant degradation of polymer materials.

The changes in the concentrations increase the amount of boron in the sump following

a LOCA. The increased boron in the sump is sufficient to maintain the core in a subcritical condition. Also, a revised hot leg switchover time has been calculated and will be implemented in the plant EOPs. Thus, there will be no boron precipitation in the core following a LOCA.

All systems, structures, and components previously required for the mitigation of an event remain capable of fulfilling their intended design function. The proposed change has no adverse affect on any safety-related system or component and does not challenge the performance or integrity of any safety related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

2. TS 3.5.4 and Associated TS Bases Page—RWST—Boron Concentration Increase

The change to the RWST concentration does not cause the initiation of any accident nor create any new credible limiting single failure. The change does not result in a condition where the design, material, and construction standards of the RWST and other potentially affected NSSS components, that were applicable prior to the changes, are altered. The integrity and operability of the stainless steel surfaces in the RWST and affected NSSS components/systems will be maintained. The decrease in solution pH is small and will not degrade the stainless steel. Also, the integrity of the Class 1E instrumentation and control equipment will be maintained during a LOCA since the lower sump pH, resulting from the increased boron concentrations, is still within the applicable equipment qualification limits. These limits are set to preclude the possibility of chloride-induced stress corrosion cracking and assure that there is no significant degradation of polymer materials.

The changes in the concentrations increase the amount of boron in the sump following a LOCA. The increased boron in the sump is sufficient to maintain the core in a subcritical condition. Also, a revised hot leg switchover time has been calculated and will be implemented in the plant EOPs. Thus, there will be no boron precipitation in the core following a LOCA.

All systems, structures, and components previously required for the mitigation of an event remain capable of fulfilling their intended design function. The proposed change has no adverse affect on any safety-related system or component and does not challenge the performance or integrity of any safety[-]related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. TS 3.7.15 and Associated TS Bases Pages—Plant Systems/Spent Fuel Assembly Storage

The Region 2 burnup credit racks described in section 4.3.3 are not currently installed in the plant. Since the time that these racks were licensed, TVA has determined not to install or utilize this storage option. Therefore, since they are not installed, this change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

4. TS 4.2.1—Design Features/Reactor Core/Fuel Assemblies

TPBARS have been designed to be compatible with existing Westinghouse 17x17 fuel assemblies and conventional Burnable Poison Rod Assembly (BPRA) handling tools, equipment, and procedures, and therefore, no new [or different kind of] accidents or equipment malfunctions are created by the handling of TPBARs * * *

TPBARs use materials with known and predictable performance characteristics and are compatible with pressurized water reactor (PWR) coolant. The TPBAR design has specifically included material similar to those used in standard burnable absorber rods with the exception of internal assemblies used in the production and retention of tritium. As described in the TPC Topical Report, these materials are compatible with the reactor coolant system (RCS) and core design. Therefore, no new [or different kind of] accidents or equipment malfunctions are created by the presence of the TPBARs in the RCS.

Mechanical design criteria have been established to ensure that TPBARs will not fail during Condition I or II events. Analysis has shown that TPBARs, appropriately positioned in the core operate within the established thermal-hydraulic criteria. Due to the expected high reliability of TPBAR components the frequency of TPBAR cladding failures is very small, such that multiple adjacent TPBAR failures in limiting locations is not considered credible. In addition, analysis has shown that if a single TPBAR fails catastrophically in a high power location during normal operation and the lithium is leached out, the global reactivity increase is negligible and the local power peaking is small enough that DNBR [departure from nucleate boiling ratio] limits and fuel rod integrity are not challenged. Therefore, no new [or different kind of] accidents or equipment malfunctions are created by the presence of the TPBARs in the reactor.

Analysis has shown that TPBARs will not fail during Condition III and IV events. TPBARs may fail during a cold leg large break loss-of-coolant-accident or as a result of a fuel handling accident. The radiological consequences of these events are within 10 CFR 100 limits. Therefore, there is no significant increase in consequences of these previously evaluated accidents.

TPBARs do not adversely affect reactor neutronic or thermal-hydraulic performance; therefore they do not create the possibility of accidents or equipment malfunctions of a [new or] different type than previously evaluated while in the reactor.

5.TS 4.3.3—Design Features/Fuel Storage/Capacity

The Region 2 burnup credit racks described in this section are not currently installed in the plant. Since the time that these racks were licensed, TVA has determined not to install or utilize this storage option. Due to the deletion of the Region 2 racks, the additional detail provided clarifies existing storage restrictions. Therefore, since they are not installed, this change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

6. Bases 3.5.2—Emergency Core Cooling Systems/ECCS Operating

Due to the increase of the boron concentration in the RWST and the accumulators, initial mixed boron concentrations are higher and the precipitation concentration is reached sooner. As a result, the hot leg switchover value is being shortened. This time being shortened does not change the switchover function. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

7. Bases 3.6.7—Hydrogen Recombiners

This change is administrative in nature and only involves only identifying another source of hydrogen gas (tritium) to the bases. The functions for the hydrogen recombiners remain the same. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

8. TPBAR Consolidation Activity—

The consolidation and handling activities are bounded by current fuel handling evaluations. Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

1. TS 3.5.1—Cold Leg Accumulator—Boron Concentration Increase

The change does not invalidate any of the non-LOCA safety analysis results or conclusions, and all of the non-LOCA safety analysis acceptance criteria continue to be met. The licensing basis SBLOCA analyses does not credit the accumulator boron and is not affected by the proposed change.

Therefore, there is no reduction in the margin to the Peak clad temperature (PCT) limit for the SBLOCA. There is no increase in the Best Estimate LBLOCA PCT; therefore, there continues to be a high level of probability that the ECCS acceptance criteria limit is not exceeded with regard to the LBLOCA analysis. The increased boron concentration is sufficient to maintain subcriticality during the LBLOCA, and a post-LOCA long term core cooling analysis demonstrated that the post-LOCA sump boron concentration is sufficient to prevent recriticality. The revised hot leg switchover time, which will be implemented in the EOPs, will prevent boron precipitation. The licensing basis containment and SLB M&E releases remain bounding, and the SGTR event acceptance criteria continue to be met. Furthermore, the changes do not affect the safety[-]related performance of the accumulator or related NSSS components. Therefore, there is no significant reduction in the margin of safety.

2. TS 3.5.4 and Associated TS Bases Page—RWST—Boron Concentration Increase

The change does not invalidate any of the non-LOCA safety analysis results or

conclusions, and all of the non-LOCA safety analysis acceptance criteria continue to be met. The licensing basis SBLOCA analyses does not credit the RWST boron and is not affected by the proposed change. Therefore, there is no reduction in the margin to the PCT limit for the SBLOCA. There is no increase in the Best Estimate LBLOCA PCT; therefore, there continues to be a high level of probability that the ECCS acceptance criteria limit is not exceeded with regard to the LBLOCA analysis. The increased boron concentration is sufficient to prevent recriticality. The revised hot leg switchover time, which will be implemented in the EOPs, will prevent boron precipitation. The licensing basis containment and SLB M&E releases remain bounding, and the SGTR event acceptance criteria continue to be met. Furthermore, the changes do not affect the safety[-]related performance of the RWST or related NSSS components. Therefore, there is no significant reduction in the margin of safety.

3. TS 3.7.15 and Associated TS Bases Pages—Plant Systems/Spent Fuel Assembly Storage

The Region 2 burnup credit racks described in section 4.3.3 are not currently installed in the plant. Since the time that these racks were licensed, TVA has determined not to install or utilize this storage option. Therefore, since they are not installed, this change would not involve a [significant] reduction in a margin of safety.

4. TS 4.2.1—Design Features/Reactor Core/Fuel Assemblies

TPBARs have been designed to be compatible with existing fuel assemblies. TPBARs do not adversely affect reactor neutronic or thermal-hydraulic performance. Analysis indicates that reactor core behavior and offsite doses remain relatively unchanged. For these reasons, the proposed amendment does not involve a significant reduction in a margin of safety.

5. TS 4.3.3—Design Features/Fuel Storage/Capacity

The Region 2 burnup credit racks described in section 4.3.3 are not currently installed in the plant. Since the time that these racks were licensed, TVA has determined not to install or utilize this storage option. Due to the deletion of the Region 2 racks, the additional detail provided clarifies existing storage restrictions and does not reduce the margin of safety in existing storage requirements. Therefore, since they are not installed, this change would not involve a [significant] reduction in a margin of safety.

6. Bases 3.5.2—Emergency Core Cooling Systems/ECCS Operating

Due to the increase of the boron concentration in the RWST and the accumulators, initial mixed boron concentrations are higher and the precipitation concentration is reached sooner. As a result, the hot leg switchover value is being shortened. This time being shortened does not change the switchover function. Therefore, this change does not involve a [significant] reduction in the margin of safety.

7. Bases 3.6.7—Hydrogen Recombiners

This change is administrative in nature and only involves only identifying another source of hydrogen gas (tritium) in the bases. The functions for the hydrogen recombiners remain the same. Therefore, this change does not involve a [significant] reduction in the margin of safety.

8. TPBAR Consolidation Activity

The changes do not significantly affect the safety[-]related performance of any plant operations, system, structures, or components. The consolidation activity is bounded by current fuel handling evaluations. Therefore, there is no [does not involve a] significant reduction in the margin of safety.

The NRC staff has reviewed the no significant hazards consideration analysis provided by TVA with respect to the three criteria listed in 10 CFR 50.92(c). The staff's safety evaluation is in its early stages and will require several months to complete. However, in terms of 10 CFR 50.92(c), the staff finds that the TVA application addresses all applicable accidents discussed in the UFSAR, including LOCAs, SGTRs, and fuel handling considerations. Insertion of the TPBARS for the purpose of producing tritium (which is sealed inside the TPBARs) requires a higher degree of fuel enrichment with U–235. Because the TPBARs neither contain fissile material nor replace normal reactor fuel, and because the TPBARs will not adversely affect reactor neutronic or thermal-hydraulic performance, their presence in the core should have no effect upon the probability or consequences of previously analyzed accidents, including fuel handling accidents. For the same reasons, the possibility of a new or different kind of accident would not be expected to result from irradiation of the TPBARS in the WBN reactor core. TVA's analysis of a possible reduction in safety margins addressed PCT limits resulting from an SBLOCA and the increased boron concentration to maintain subcriticality.

Based on the NRC staff's review of the analysis provided by the licensee, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 16, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by E-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's

property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley Authority, ET 11A, 400 West Summit Hill Drive, Knoxville, TN 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Further details with respect to this action may be found in the application for amendment dated August 20, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/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 Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by E-mail to *pdr@nrc.gov*.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 11th day of December 2001.

**L. Mark Padovan,**

*Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–30971 Filed 12–14–01; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Federal Register Notice

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATES:** Weeks of December 17, 24, 31, 2001, January 7, 14, 21, 2002.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of December 17, 2001*

There are no meetings scheduled for the Week of December 17, 2001.

*Week of December 24, 2001—Tentative*

There are no meetings scheduled for the Week of December 24, 2001.

*Week of December 31, 2001—Tentative*

There are no meetings scheduled for the Week of December 31, 2001.

*Week of January 7, 2002—Tentative*

Wednesday, January 9, 2002

9:30 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

*Week of January 14, 2002—Tentative*

There are no meetings scheduled for the Week of Janaury 14, 2002.

*Week of January 21, 2002—Tentative*

There are no meetings scheduled for the Week of January 21, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like

to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: December 12, 2001.

**David Louis Gamberoni,**

*Technical Coordinator, Office of the Secretary.*

[FR Doc. 01–31160 Filed 12–13–01; 2:47 pm]

BILLING CODE 7590–01–M

## POSTAL SERVICE BOARD OF GOVERNORS

### Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

**DATE OF MEETING:** December 3, 2001.

**STATUS:** Closed.

**PREVIOUS ANNOUNCEMENT:** 66 FR 59035, November 26, 2001.

**ADDITION:** Rate Case R2001–1.

At its meeting on December 3, 2001, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed meeting and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

**CONTACT PERSON FOR MORE INFORMATION:** David G. Hunter, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC.

**David G. Hunter,**

*Secretary.*

[FR Doc. 01–31169 Filed 12–13–01; 2:47 pm]

BILLING CODE 7710–12–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–25316; 812–12696]**

### Blue Cross and Blue Shield of Kansas, Inc.; Notice of Application

December 11, 2001.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (the ''Act'') exempting an escrow account established by the applicant from all provisions of the Act, except section 9 and sections 36 through 53 of the Act, and the rules and regulations under those sections.

**SUMMARY OF APPLICATION:** Applicant requests an order on behalf of an escrow account (the ''Escrow Account'') to be established in connection with applicant's conversion to a stock life insurance company and its subsequent acquisition by Anthem Insurance Companies, Inc. (''Anthem''). The Escrow Account will hold a portion of the cash consideration from the sale pending the resolution of a specified litigation matter involving applicant. The order would exempt the Escrow Account from certain provisions of the Act and the rules and regulations under those provisions.

*Applicant:* Blue Cross and Blue Shield of Kansas, Inc. (the ''Company'').

*Filing Date:* The application was filed on November 23, 2001 and amended on December 10, 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 January 7, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant: Kenneth J. Berman, Debevoise & Plimpton, 555 13th Street, NW., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

#### Applicant's Representations

1. The Company is a Kansas mutual life insurance company that proposes to convert to a stock life insurance company (the ''Conversion'') pursuant to a plan of conversion (the ''Plan'') in accordance with Kansas law. As a mutual life insurance company, the Company has no authorized, issued or outstanding capital stock. The policyholders of the Company, through the purchase of insurance policies and contracts, acquire insurance coverage and ''Membership Interests'' which consist principally of the right to vote in the election of directors of the Company and the right to share in any residual value of the Company if the Company were to undergo liquidation in the future.

2. Pursuant to an Alliance Agreement between the Company and Anthem, an Indiana stock insurance company (the ''Alliance Agreement''), Anthem or an affiliate of Anthem will acquire the Company upon the Company's Conversion (the ''Acquisition''). On the date of effectiveness of the Conversion and the closing of the Acquisition (the ''Conversion Date''), the Membership Interests of the Company policyholders will be extinguished, the Company's policyholders eligible to vote and receive consideration in the Conversion (''Eligible Policyholders'') will be entitled to receive consideration as provided in the Alliance Agreement and the Plan, and the Company will become a direct or indirect wholly-owned subsidiary of Anthem.

3. The Company's board of directors has adopted the Plan. The Plan has been submitted to the Commissioner of Insurance of the State of Kansas (the ''Commissioner'') for approval. Article 40 of Chapter 40 of the Kansas Statutes Annotated (the ''Kansas Conversion Law'') requires the Commissioner to hold a public hearing at which the Company's policyholders would have the right to appear and be heard. The Commissioner must approve the Plan if the Commissioner finds that (a) the Plan is fair and equitable to policyholders, (b) the Plan complies with the provisions of the Kansas Conversion Law, (c) the Plan does not unjustly enrich any director, officer, agent or employee of the Company and (d) the Company would meet minimum requirements to be issued a certificate of authority by the Commissioner to transact business in Kansas and the continued operations of the Company would not be hazardous to existing or future policyholders or the public.

4. Eligible Policyholders also must approve the Plan, including the establishment of the Escrow Account. As required by the Kansas Conversion Law, Eligible Policyholders will have received from the Company a comprehensive information booklet

describing the Plan, including all material aspects of the Escrow Account, at least 30 days prior to a special meeting to be held on January 11, 2002 at which the Eligible Policyholders will be required to vote on the Plan. The information booklet was reviewed and approved by the staff of the Kansas Insurance Department.

5. Under the proposed transaction, Eligible Policyholders will be entitled to receive $142 million of the $190 million purchase price paid by Anthem for the stock of the Company upon the Conversion, with the remaining $48 million of the purchase price deposited into the Escrow Account on the Conversion Date. The Escrow Account will be established to address issues arising from a subpoena, dated February 28, 2001, that the Company received from the Office of the Inspector General, U.S. Department of Health and Human Services (the ''Contingent Litigation Matter'').[1] The amounts held in the Escrow Account will be used to pay all costs, expenses and liabilities related to the Contingent Litigation Matter, pay related taxes which might become payable, and pay all costs and expenses of the Escrow Account. Any remaining amounts will be distributed to Eligible Policyholders following final resolution of the Contingent Litigation Matter.

6. The Escrow Account will be a separately designated investment account established on or prior to the Conversion Date pursuant to an escrow agreement (the ''Escrow Agreement'') to be entered into among the Company, Anthem and an escrow agent (the ''Escrow Agent''). The Escrow Agent will be a bank, savings and loan association or trust company. The sole purpose of the Escrow Account will be to liquidate its assets and distribute the income to the Eligible Policyholders in as prompt and orderly a fashion as possible following the resolution of the Contingent Litigation Matter. Amounts held in the Escrow Account will be invested by the Escrow Agent solely in obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States of America or an agency or instrumentality thereof with a maturity date of one year or less from the date of the investment (''Government Securities''). The Escrow Agent will not have the authority to borrow funds from, or on behalf of the Escrow Account, sell securities to, or acquire securities from, the Escrow Account, or, acquire any other assets except for Government Securities. The rights of the Eligible Policyholders to amounts held in the Escrow Account will not be represented by any form of certificate or instrument and will not be transferable or assignable except by will, the laws of intestacy or by other operation of law. The Commissioner will retain regulatory oversight over the Escrow Account, including the investment and distribution of the assets held in the Escrow Account to ensure that the interests of Eligible Policyholders are protected.

7. The Escrow Account will continue until the Contingent Litigation Matter has been finally disposed of by binding settlement, court order or otherwise, all tax amounts have been finally determined, all amounts that are reasonably recoverable from any insurer in respect of the Contingent Litigation Matter are recovered, and all amounts in the Escrow Account have been paid or distributed by the Escrow Agent in accordance with the Escrow Agreement and the Alliance Agreement. Any amounts remaining in the Escrow Account will be distributed to Eligible Policyholders in accordance with the distribution principles set forth in the Plan.

**Applicant's Legal Analysis**

1. Section 3(a)(1)(A) of the Act defines the term ''investment company'' to include an issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Because the assets held in the Escrow Account will be invested exclusively in Government Securities and the Escrow's sole source of income will be investment income attributable to such securities, applicant states that it is possible that the Escrow Account could be deemed to be an investment company as defined in section 3(a)(1)(A).

2. Section 6(c) of the Act provides, in relevant part, that the Commission may exempt any person or persons, or any transaction or transactions, from any provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities.[2] Section 6(e) of the Act provides that, in connection with any order exempting an investment company from any provision of section 7, the Commission may specify that certain provisions of the Act will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicant contends that the costs involved in registering and operating the Escrow Account under the Act are not necessary to protect the interests of the Eligible Policyholders and would reduce the amount of cash consideration actually distributed to the Eligible Policyholders. Because of the limited nature of the Escrow Account's activities, the Company believes that most provisions of the Act are not relevant to the Escrow Account. The Escrow Account is being organized for a limited purpose, will have a limited life, and will be subject to the Commissioner's oversight. Moreover, management of the Escrow Account's assets by the Escrow Agent will be severely restricted. Accordingly, applicant states that the requested order meets the requirements of section 6(c) of the Act.

**Applicant's Conditions**

Applicant agrees that any order granting the requested relief shall be subject to the following conditions:

1. The Escrow Account will not hold itself out as being an investment company, but instead will hold itself out as an escrow account in the process of liquidating and distributing its assets to the Eligible Policyholders.

2. The Escrow Account will be limited to making temporary investments in Government Securities.

3. The Escrow Account will terminate, in accordance with the terms of the Escrow Agreement, upon final disposition of the Contingent Litigation Matter by binding settlement, court order or otherwise, final determination of certain tax matters, reasonable recovery from any insurer of costs associated with the Contingent Litigation Matter and distribution of all amounts in the Escrow Account by the Escrow Agent.

[1] The subpoena seek documents in connection with an investigation of possible improper claims against Medicare pursuant to 5 U.S.C. App. 3 Section 6(a)(4).

[2] Applicant notes that the last sentence of section 7(b) of the Act provides that the broad injunction against actions by unregistered investment companies contained in section 7 of the Act does not apply to ''transactions of an investment company which are merely incident to its dissolution.'' Applicant states that due to the nature of the Contingent Litigation Matter, it is likely that the life of the Escrow Account may need to extend beyond three years and that applicant therefore may be unable to rely on this provision in section 7(b).

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–30977 Filed 12–14–01; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release Nos. 33–8040; 34–45149; FR–60]**

## Accounting Policies; Cautionary Advice Regarding Disclosure

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Cautionary advice regarding disclosure about critical accounting policies.

**SUMMARY:** The Securities and Exchange Commission is issuing a statement regarding the selection and disclosure by public companies of critical accounting policies and practices.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Bayless, Special Assistant to the Chief Accountant, 202–942–4400.

**SUPPLEMENTARY INFORMATION:** As public companies undertake to prepare and file required annual reports with us, we wish to remind management, auditors, audit committees, and their advisors that the selection and application of the company's accounting policies must be appropriately reasoned. They should be aware also that investors increasingly demand full transparency of accounting policies and their effects.

Reported financial position and results often imply a degree of precision, continuity and certainty that can be belied by rapid changes in the financial and operating environment that produced those measures. As a result, even a technically accurate application of generally accepted accounting principles (''GAAP'') may nonetheless fail to communicate important information if it is not accompanied by appropriate and clear analytic disclosures to facilitate an investor's understanding of the company's financial status, and the possibility, likelihood and implication of changes in the financial and operating status.

Of course, public companies should be mindful of existing disclosure requirements in GAAP and our rules. Accounting standards require information in financial statements about the accounting principles and methods used and the risks and uncertainties inherent in significant estimates.[1] Our rules governing Management's Discussion and Analysis (''MD&A'') currently require disclosure about trends, events or uncertainties known to management that would have a material impact on reported financial information.[2]

We have observed that disclosure responsive to these requirements could be enhanced. For example, environmental and operational trends, events and uncertainties typically are identified in MD&A, but the implications of those uncertainties for the methods, assumptions and estimates used for recurring and pervasive accounting measurements are not always addressed. Communication between investors and public companies could be improved if management explained in MD&A the interplay of specific uncertainties with accounting measurements in the financial statements. We intend to consider new rules during the coming year to elicit more precise disclosures about the accounting policies that management believes are most ''critical''—that is, they are both most important to the portrayal of the company's financial condition and results, and they require management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain.

Even before new rules are considered, however, we believe it is appropriate to alert companies to the need for greater investor awareness of the sensitivity of financial statements to the methods, assumptions, and estimates underlying their preparation. We encourage public companies to include in their MD&A this year full explanations, in plain English, of their ''critical accounting policies,'' the judgments and uncertainties affecting the application of those policies, and the likelihood that materially different amounts would be reported under different conditions or using different assumptions. The objective of this disclosure is consistent with the objective of MD&A.

Investors may lose confidence in a company's management and financial statements if sudden changes in its financial condition and results occur, but were not preceded by disclosures about the susceptibility of reported amounts to change, including rapid change. To minimize such a loss of confidence, we are alerting public companies to the importance of employing a disclosure regimen along the following lines:

### 1. Each Company's Management and Auditor Should Bring Particular Focus to the Evaluation of the Critical Accounting Policies Used in the Financial Statements

As part of the normal audit process, auditors must obtain an understanding of management's judgments in selecting and applying accounting principles and methods. Special attention to the most critical accounting policies will enhance the effectiveness of this process. Management should be able to defend the quality and reasonableness of the most critical policies, and auditors should satisfy themselves thoroughly regarding their selection, application and disclosure.

### 2. Management Should Ensure That Disclosure in MD&A Is Balanced and Fully Responsive

To enhance investor understanding of the financial statements, companies are encouraged to explain in MD&A the effects of the critical accounting policies applied, the judgments made in their application, and the likelihood of materially different reported results if different assumptions or conditions were to prevail.

### 3. Prior To Finalizing and Filing Annual Reports, Audit Committees Should Review the Selection, Application and Disclosure of Critical Accounting Policies

Consistent with auditing standards, audit committees should be apprised of the evaluative criteria used by management in their selection of the accounting principles and methods.[3]

[1] *See, e.g.,* Accounting Principles Board Opinion No. 22, ''Disclosure of Accounting Policies'' (Apr. 1972); AICPA Statement of Position No. 94–6, ''Disclosure of Certain Significant Risks and Uncertainties'' (Dec. 1994).

[2] The underlying purpose of MD&A is to provide investors with ''information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations.'' Item 303(a) of Regulation S–K [17 CFR 229.303(a)]. As we have previously stated, '' '[i]t is the responsibility of management [in MD&A] to identify and address those key variables and other qualitative and quantitative factors which are peculiar to and necessary for an understanding and evaluation of the company.' '' Securities Act Rel. No. 6835 (May 18, 1989) [54 FR 22427] (quoting Securities Act Rel. No. 6349 (Sept. 28, 1981) [not published in the **Federal Register**]).

[3] *See* Codification of Statements on Auditing Standards, AU § 380, Communication with Audit Committees or Others with Equivalent Authority and Responsibility (''SAS 61''). SAS 61 requires independent auditors to communicate certain matters related to the conduct of an audit to those who have responsibility for oversight of the financial reporting process, specifically the audit committee. Among the matters to be communicated to the audit committee are: (1) Methods used to account for significant unusual transactions; (2) the effect of significant accounting policies in

Continued

Proactive discussions between the audit committee and the company's senior management and auditor about critical accounting policies are appropriate.

**4. If Companies, Management, Audit Committees or Auditors Are Uncertain About the Application of Specific GAAP Principles, They Should Consult With our Accounting Staff**

We encourage all those whose responsibility it is to report fairly and accurately on a company's financial condition and results to seek out our staff's assistance. We are committed to providing that assistance in a timely fashion; our goal is to address problems before they happen.

Dated: December 12, 2001.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–30978 Filed 12–14–01; 8:45 am]

BILLING CODE 8010–01–P

controversial or emerging areas for which there is a lack of authoritative guidance or consensus; (3) the process used by management in formulating particularly sensitive accounting estimates and the basis for the auditor's conclusions regarding the reasonableness of those estimates; and (4) disagreements with management over the application of accounting principles, the basis for management's accounting estimates, and the disclosures in the financial statements. *Id.*

[1] 15 U.S.C. 78s(b)(1)

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45146; File No. SR–DTC–2001–14]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Closing Down of the Mortgage-Backed Securities Division of The Depository Trust Company

December 10, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 24, 2001, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change concerns the closing of DTC's Mortgage-Backed Securities Division (''MBS Division'').[2] To accomplish this, DTC plans to close the MBS Division's transaction processing system and to amend DTC's rules to delete the MBS Division's rules.[3] The securities formerly services by the MBS Division will remain eligible for processing on DTC's main processing system to the same extent that other Fedwire securities are currently processed at DTC although the issuance and the majority of clearance of these securities will be moved to the Fedwire system.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[4]

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to obtain Commission approval of DTC's closing the operations of its MBS Division. Currently, among other things, the MBS Division issues and settles mortgage-backed securities that are guaranteed by the Government National Mortgage Association (''GNMA''). However, GNMA wishes to transfer the settlement of these mortgage-backed securities to the Fedwire system of the Federal Reserve Board.[5] GNMA plans to convert its securities to Fedwire by the end of the first quarter of 2002.

GNMA announced its plans to move its securities to Fedwire in May 2000. The conversion plans were developed in consultation with a task force organized by The Bond Market Association (''BMA'') that consisted of representatives from broker-dealers, custodial banks, GNMA, the Federal Reserve Banks, the Mortgage Bankers Association, DTC, and the BMA. The force formed a GNMA Conversion Subcommittee to develop a conversion plan and implementation schedule. In February 2001, the subcommittee issued its Conversion Plan.[6]

The conversion is taking place in phases over a series of weekends beginning October 6, 2001, and is scheduled for completion by March 31, 2002. During this period, different classes of GNMA securities will be moved electronically from the MBS Division to Fedwire in accordance with delivery instructions provided to the MBS Division by the MBS Division's participants. Other securities issued and settled on the books of the MBS Division, namely securities guaranteed by the Department of Veterans Affairs and a limited number of FNMA and FHLMC securities which are collateralized by GNMA securities, will also move to Fedwire at some time during the GNMA conversion or immediately after on dates to be determined.

Shortly after the completion of the payment of principal and interest with respect to securities last converted to Fedwire, DTC will close the transaction processing system of the MBS Division, return the MBS Division participant fund deposits to the MBS Division's participants, and amend DTC's rules to delete the rules that apply to the MBS Division. After the conversion, FNMA securities will remain eligible for processing on DTC's main system in the same manner as other Fedwire securities are currently processed at DTC. Fedwire securities processed at DTC must be deposited and withdrawn free of payment over Fedwire to and from DTC's Fedwire account. Once deposited at DTC, Fedwire-eligible securities will be processed among DTC participants subject to DTC's rules and procedures without additional restrictions.

In connection with the conversion of GNMA securities to Fedwire, DTC considered expanding its processing to permit GNMA securities to be delivered versus payment into and from DTC's Fedwire account subject to regulatory approval. DTC solicited comments from its participants, but fewer than a dozen

[2] The MBS Division is the successor to The Participants Trust Company, which was merged into DTC effective August 31, 1998.

[3] These rules are currently in Annex A of DTC's Rules.

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] The Fedwire system of the Federal Reserve Board is currently used for, among other things, the issuance and settlement of U.S. Treasury securities and mortgage-backed securities guaranteed by the Federal Home Loan Mortgage Corporation (''FHLMC'') and the Federal National Mortgage Association (''FNMA'').

[6] The Conversion Plan is available online at <*www.frbservices.org*> and at <*www.bondmarkets.com/regulatory*>. A copy of the Conversion Plan is also attached as Exhibit 2 of DTC's filing [DTC Important Notice No. 1483 (Feb. 15, 2001)], which is available through the Commission's Public Reference Section or through DTC.

participants expressed an interest in using such a service. In light of the development costs involved and the limited interest expressed by its participants, DTC's Board of Directors concluded that DTC's resources would be better applied to projects that serve a wider participant base.

DTC will notify the MBS Division's participants and the Commission upon the completion of the closure of the MBS Division.[7]

DTC believes that the proposed rule change is consistent with the requirements of section 17(A)(b)(3)(A) of the Act and the rules and regulations thereunder applicable to DTC because it promotes and accurate clearance and settlement of securities transactions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

DTC perceives no impact on competition by reason of the proposed rule change.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

DTC solicited written comments from its participants on GNMA's proposal to move its securities to Fedwire in DTC Important Notice No. 0057 dated June 1, 2000.[8] Participants responded by telephone and through discussions at meetings of the BMA, the GNMA Settlement Task Force formed under the auspices of the BMA, and DTC's Operations and Planning Committee. The consensus at these meetings and discussions was that DTC should support the proposed conversion to Fedwire and that GNMA securities should remain eligible for processing at DTC to the same extent as are other Fedwire eligible securities currently processed at DTC. DTC is a member of the GNMA Conversion Subcommittee and has worked closely with the BMA, GNMA, the Federal Reserve Banks, and interested industry members to facilitate the transition to Fedwire. DTC has issued Important Notices to DTC and MBS Division participants detailing the conversion processing flows and testing procedures.[9]

[7] Notwithstanding the closure of the MBS Division, DTC will maintain the documents and records of the MBS Division in accordance with the regulations promulgated under Section 17(a) of the Exchange Act, 15 U.S.C. 78q.

[8] A copy of this notice is attached as Exhibit 2 of DTC's filing, which is available through the Commission's Public Reference Section or through DTC.

[9] Attached as Exhibit 2 of DTC's filing are the following DTC Important Notices relating to the GNMA conversion: Nos. 0057 (June 1, 2000); 1483 (Feb. 15, 2001) (Conversion Plan attached); 1937 (May 24, 2001); 2158 (June 21, 2001); 2159 (June 19, 2001); and 2198 (July 5, 2001). These documents are available through the Commission's Public Reference Section or through DTC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so filing or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rue change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR–DTC–2001–14 and should be submitted by January 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–30958 Filed 12–14–01; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45144; File No. SR–PCX–2001–45]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Inactive Lessors' Eligibility to Serve on the Board of Governors

December 10, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2001, the Pacific Exchange, Inc. (''PCX'' of ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PCX proposes to amend Article III, Section 2(b) of the PCX Constitution and PCX rule 1.1(h) to provide for the eligibility of inactive lessors to serve on the PCX Board of Governors (''Board''). Below is the text of the proposed rule change. Text in italics indicates material to be added.

* * * * *

*Article III*

*Eligibility of Governors*

SEC. 2(b). Any member, allied member or person who is an officer or director of the parent or subsidiary corporation of a member firm, or a general partner in a partnership which owns or is wholly owned by a member firm, or an officer or director of a member firm or of a participant firm of any subsidiary of the Exchange performing depository or clearing functions, or an officer, director or general partner of the parent or a subsidiary corporation of such clearing member firm or depository participant firm, *or an inactive lessor* or any person not affiliated with a broker or dealer in securities is eligible to be elected as a member of the board of Governors. Of the governors, in each of the classes specified in Sec. 2(a), above, at least one shall be a member of the Exchange, at least one shall be an office member or office allied member of the Exchange,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and at least three shall be representatives of the public and shall not be, or be affiliated with, a broker or dealer in securities. There shall be at least two floor members on the board at all times, one of which shall be an Equity Trading Permit Holder, and Equity-ASAP Holder or an Allied Person of an ETP or an Equity ASAP Holder.

* * * * *

*Inactive Lessor*

Rule 1.1(h). Inactive Lessor: The term ''inactive lessor'' shall refer to a natural person, firm or other such entity as the Board may approve, who owns or inherits a membership for the sole purpose of acting as a lessor. *For purposes of the composition of the Board of Governors, inactive lessors are not deemed to be representatives of the public.*

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In the filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to amend the PCX Constitution and Rules to clearly establish that PCX inactive lessors are eligible to serve on the Exchange's Board. An inactive lessor is defined in the PCX Constitution as ''a natural person, firm or other such entity as the Board may approve, who owns or inherits a membership for the sole purpose of acting as a lessor.'' [3] Previously, some of the PCX's inactive lessors had requested to have their interests represented on the Board. A number of these inactive lessors have presented their names to the PCX's Nominating Committee so that they may be nominated and stand for election to the Board. The Exchange believes that permitting these individuals to serve on the Board is appropriate.

The PCX requirements relating to the eligibility of persons to serve on the Board is set forth in Article III, Section 2(b) of the PCX Constitution, which provides, in part, as follows:

''Any member,[4] allied member [5] or person who is an officer or director of the parent or subsidiary corporation of a member firm,[6] or a general partner in a partnership which owns or is wholly owned by a member firm, or an officer or director of a member firm or of a participant firm of any subsidiary of the Exchange performing depository or clearing functions, or an officer, director or general partner of the parent or a subsidiary corporation of such clearing member firm or depository participant firm, or any person not affiliated with a broker or dealer in securities is eligible to be elected as a member of the Board of Governors.'' (Footnotes added)

Article III, Section 2(a) of the PCX Constitution provides that the Exchange's elected Governors are divided into three classes, each of which is composed of seven Governors. At each Annual Meeting of the PCX, a new class (consisting of seven Governors) is elected. Pursuant to Article III, Section 2(b), of the seven Governors elected at each Annual Meeting, at least one must be a member of the Exchange; at least one must be an office member or office allied member of the Exchange; and at least three must be representatives of the public. This leaves two slots per class (and a total of six slots on the Board at any given time) that may be filled by other qualified persons. Under the proposal, an inactive lessor would be qualified to fill one of these open slots. However, the Exchange notes that Article III, Section 2(b) requires that these open slots must otherwise be filled when necessary to meet other requirements set forth in Section 2(b), namely that there must be at least two floor members on the Board at all times (one of which must be an Equity Trading Permit Holder, an Equity-ASAP Holder or an Allied Person of an ETP Firm or an Equity ASAP Holder) and that, beginning in the year 2001, there must be eleven representatives of the public on the Board at all times.

The proposed rule change is not intended to permit any change to the number of public representatives eligible to serve on the PCX's Board. The Exchange represents that it will not place an inactive lessor on the Board in order to fill a slot designated for a ''representative of the public.'' According, the Exchange proposes to amend PCX Rule 1.1(h), which defines the term ''inactive lessor,'' to clarify that for purposes of the composition of the PCX's Board, inactivee lessors are not deemed to be representatives of the public.[7]

Inactive lessors have an interest in the activities of the Exchange because they have a financial interest in the Exchange by virtue of owning a membership. The value of their investments is directly tied to decisions made by the Board. The PCX Constitution, Article III, Section 2(c), states that care should ''be taken to have the various interest of the membership represented on the Board of Governors.''

Finally, the Exchange notes that the Constitution of the Chicago Board Options Exchange (''CBOE'') has a similar provision that permits service by a ''lessor director'' on its Board of Directors. Specifically, the CBOE provision permits service by a member ''who directly or indirectly owns and controls a membership with respect to which he acts solely as lessor and who is not actively engaged in business as a 'person associated with a broker-dealer' as those terms are defined in the Securities Exchange Act of 1034. * * *'' [8]

[3] *See* PCX Rule 1.1(h).

[4] The term ''member'' is defined as ''a natural person in whose name the membership is held and who is in good standing.'' *See* PCX Constitution, Article V, Section 3. The term ''floor member'' is defined as ''a member of the Exchange, who meets the qualification requirements for the purpose of exercising full trading privileges on a floor of the Exchange on behalf of a member organization.'' *See* PCX Constitution, Article V, Section 8.

[5] The term ''allied member'' refers to a non-member who is one of the following: ''(1) An employee of a member firm who controls such member firm, or (2) an employee of a member firm corporation who is a director or a principal executive officer of such corporation, or (3) an employee of a member firm limited liability company who is a manager or a principal executive officer of such limited liability company, or (4) a general partner in member firm partnership; and who has been approved by the Exechange as an allied member.'' *See* PCX Constitution, Article V, Section 6.

[6] ''Member firm'' is defined as ''a partnership, corporation, limited liability company or other organization in good standing who owns or leases a membership or upon whom a member has conferred privileges of membership pursuant to and in compliance with Article VIII of this Constitution.'' *See* PCX Constitution, Article V, Section 4 and PCX Rule 1.1(j).

[7] The PCX states that the proposed language in PCX Rule 1.1(h) to clarify the role of inactive lessors on the Board is intended as an interpretation of Article III, Section 2(b) of the PCX Constitution. Telephone conversation between Michael D. Pierson, Vice President, Regulatory Policy, PCX, and Kelly M. Riley, Senior Special Counsel and Cyndi N. Nguyen, Attorney, SEC on December 5, 2001.

[8] *See* CBOE Constitution, Article VI, Section 6.1.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principals of trade and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–45 and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–30957 Filed 12–14–01; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45145; File No. SR–SCCP–2001–01]**

## Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Adopting a Fee Schedule for Electronic Communications Networks

December 10, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 23, 2001, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') and on June 25, 2001, and November 27, 2001, amended the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

SCCP has adopted a new fee schedule for SCCP participants for trades executed on the Philadelphia Stock Exchange, Inc. (''Phlx'') for Electronic Communications Networks (''ECNs'').[2] The new fee schedule will operate as a pilot program for one year, wherein SCCP proposes to waive certain dues, fees and charges, including trade recording fees, value fees, treasury transactions charges but not account fees, research fees, computer transmission/tapes charges, or miscellaneous charges on SCCP's fee schedule.[3]

After the initial pilot period, an ECN will be eligible for the new fee schedule only if it has achieved average daily equity volume on the Phlx of at least 5,000 trades and 5,000,000 shares in the twelfth month after the ECN first became subject to the ECN fee schedule.[4] If the targeted amount is not met, the ECN will be subject to the SCCP fee schedule in effect at that time. After this pilot program ends in 2002, SCCP will make another rule filing with the Commission to establish new fees based on volume thresholds for ECNs.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[5]

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed changes to SCCP's fee schedule are intended to attract equity order flow from ECNs to Phlx by substituting a more competitive fee schedule tied to high volume targets. The high volume targets would be triggered in the twelfth month of the fee. Should an ECN not meet the targeted volume numbers described above, it

[1] 15 U.S.C. 78s(b)(1).

[2] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

[3] Certain provisions of the SCCP Fee Schedule will not apply to ECNs because they apply to specialists and/or relate to margin financing, such as specialist discount, margin account interest, P&L statements charges, and buy-ins.

[4] Because this volume requirement only applies to volume in the twelfth month (meaning *to* the thirteenth month's fee), actually waiving SCCP fees that month would necessarily require an extension of the pilot program beyond the initial 12 months. In the extension, SCCP would address whether the targets would continue to be monthly.

[5] The Commission has modified the text of the summaries prepared by SCCP.

may become subject to the then current SCCP fee schedule in the thirteenth month.

SCCP believes that the ECN fee schedule provides competitive fees with appropriate incentives, thus providing a reasonable method to attract large order flow providers such as ECNs to the Exchange. Additional order flow should enhance liquidity and improve Phlx's and SCCP's competitive position in equity trading and clearance.

SCCP believes that the proposed changes to its fee schedule are consistent with section 17A of the Act because that they provide for the equitable allocation of reasonable dues, fees, and other charges in order to attract a new form of order flow to Phlx.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [6] and Rule 19b–4(f)(2) [7] thereunder because the proposed rule change establishes a fee. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at Phlx's principal office. All submissions should refer to File No. SR–SCCP–2001–01 and should be submitted by January 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–30956 Filed 12–14–01; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–(f)(2).

[8] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3384]**

### State of Alabama

As a result of the President's major disaster declaration on December 7, 2001, I find that Autauga, Blount, Butler, Calhoun, Cherokee, Clay, Dale, DeKalb, Etowah, Fayette, Jefferson, Lamar, Lawrence, Madison, Marion, Marshall, St. Clair, Talladega and Winston Counties in the State of Alabama constitute a disaster area due to damages caused by severe storms and tornadoes occurring on November 24–25, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 5, 2002 and for economic injury until the close of business on September 9, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Barbour, Bibb, Chilton, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Elmore, Franklin, Geneva, Henry, Houston, Jackson, Lauderdale, Limestone, Lowndes, Monroe, Montgomery, Morgan, Pickens, Pike, Randolph, Shelby, Tallapoosa, Tuscaloosa, Walker and Wilcox counties in the State of Alabama; Chattooga, Dade, Floyd, Polk and Walker counties in the State of Georgia; Itawamba, Lowndes and Monroe counties in the State of Mississippi; Franklin and Lincoln counties in the State of Tennessee.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with Credit Available Elsewhere | 6.500 |
| Homeowners without Credit Available Elsewhere | 3.250 |
| Businesses with Credit Available Elsewhere | 8.000 |
| Businesses and Non-Profit Organizations without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) with Credit Available Elsewhere | 6.375 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 338411. For economic injury the number is 9N7600 for Alabama; 9N7700 for Georgia; 9N7800 for Mississippi; and 9N7900 for Tennessee.

Dated: December 10, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 01–30975 Filed 12–14–01; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3385]**

### Disaster Loan Area; State of Indiana

Shelby County and the contiguous counties of Bartholomew, Decatur, Hancock, Johnson, Marion and Rush in the State of Indiana constitute a disaster area due to damages caused by severe storms and tornadoes that occurred on November 24, 2001. Applications for loans for physical damage may be filed until the close of business on February 11, 2002 and for economic injury until the close of business on September 11, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 6.500 |

| | Percent |
|---|---|
| Homeowners without credit available elsewhere | 3.250 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 6.375 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 338511 and for economic injury is 9N8000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 11, 2001.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 01–30976 Filed 12–14–01; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3383]**

### State of Mississippi

As a result of the President's major disaster declaration on December 7, 2001, I find that Bolivar, DeSoto, Hinds, Humphreys, Madison, Panola, Quitman, Sunflower, Tate and Washington Counties in the State of Mississippi constitute a disaster area due to damages caused by severe storms, tornadoes and flooding that occurred on November 24, 2001 and continue. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 5, 2002 and for economic injury until the close of business on September 9, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Attala, Claiborne, Coahoma, Copiah, Holmes, Issaquena, Lafayette, Leake, LeFlore, Marshall, Rankin, Scott, Sharkey, Simpson, Tallahatchie, Tunica, Warren, Yalobusha and Yazoo in the State of Mississippi; Chicot, Crittenden, Desha and Phillips counties in the State of Arkansas; East Carroll parish in the State of Louisiana; and Shelby county in the State of Tennessee.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 6.500 |
| Homeowners without credit available elsewhere | 3.250 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 6.375 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 338311. For economic injury the number is 9N7200 for Mississippi; 9N7300 for Arkansas; 9N7400 for Louisiana; and 9N7500 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 10, 2001.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 01–30974 Filed 12–14–01; 8:45 am]

BILLING CODE 8025–01–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Determination of Effective Date of U.S.-Vietnam Bilateral Trade Agreement

**AGENCY:** Office of the United States Trade Representatives.

**ACTION:** Notice.

**SUMMARY:** The United States Trade Representative (''the USTR'') has determined that the effective date of the ''Agreement between the United States and the Socialist Republic of Vietnam on Trade Relations'' (''the Agreement''), and, the grant of nondiscriminatory tariff treatment to the products of Vietnam is December 10, 2001. This determination is made pursuant to the terms of the Agreement and as required in Presidential proclamation 7449 (66 FR 31375).

**FOR FURTHER INFORMATION CONTACT:** Elena Bryan, Director for India and Indochina Affairs, Office of the United States Trade Representative, (202) 395–6813.

**SUPPLEMENTARY INFORMATION:** On July 13, 2000, the United States and Vietnam concluded the Agreement in accordance with the requirements of the Trade Act of 1974, as amended (19 U.S.C. 2431 *et seq.*) (''the Trade Act''). Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country denied such treatment prior to the date of enactment of the Trade Act, and a proclamation implementing such agreement, shall take effect only if a joint resolution described in section 151(b)(3) of the Trade Act (19 U.S.C. 2191(b)(3)) that approves of the Agreement is enacted into law.

President Bush signed Proclamation 7449 on June 8, 2001, and transmitted the Agreement to Congress on that date for its approval. In the proclamation, the President directed the USTR to publish notice of the effective date of the Agreement. Congress approved the Agreement on October 3, 2001 and the President signed the legislation approving the Agreement on October 16, 2001. The National Assembly of Vietnam approved the resolution ratifying the Agreement on November 28, 2001 and the President of Vietnam signed the legislation on December 4, 2001.

Chapter VII, Article 8:1 of the Agreement provides that it shall enter into force on the date of exchange of written notices of acceptance by the two Governments. On December 10, 2001, Ambassador Robert B. Zoellick, the United States Trade Representative and Vu Khoan, Minister of Trade of the Socialist Republic of Vietnam, exchanged written notices of acceptance, thus implementing the Agreement. Thus, in accordance with the terms of the Agreement, the effective date of nondiscriminatory treatment for products of Vietnam is December 10, 2001.

**Robert B. Zoellick,**

*United States Trade Representative.*

[FR Doc. 01–30961 Filed 12–14–01; 8:45 am]

BILLING CODE 3190–01–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG 2001–10613]**

### Information Collection Under Review by the Office of Management and Budget (OMB): 2115–0003

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one

Information Collection Report (ICR) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

**DATES:** Please submit comments on or before January 16, 2002.

**ADDRESSES:** To make sure that your comments and related material do not enter the docket [USCG 2001–10613] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a), next above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) OIRA, at the address given in paragraph (1)(b), next above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Docket Management Facility at 202–493–2251 or (b) OIRA 202–395–7285, attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a website on which you can post your comments.

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

Copies of the complete ICR are available for inspection and copying in public dockets. A copy of it is available in docket USCG 2001–10613 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW, Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [66 FR 48157 (September 18, 2001)] the 60-day notice required by OIRA. That notice elicited no comments.

### Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2001–10613. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

### Information Collection Requests

1. *Title:* Information on Marine Casualties; Testing Personnel of Commercial Vessels for Drugs and Alcohol; and Management Information Systems.

*OMB Control Number:* 2115–0003.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* The owner, agent, master, operator, or person-in-charge of a vessel involved in a marine casualty.

*Forms:* CG–2692, CG–2692A, CG–2692B, and CG–5573.

*Abstract:* The Coast Guard needs information with which it can investigate mishaps to commercial vessels causing death, extensive damage, and the like, as mandated by Congress. It needs information from chemical testing so it can detect and reduce the use of drugs and alcohol by mariners, also as mandated by Congress. And it needs certain information on management so it can evaluate the effectiveness of its programs.

*Annual Estimated Burden Hours:* The estimated burden is 19,195 hours a year.

Dated: December 11, 2001.

**J.E. Evans,**

*Acting Director of Information & Technology.*

[FR Doc. 01–31013 Filed 12–14–01; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

**[USCG–2001–11137]**

## Maritime Security

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting; request for comments.

**SUMMARY:** The Coast Guard is holding a public workshop to discuss security procedures, programs, and capabilities within marine transportation systems. Discussions will focus on identifying possible security measures, standards, and responses to threats and acts of crime and terrorism. We encourage interested parties to attend the workshop and submit comments for discussion during the workshop. We also seek comments to the docket, especially from any party unable to attend the workshop.

**DATES:** The public workshop will be held on January 28 through 30, 2002, from 9 a.m. to 5 p.m., at The Grand Hyatt Washington at Washington Center in Washington DC. We may end the workshop early, if we have covered all of the agenda topics and if the people attending have no further comments. Persons wishing to make presentations must contact CDR Mike Rand by January 7, 2002. Comments and related material must reach the Docket Management Facility on or before February 14, 2002.

**ADDRESSES:** The workshop will be held at the following location: Grand Hyatt Washington at Washington Center, 1000 H Street, NW., Washington DC., 20001, Phone (202) 582–1234.

You may submit your comments directly to the Docket Management Facility. To make sure that your comments and related material do not

enter the docket [USCG–2001–11137] more than once, please submit them by only one of the following means:

(1) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov/.*

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

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

(4) By mail to the Docket Management Facility, (USCG–2001–11137), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

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

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice or the public workshop, write or call CDR Mike Rand, at the Vessel and Facility Security Division (G–MP), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20590, mrand@comdt.uscg.mil, or at 202–267–6853. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief of Dockets, Department of Transportation, at 202–366–5149.

**SUPPLEMENTARY INFORMATION:**

## Request for Comments

We encourage you to participate in this workshop by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG–2001–11137] and give the reason for each comment. You may submit your comments and material electronically, by fax, by delivery, or by mail to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

## Public Workshop

The Coast Guard encourages owners and operators of vessels, offshore platforms, and facilities, agencies in law enforcement and emergency planning, port authorities, shipping agents, insurance companies, Protection and Indemnity Clubs, and other interested persons to attend the workshop. Workshop attendees will have the opportunity to verbally comment on topics scheduled for discussion on the agenda. We may ask questions to clarify comments given by an attendee. The workshop will be held January 28 through 30 from 9 a.m. to 5 p.m. each day at The Grand Hyatt Washington at Washington Center in Washington DC. Separate sessions discussing threats to the marine transportation system's security in such areas as physical security, operational measures, and access control will be held simultaneously each day to allow for comments and/or presentations on these topics. The completed agenda will be placed on the docket approximately two weeks before the workshop. We also will announce the availability of the agenda on the docket in a notice published in the **Federal Register**.

For those wishing to make a presentation at the workshop, please notify CDR Mike Rand with the following information:

(1) The topic you wish to talk about;

(2) The date and time you would like to schedule the presentation; and

(3) Any materials (such as video and audio equipment) you might need to conduct your presentation.

Persons wishing to make presentations must contact CDR Mike Rand by January 7, 2002. Information on how to contact him is under **FOR FURTHER INFORMATION CONTACT.**

## Information on Services for Individuals With Disabilities

To obtain information on facilities or services for individuals with disabilities or to ask that we provide special assistance at the workshop, please notify CDR Mike Rand at the address or phone number under **FOR FURTHER INFORMATION CONTACT.**

## Background and Purpose

The terrorist attacks of September 11, 2001, and the attack on USS COLE, a Navy ship moored in Yemen that killed 17 sailors and injured 37 in October of 2000, make it clear that the marine transportation system faces unprecedented threats.

The United States can ill afford to ignore the potential vulnerability of its marine transportation system (MTS). More than 95 percent of U.S. foreign trade by volume now travels by sea. The MTS, whether at port facilities in coastal waters or along inland waterways, plays a vital role in America's transportation network.

In addition, U.S. ports handle more than 17 million containers each year. Containers raise a specific concern because they are, by design, intermodal. A container unloaded at a port on one day is often deployed deep into America's heartland soon thereafter by truck or rail. With only a small percentage of those containers currently being inspected by federal agencies, the potentiality for illegal activities is enormous.

Ports are not the only potential maritime targets; other such targets include but are not limited to—tank vessels, passenger vessels, cargo vessels, facilities for exploration and production of oil, power plants, bridges, other critical infrastructure, and the marine environment also need protection. Furthermore, the United States has more than 95,000 miles of coastline, providing many infiltration routes into the country.

It is important to note that the Coast Guard and Congress were concerned about MTS security even before September 11, 2001. Indeed, the Port and Maritime Security Act was introduced at the close of the 106th Congress. If passed, the Act would, among other things, authorize the Coast Guard to establish an MTS security task force in consultation with the U.S. Customs Service, and the Maritime Administration.

The proposed Act was prompted by the work of the President's Interagency Commission on Crime and Security in U.S. Seaports, which subsequently issued a report highlighting the threats to our nation's ports. The Commission found that:

- The state of security in U.S. seaports generally ranges from poor to fair, and, in a few cases, good. There are no widely accepted standards or guidelines for physical, procedural, and personnel security for seaports, although some ports are making outstanding efforts to improve security. Control of access to the seaport or sensitive areas within it is often lacking. Practices to restrict or control the access of vehicles to vessels, the receipt and

delivery of cargo, and the processing of passengers at seaports are either not present or not consistently enforced, increasing the risk that violators could quickly remove cargo or contraband. Many ports do not issue identification cards to personnel to restrict the access to vessels, the receipt and delivery of cargo, and the processing of passengers.

• Vessel manifests, import and export, are sometimes deficient for import risk assessment and export control. Information from them is easier to use for drug enforcement and commercial compliance if it is received as electronic data before the arrival of vessels.

• Although the Federal government has established formal structures for coordinating governmental efforts and has developed national strategies to address drug trafficking, terrorism, other domestic and international crime, and to guarantee economic mobility, seaport security per se has not been adequately addressed. Stronger and more focused coordination among agencies and between the public and private sectors to enhance Security is needed.

**Topic of Discussion: Security of Marine Transportation Systems**

The Coast Guard is conducting this workshop to assess existing MTS security standards and measures to gather ideas on possible improvements. To facilitate discourse during the workshop attendees should, before attending the workshop, evaluate threats to MTS security in such areas as physical security, operational measures, and access control. After recognizing threats to MTS security, the public should evaluate existing MTS security standards and measures to identify vulnerabilities, and then develop possible adjustments to decrease those vulnerabilities. The workshop will provide the public an opportunity to present ideas and to discuss the threats, vulnerabilities, and adjustments to MTS security. In the future we may propose new or amendatory rules that would address issues broached during the workshop.

Three general areas of MTS security, to wit, physical security, operational measures, and access control, will almost certainly arise during the workshop. Persons planning to attend the workshop should be prepared to discuss these general areas as they relate to security, protection, and economic performance of the maritime industry. Workshop attendees will be asked to discuss a host of possible costs and benefits that could result from identifying and addressing physical security, operational measures, and access-control vulnerabilities.

We request information about all current Federal, State, and local governmental laws, procedures, regulations, and standards that are either functioning or that are planned. We also request industry to provide any current and planned standards and procedures covering the security of vessels and facilities. Finally, we request recommendations toward needed improvement or added regulations. Examples of the types of information we are interested in receiving are:

*Physical security.* Discussions of the physical security of personnel, ports, facilities, and vessels might include, but are not limited to:

• Measures and standards currently being used at a facility or on board a vessel.

• Criteria for measures and standards at a facility or on board a vessel such as fences, gates, alarms, lighting, antennas, and personnel on watch.

• Security technologies currently used or possible to make ports, facilities, and vessels more secure against the threat or commission of crimes or terrorism.

*Operational measures.* Discussions of the operational measures for personnel, ports, facilities, and vessels might include, but are not limited to:

• Effectiveness of existing passenger terminals and passenger vessels security plan requirements.

• Effectiveness of existing terminal and security plans for ports, vessels, offshore platforms, and industry.

• Facilities and vessels, other than passenger terminals and passenger vessels regulated in 33 CFR parts 120 and 128, which should have security plans.

• Response plans in place to prevent criminal and terrorist acts and threats.

• Details of measures taken in response to such acts and threats.

• Necessity of MTS security committees and the sharing of intelligence and threat advisories between the Coast Guard and industry.

• Criteria and need for a tracking system for vessels trafficking the navigable waters of the United States.

*Access control.* Discussions of access control for personnel, passengers, and cargo might include, but are not limited to:

• Criteria and process for background check prior to employment.

• Check points that screen personnel, passengers, cargo, and baggage.

• Additional information, currently used or deemed necessary to document or certificate personnel, facilities, and vessels.

• Types of credentials (such as identification cards, employment cards, and access passes) used to limit access.

Dated: December 10, 2001.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 01–31171 Filed 12–13–01; 3:46 pm]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Air Traffic Procedures Advisory Committee

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**SUMMARY:** The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

**DATES:** The meeting will be held from January 14–17, 2002, from 8 a.m. to 4 p.m. each day.

**ADDRESSES:** The meeting will be held at the McCarran International Airport, Main Terminal (Second Floor), Mezzanine Rooms 2 & 3, 5757 Wayne Newton Blvd., Las Vegas, NV 89111.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Harrell, Executive Director, ATPAC, Air Traffic Planning and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9155.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held January 14 through January 17, 2002, at the McCarran International Airport, Main Terminal (Second Floor), Mezzanine Rooms 2 & 3, 5757 Wayne Newton Blvd., Las Vegas, NV 89111.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.

6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 11, 2002. The next quarterly meeting of the FAA ATPAC is planned to be held from April 16–19, 2002, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on December 10, 2001.

**Eric Harrell,**

*Executive Director, Air Traffic Procedures Advisory Committee.*

[FR Doc. 01–31001 Filed 12–14–01; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application to a Passenger Facility Charge (PFC) at Albuquerque International Sunport, NM and Use the Revenue at Albuquerque International Sunport and Double Eagle II Airport

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose at Albuquerque Sunport and use the revenue from a PFC at Albuquerque International Sunport and Double Eagle II Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before January 16, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Dewey V. Cave, Manager of Albuquerque International Sunport at the following address: Mr. Dewey V. Cave, Airport Manager, Albuquerque International Sunport, PO Box 9948, Albuquerque, NM 87119–1048.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose the revenue from a PFC at Albuquerque International Sunport (ABQ) and use the revenue at Albuquerque International Sunport (ABQ) and Double Eagle II Airport (AEG) under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 6, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 5, 2002.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* May 1, 2002.

*Proposed charge expiration date:* December 1, 2007.

*Total estimated PFC revenue:* $44,483,079.

*PFC application number:* 02–02–C–00–ABQ.

*Brief Description of Proposed Project(s)*

Projects To Impose and Use PFC's

1. 1993 Master Plan Update (ABQ)
2. Taxiway E Reconstruction (ABQ)
3. Taxiway A & B Improvements (ABQ)
4. Terminal Apron Expansion (ABQ)
5. Runway 3–21 Extension and Upgrade (ABQ)
6. Runway 12–30 Extension and Reconstruction (ABQ)
7. Double Eagle II Ramp and Runway Improvements (ABQ) & (AEG)
8. Access Road D Construction (ABQ)
9. Sunport Boulevard Construction (ABQ)
10. Air Cargo Apron Expansion (ABQ)
11. PFC Application #1 and #2 Development (ABQ)

*Proposed class or clases of air carriers to be exempted from collecting PFC's:* FAR Part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person or Albuquerque International Sunport.

Issued in Fort Worth, Texas on December 6, 2001.

**Joseph G. Washington,**

*Acting Manager, Airports Division.*

[FR Doc. 01–31003 Filed 12–14–01; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2001–11153]**

### Integrated Modular Avionics (IMA) Hardware Elements.

**AGENCY:** Federal Aviation Administration, DOT

**ACTION:** Notice of availability for public comment.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO) pertaining to integrated modular avionics hardware elements (IMA). The proposed TSO prescribes the criteria for the minimum performance standard (MPS) that IMA hardware element equipment must meet to be identified with the appropriate TSO marking.

**DATES:** Comments must be received on or before January 16, 2002.

**ADDRESSES:** Send all comments on the proposed technical standard order to: Technical Programs & Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Room 815, Washington,

DC 20591. Or deliver comments to: Federal Aviation Administration (FAA), Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Comments must identify the TSO file number.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Lewis, Technical Programs & Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Room 815, Washington, DC 20591; Telephone No.—(202) 493–4841; FAX No.—(202) 267–5340; E-mail address—*John.Lewis@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed TSO may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service before issuing the final TSO.

## Background

Traditionally, avionics systems consisted of dedicated Line Replaceable Units (LRUs) which performed specific functions such as autoflight, flight management, and flight deck display. TSOs were written for these LRUs and their functions. Advancements in digital technology have created a trend toward higher levels of integration and modularity. In many modern integrated systems software determines functionality, while hardware serves as a platform for input, output, data storage, and software execution. Since these basic attributes tend to be similar for various applications, efficiencies can be gained by using various types of generic airborne hardware elements to execute these functions.

This TSO refers to these generic hardware elements as ''IMA hardware elements'', which includes modules, cabinets, or racks. A module may contain software to enable electronic part marking and/or future loading of functional software. These modules will not function without being installed in specific cabinets or racks. Module types may include data processing modules, power supply modules, communication and data bus modules, or others. Cabinets or racks are use to host IMA modules. These cabinets or racks may be simple mechanical enclosures, or they may incorporate active cooling elements, power supplies, communication interfaces, backplanes for data and power, or any combination of these features.

## How to Obtain Copies

You may obtain a copy of the proposed TSO via Internet (*http://av-info.faa.gov/software/drafts.htm*) or on request from the office listed under **FOR FURTHER INFORMATION CONTACT.** Copies of Document Nos. RTCA/DO–160D (change 2), RTCA/DO–178B, and RTCA/DO–254 may be purchased from the RTCA Inc., 1828 L Street, NW., Suite 807, Washington, DC 20036 (website: *http://www.rtca.org*). Aviation Recommended Practice number ARP–4754 may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001 (website: *http://www.sae.org*).

You may inspect the RTCA documents at the FAA office location listed under **ADDRESSES.** However, RTCA documents are copyrighted and may not be reproduced without the written consent of RTCA, Inc.

Issued in Washington, DC on December 11, 2001.

**David W. Hempe,**

*Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 01–31002 Filed 12–14–01; 8:45 am]

**BILLING CODE 4910–13–M**

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# DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for Form 8879

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8879, IRS e-file Signature Authorization.

**DATES:** Written comments should be received on or before February 15, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to George Freeland, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* IRS e-file Signature Authorization.

*OMB Number:* 1545–1758.

*Form Number:* 8879.

*Abstract:* Form 8879 is used to allow taxpayers to authorize the Electronic Return Originators to enter the taxpayer's PIN on the electronically filed tax returns.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individual or households.

*Estimated Number of Respondents:* 8,000,000.

*Estimated Time Per Respondent:* 41 minutes.

*Estimated Total Annual Burden Hours:* 5,440,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to

minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 2001.

**George Freeland,**

*IRS Reports Clearance Officer.*

[FR Doc. 01–31008 Filed 12–14–01; 8:45 am]

BILLING CODE 4830–01–P

# Corrections

Federal Register

Vol. 66, No. 242

Monday, December 17, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. NRTL95–F–1]**

### Nationally Recognized Testing Laboratories, Proposed Revised Fee Schedule

*Correction*

In notice document 01–30727 beginning on page 64274 in the issue of Wednesday, December 12, 2001, make the following correction:

On page 64274, in the third column, in the **DATES** section, in the fourth line, ''December 27, 2002'' should read, ''December 27, 2001''.

[FR Doc. C1–30727 Filed 12–14–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
December 17, 2001

# Part II

# Department of Commerce

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

## Fisheries of the Exclusive Economic Zone Off Alaska; Amendments 61/61/13/8 to Implement Major Provisions of the American Fisheries Act; Proposed Rule

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 011128283–1283–01; I.D. 111401B]**

**RIN 0648–AN55**

## Fisheries of the Exclusive Economic Zone Off Alaska; Amendments 61/61/13/8 to Implement Major Provisions of the American Fisheries Act

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 61 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 61 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, Amendment 13 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crab, and Amendment 8 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMPs). These amendments incorporate the provisions of the American Fisheries Act (AFA) into the FMPs and their implementing regulations. Proposed management measures to implementing the AFA include: Regulations limiting entry by vessels and processors into all sectors of the Bering Sea and Aleutian Islands (BSAI) pollock fishery, a new formula allocating the BSAI pollock total allowable catch (TAC) among the inshore, catcher/processor, and mothership processing sectors and the Community Development Quota (CDQ) Program, regulations governing the formation and operation of fishery cooperatives (cooperatives) in the BSAI pollock fishery, harvesting and processing limits known as ''sideboards'' to protect vessels and processors in other fisheries from spillover effects resulting from the rationalization and privatization of the BSAI pollock fishery, observer coverage requirements for vessels and processors in the BSAI pollock fishery, catch weighing and scale requirements for BSAI pollock processors, vessel monitoring system (VMS) requirements for AFA catcher vessels and AFA catcher/processors fishing for groundfish in the BSAI and GOA; and a 2–year extension of the inshore/offshore regime for pollock and Pacific cod in the Gulf of Alaska (GOA). These amendments are necessary to implement the AFA and are intended to do so in a manner consistent with the environmental and socioeconomic objectives of AFA, the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), the FMPs, and other applicable laws.

**DATES:** Comments on the proposed rule must be received on or before January 31, 2002.

**ADDRESSES:** Comments must be sent to Sue Salveson, Assistant Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Copies of the Environmental Impact Statement/ Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (EIS/ RIR/IRFA) prepared for Amendments 61/61/13/8 may be obtained from NMFS at the above address or online at *http://www.fakr.noaa.gov*. Send comments on collection-of-information requirements to NMFS, Alaska Region and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Kent Lind, 907–586–7228 or kent.lind@noaa.gov

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI and Gulf of Alaska (GOA) under the FMPs for groundfish in the respective areas. With Federal oversight, the State of Alaska (State) manages the commercial king crab and Tanner crab fisheries in the BSAI and the commercial scallop fishery off Alaska under the FMPs for those fisheries. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

### American Fisheries Act—Background Information

On October 21, 1998, the President signed into law the AFA (Div. C, Title II, Pub. L. No. 105–277, 112 Stat. 2681 (1998)). The AFA is divided into two subtitles establishing certain requirements for fishery endorsements for all U.S. fishing vessels, and providing for the reorganization and rationalization of the BSAI pollock fishery, respectively.

*Subtitle I—Fisheries Endorsements* established a 25 percent foreign ownership and control limit for all U.S. documented fishing vessels over 100 ft (30.9 meters (m)) registered length. Subtitle I also limits new U.S. documented fishing vessels to no more than 165 ft (59.3 m) registered length, no more than 3,000 lbs (1.36 mt) shaft horsepower, and no more than 750 gross registered tons (680 mt). The provisions of this subtitle apply to all U.S. documented fishing vessels fishing anywhere in the U.S. EEZ and are being implemented by the Maritime Administration (MARAD) and the U.S. Coast Guard.

*Subtitle II—Bering Sea Pollock Fishery* mandated sweeping changes to the BSAI pollock fishery and to a lesser extent, affected the management of the other groundfish, crab, and scallop fisheries off Alaska. The purpose of Amendments 61/61/13/8 is to implement the management program required by Subtitle II of the AFA.

Congress identified two primary objectives in passing the AFA. The first objective was to complete the process begun in 1976 to give U.S. interests a priority in the harvest of U.S. fishery resources. This objective was accomplished through the restrictions on foreign ownership and control that are set out in Subtitle I of the AFA. The second objective was to significantly decapitalize the Bering Sea pollock fishery. This objective was addressed by Subtitle II of the AFA. Under the council system established by the Magnuson-Stevens Act, Congressional action is generally not needed to address fishery conservation and management issues in specific fisheries. However, Congress believed that the overcapacity in the BSAI pollock fishery prior to the AFA was due, in part, to mistakes in, and misinterpretations of, the 1987 Commercial Fishery Industry Vessel Anti-Reflagging Act (Anti-Reflagging Act). In passing the AFA, Congress noted that the Anti-Reflagging Act had allowed a flood of foreign-rebuilt catcher/processors into the BSAI pollock fishery and did not limit foreign control of such vessels in the manner in which Congress had intended. Without Subtitle II, the Council and NMFS did not have authority to provide funds under the Federal Credit Reform Act to buy out and retire vessels from the BSAI pollock fishery, to strengthen U.S. controlling interest standards for fishing vessels, or to implement the inshore cooperative program contained in the AFA.

Subtitle 2 of the AFA contains numerous provisions that affect the management of the groundfish and crab fisheries off Alaska. Key provisions include:

1. The buyout of nine pollock catcher/processors and the subsequent scrapping of eight of these vessels through a combination of $20 million in Federal appropriations and $75 million in direct loan obligations;

2. A new allocation scheme for BSAI pollock that allocates 10 percent of the BSAI pollock total allowable catch (TAC) to the CDQ program, and after allowance for incidental catch of pollock in other fisheries, allocates the remaining TAC as follows: 50 percent to vessels harvesting pollock for processing by inshore processors, 40 percent to vessels harvesting pollock for processing by catcher/processors, and 10 percent to vessels harvesting pollock for processing by motherships;

3. A fee of six-tenths (0.6) of one cent for each pound round weight of pollock harvested by catcher vessels delivering to inshore processors for the purpose of repaying the $75 million direct loan obligation;

4. A prohibition on entry of new vessels and processors into the BSAI pollock fishery. The AFA lists by name vessels and processors and/or provides qualifying criteria for those vessels and processors eligible to participate in the non-CDQ portion of the BSAI pollock fishery;

5. New observer coverage and scale requirements for AFA catcher/processors;

6. New standards and limitations to guide the creation and operation of fishery cooperatives in the BSAI pollock fishery;

7. An individual fishing quota program for inshore catcher vessel cooperatives under which NMFS grants individual allocations of the inshore BSAI pollock TAC to inshore catcher vessel cooperatives that are formed around a specific inshore processor and that agree to deliver at least 90 percent of their pollock catch to that processor;

8. The establishment of harvesting and processing limits known as ''sideboards'' on AFA pollock vessels and processors to protect the interests of fishermen and processors in other fisheries from spillover effects resulting from the rationalization of the BSAI pollock fishery; and

9. A 17.5 percent excessive share harvesting cap for BSAI pollock and a requirement that the Council develop excessive share caps for BSAI pollock processing and for the harvesting and processing of other groundfish.

Some of the above provisions of the AFA already have been implemented by NMFS and other agencies. The buyout of the nine ineligible factory trawlers and their subsequent scrapping was completed by NMFS in 1999 under the schedule mandated by the AFA. This action was accomplished by contract with the vessel owners rather than regulation. The inshore pollock fee program required by the AFA was implemented by NMFS through final regulations published February 3, 2000 (65 FR 5278). MARAD has implemented the new U.S. ownership requirements and size restrictions for U.S. fishing vessels through final regulations published July 19, 2000 (65 FR 44860). MARAD's regulations also set out procedures for review of compliance with excessive share harvesting limits contained in this proposed rule.

**Development of Amendments 61/61/13/8 and AFA-Related Actions Taken to Date**

Since the passage of the AFA in October 1998, NMFS and the Council have undertaken an extensive public process to develop the management program proposed under Amendments 61/61/13/8. Amendments 61/61/13/8 were prepared and revised during the course of 12 Council meetings over the past 2 years and have been the subject of numerous additional public meetings held by the Council and NMFS to address specific aspects of the AFA. While the permanent management program proposed under Amendments 61/61/13/8 was under analysis and development by the Council and NMFS, the statutory deadlines in the AFA were met on an interim basis through several emergency interim rules that were extended through the end of 2001 by Pub. L. No. 106–554, which mandated that all management measures in effect as of July 2000 be extended through the end of 2001. The following time line provides a summary of the 2–year public process through which NMFS and the Council prepared Amendments 61/61/13/8.

*November 1998.* After the passage of the AFA in October 1998, the Council held a special meeting in November 1998, in Anchorage, AK, to address among other things, the new requirements of the AFA and the effect of the AFA on the fisheries under the jurisdiction of the Council. The Council made various recommendations to NMFS regarding the regulation of cooperatives in the catcher/processor sector and the management of sideboards for AFA catcher/processors for the 1999 fishery and began the process of identifying issues and alternatives for upcoming AFA-related actions.

*December 1998.* At its December 1998 meeting in Anchorage, AK, the Council approved two emergency rules to implement required provisions of the AFA for the 1999 fishing year. The first emergency interim rule required two observers on all AFA-listed catcher processors and motherships, and established procedures for making inseason sideboard closures (64 FR 3435, January 22, 1999; extended at 64 FR 33425, June 23, 1999). The second emergency interim rule made several technical changes to the CDQ program regulations to accommodate the new requirements of the AFA (64 FR 3887, January 26, 1999; extended at 64 FR 34743, June 29, 1999). After extensive public testimony and input from the Council's Advisory Panel (AP) and Scientific and Statistical Committee (SSC), the Council identified a suite of alternatives for the management program that subsequently became known as Amendments 61/61/13/8.

*February 1999.* At its February 1999 meeting in Anchorage, AK, the Council finalized sideboard and AFA management measure alternatives with the intent that a draft analysis would be reviewed at the April 1999 meeting with a final decision scheduled for June 1999 to allow the Council to meet the July 1999 deadline imposed by the AFA for recommendation of sideboard measures. The Council also began preparation of a separate discussion paper to examine the structure of the inshore cooperative program. This separate analysis was in response to a proposal by a group of independent inshore catcher vessel owners who advocated a change in the program to allow the formation of an independent vessel cooperative that would not be tied to a particular processor. A draft analysis was scheduled for review in June 1999, with further discussion in October 1999.

*April 1999.* At its April 1999 meeting in Anchorage, AK, the Council reviewed its draft analysis for Amendments 61/61/13/8, and received extensive public testimony regarding alternatives and other issues that should be considered under Amendments 61/61/13/8. The Council directed staff to make various revisions and additions to the analysis with the intent that the amendment package would be brought before the Council for final action in June 1999. The Council also reviewed its discussion paper on the structure of the inshore cooperative program and the independent inshore catcher vessel cooperative proposal and requested that a broader analysis be prepared for initial review at the October 1999 meeting. In

addition, the Council formed an inshore cooperative implementation committee to advise NMFS on many of the technical issues related to the formation and management of inshore cooperatives.

*May 1999*. The Council's inshore cooperative implementation committee held a public meeting with NMFS on May 10–13 in Seattle, WA, to examine alternative management approaches for inshore catcher vessel cooperatives. The approach to implementing and managing inshore cooperatives developed at this meeting forms the basis of the inshore cooperative management program contained in this proposed rule.

*June 1999*. At its June 1999 meeting in Kodiak, AK, the Council reviewed Amendments 61/61/13/8 and after extensive public testimony, approved a suite of AFA-related recommendations including restrictions on the formation and operation of cooperatives, harvesting sideboards for catcher/processors and catcher vessels, and catch weighing and monitoring requirements. However, the Council was unable to reach a decision on two AFA-related issues: groundfish processing sideboards and excessive processing share caps. To address these issues, the Council established an industry committee to further examine alternatives and work with State and Federal managers to resolve implementation issues with the intent that the Council would review the committee's recommendations in October 1999.

*August 1999*. The Council's processing sideboard industry committee held a public meeting in Seattle, WA, to examine alternatives for processing sideboards and excessive processing share caps. The committee was unable to reach complete consensus on a recommended approach for processing sideboard caps. However, the committee did develop some general recommendations for the Council and provided the Council with some requests for additional analysis and information.

*October 1999*. At its October 1999 meeting in Seattle, WA, the Council reviewed its analysis on the structure of the inshore cooperative program, including the proposal to allow formation of independent inshore catcher vessel cooperatives, and received extensive public discussion on this issue. However, the Council voted to postpone action until February 2000 and requested further analysis on this issue. The Council also re-examined its June 1999 catcher vessel sideboard exemption recommendations and requested that NMFS delay implementation of these measures until the Council had the opportunity to analyze and discuss possible revisions to its recommended catcher vessel sideboard exemptions. The Council announced that it would be revising its sideboard exemption recommendations at its December 1999 meeting. Finally, the Council reviewed what had become a separate analysis of groundfish processing sideboards and excessive processing share caps. After extensive discussion and public comment on this issue, the Council chose to expand and revise its analysis with intent to review the issue again in February 2000 with final action scheduled for June 2000.

*December 1999*. At its December 1999 meeting in Anchorage, AK, the Council recommended two emergency interim rules to implement required provisions of the AFA for the 2000 fishing year. These measures were necessary to meet certain statutory deadlines in the AFA while the comprehensive suite of permanent management measures under Amendments 61/61/13/8 continued to undergo development, revision, and analysis by the Council and NMFS. The first emergency interim rule set out permit requirements for AFA vessels, processors, and cooperatives (65 FR 380, January 5, 2000; extended at 65 FR 39107, June 23, 2000). The second emergency interim rule established sector allocations, cooperative regulations, sideboards, and catch monitoring requirements for the AFA fleets (65 FR 4520, January 28, 2000; extended at 65 FR 39107, June 23, 2000).

*February 2000*. At its February 2000 meeting in Anchorage, AK, the Council reviewed its revised analysis of groundfish processing sideboards and excessive share processing caps and requested analysis of several additional issues with the stated intent that the analysis would be reviewed again in June 2000. The Council postponed action on the proposed changes to the structure of the inshore cooperative program and the independent inshore catcher vessel proposal until June 2000. Finally, at that meeting, the Council and NMFS decided it would be appropriate to expand the environmental assessment (EA) prepared for Amendments 61/61/13/8 into an EIS given the magnitude of the proposed management program to implement the AFA.

*April 2000*. At its April 2000 meeting in Anchorage, AK, the Council received extensive testimony from industry on several elements of Amendments 61/61/13/8. Catcher vessel owners requested that the Council consider revising several of its recommendations related to catcher vessel sideboards, retirement of vessels, and the formula for calculating inshore cooperative allocations. The Council requested preparation of a supplemental analysis of these issues for consideration in June 2000. The Council also received testimony from crab fishermen who opposed the crab processing caps implemented in 2000 through emergency interim rule. The Council announced its intent to examine alternatives for crab processing caps at its June 2000 meeting with final action on any changes scheduled for September 2000. In addition, the April Council meeting was used as a scoping meeting to solicit input from the public on issues and alternatives that should be addressed in the EIS being prepared for Amendments 61/61/13/8.

*June 2000*. At its June 2000 meeting in Portland, OR, the Council reviewed its analysis of proposed structural changes to the inshore cooperative program including the independent inshore catcher vessel proposal. The Council did not adopt changes promoted by independent inshore catcher vessel owners that would have allowed greater flexibility in choosing which cooperative a vessel could join. Instead, the Council recommended two changes related to retirement of vessels and allocation formulas that would supersede the measures set out in the AFA. These changes were incorporated as revisions to Amendments 61/61/13/8. The Council also examined the issue of groundfish processing sideboards and excessive processing share caps and voted to release its analysis for public review with intent to take final action on these measures at its October 2000 meeting. The Council's original intent was to include groundfish processing sideboards and excessive processing share caps in Amendments 61/61/13/8. However, due to the extensive additional analysis required for these two issues, the Council decided to address these issues on a separate timetable with a separate analysis.

*September 2000*. At its September 2000, meeting in Anchorage, AK, the Council examined proposed changes to crab processing sideboard limits and recommended that the 1995–1997 formula used to calculate crab processing caps under the AFA be revised by adding 1998 processing history and giving it double-weight. In other words, 1995 through 1998 would be used to determine crab processing history with the 1998 year counting twice. The purpose of this change was to give greater emphasis to recent processing history in consideration of

changes to the crab processing industry that have occurred since 1995.

*October 2000.* At its October 2000 meeting in Sitka, AK, the Council considered the issues of BSAI pollock excessive processing share limits and groundfish processing sideboard limits. The Council adopted a 30 percent excessive processing share limit for BSAI pollock that would be applied using the same 10 percent entity rules set out in the AFA to define AFA entities for the purpose of the 17.5 percent excessive harvesting share limit contained in the AFA. This action represents the Council's final revision to Amendments 61/61/13/8 before official submission of the amendments to the Secretary of Commerce for review and approval. With respect to non-pollock groundfish processing sideboards, the Council took no action. The Council believed that placing non-pollock groundfish processing limits on AFA processors could have negative effects on markets for both AFA and non-AFA catcher vessels. In addition, the Council concluded that its suite of harvesting sideboard restrictions on AFA catcher vessels and catcher/processors also serve to protect non-AFA processors in the BSAI, which are primarily non-AFA catcher/processors. Instead of imposing non-pollock processing limits on AFA processors, the Council indicated its intent to explore revisions to its Improved Retention/Improved Utilization (IR/IU) program set out at 50 CFR 679.27. Testimony from non-AFA processors indicated that such changes could be a more effective means of providing a more level playing field for non-AFA catcher/processors.

## Submission of Amendments 61/61/13/8 for Secretarial Review and Public Comment

The Council has submitted Amendments 61/61/13/8 for Secretarial review and a Notice of Availability of the FMP amendments was published in the Federal Register on November 27, 2001, with comments on the FMP amendments invited through January 28, 2002. Comments may address the FMP amendments, the proposed rule, or both, but must be received by January 28, 2002, to be considered in the approval/disapproval decision on the FMP amendments. All comments received by January 28, 2002, whether specifically directed to the FMP amendments or the proposed rule, will be considered in the approval/disapproval decisions on the FMP amendments.

## Elements of the Proposed Rule

The following is a summary of the major elements of the proposed rule to implement Amendments 61/61/13/8.

### *Permit Requirements for Vessels and Processors*

Amendments 61/61/13/8 would establish permit requirements for AFA catcher/processors, AFA catcher vessels, AFA motherships, AFA inshore processors, and AFA inshore cooperatives. Once issued, AFA vessel and processor permits would be valid until December 31, 2004, which is the expiration date for section 208 of the AFA. Any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any processor that receives pollock in a non-CDQ directed pollock fishery in the BSAI would be required to maintain a valid AFA permit onboard the vessel or at the processor location at all times that non-CDQ pollock is being harvested or processed. In addition, these new AFA permits would not exempt a vessel operator, vessel owner, or pollock processor from any other applicable permit or licensing requirements required by State or Federal regulations. Finally, the AFA does not limit who may participate in the CDQ pollock fishery. Therefore, vessels or processors participating in the pollock CDQ fishery would not be required to have AFA permits.

NMFS has already issued interim AFA permits to owners of AFA catcher vessels, AFA catcher/processors, AFA motherships, and AFA inshore processors under the emergency interim rule published January 5, 2000 (65 FR 380). Under this proposed rule, these interim permits would expire 60 days after the effective date of the final rule and the owners of AFA catcher vessels, AFA catcher/processors, AFA motherships, and AFA inshore processors would be required to re-apply for final AFA permits. These final AFA permits would be valid for the duration of section 208 of the AFA that extends through December 31, 2004. The owners of all AFA vessels and processors would be required to re-apply for their AFA permits because this proposed rule requires submission of additional ownership information on AFA permit applications that was not collected under the emergency interim rule.

The deadline for application for all new AFA vessel and processor permits would be 60 days after the effective date of the final rule. This deadline would apply to the owners of any vessels and processors for which NMFS has not already received a permit application under the emergency interim rule but would not apply to replacement vessel permit applications. NMFS would not accept applications for new AFA vessel and processor permits after this date and any owners of vessels or processors who have not already been issued AFA permits under the emergency interim rule or for which an application has not been received by this date would be permanently ineligible to receive AFA permits for those respective vessels and/or processors. The purpose of this application deadline is to finalize the list of vessels and processors to which AFA fishing privileges and sideboard restrictions apply. A final list of AFA-permitted vessels is necessary because inshore cooperative allocations and catcher vessel sideboards are based on the aggregate catch histories of the various AFA-permitted fleets.

Under the proposed rule, AFA vessel and processor permits could not be used on or transferred to another vessel or processor, except under the replacement vessel provisions outlined below. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. In contrast to vessel and processor permits, AFA inshore cooperative permits, discussed below, are valid only for the fishing year for which they are issued. However inshore cooperative fishing permits would be renewable on an annual basis following approval of a submitted permit application.

### *AFA Permit Application and Administrative Appeals Process*

Application forms for all AFA permits would be available upon request from the NMFS Alaska Region (see **ADDRESSES**) and would be available for downloading on the NMFS Alaska Region home page (*http://www.fakr.noaa.gov*). AFA vessel and processor permits would be issued to the current owner of a qualifying vessel or processor. The proposed rule also sets out an administrative appeals process under which applicants would be able to appeal NMFS determinations related to AFA permits and AFA inshore cooperative allocations. The appeals process for AFA permits would be similar to the process currently in place for the individual fishing quota program and license limitation program (LLP) appeals set out at 50 CFR 679.4(k).

### *AFA Catcher/Processor Permits*

Subsection 208(e) of the AFA, which took effect on January 1, 1999, lists by name catcher/processors that are eligible to harvest the catcher/processor sector BSAI pollock directed fishing

allowance. Under this proposed rule, two categories of AFA catcher/processor permits would be issued. Vessels listed by name in paragraphs 208(e)(1) through (20) of the AFA would be issued ''listed AFA catcher/processor permits.'' Vessels qualifying for AFA catcher/processor permits under paragraph 208(e)(21) would be issued ''unlisted AFA catcher/processor permits,'' which would restrict such vessels, in the aggregate, to a harvest of no more than 0.5 percent of the catcher/processor sector pollock TAC allocation. In addition, a catcher/processor would not need an AFA catcher/processor permit to participate in the CDQ sector of the BSAI pollock fishery because the AFA does not limit participation in the CDQ pollock fishery.

All owners of AFA catcher/processors would be required to reapply for their AFA permits under this proposed rule because this proposed rule requires the additional submission of vessel ownership information that was not previously collected. All applicants for AFA catcher/processor permits would be required to disclose the identities of all persons who hold a 10 percent or greater direct or indirect interest in the vessel in question. This information is necessary for NMFS to track compliance with the 17.5 percent excessive harvesting share limit established under the AFA and discussed below in the section on excessive shares.

*AFA Catcher Vessel Permits*

Under the AFA, a catcher vessel is qualified to engage in directed fishing for BSAI pollock if it is listed by name in subsections 208(b), 208(c), or 211(e) of the AFA, or if its history of participation in the BSAI pollock fishery meets certain criteria set out in subsections 208(a), 208(b), or 208(c) of the AFA. Under this proposed rule, AFA catcher vessel permits would be endorsed to authorize directed fishing for pollock for delivery to one or more of the three processing sectors: Catcher/processors, inshore processors, and motherships. Under the AFA, a catcher vessel may be authorized to engage in directed fishing for pollock for delivery to both AFA inshore processors and AFA motherships, depending on its qualifying catch history. However, a vessel that is eligible to deliver to catcher/processors is ineligible for an endorsement to deliver to inshore processors or motherships. In addition, a catcher vessel would not need an AFA catcher vessel permit to participate in the CDQ sector of the BSAI pollock fishery because the AFA does not limit participation in the CDQ pollock fishery.

All owners of AFA catcher vessels would be required to reapply for their AFA permits under this proposed rule because this proposed rule requires the additional submission of vessel ownership information that was not previously collected. All applicants for AFA catcher vessel permits would be required to disclose the identities of all persons who hold a 10 percent or greater direct or indirect interest in the vessel in question. This information is necessary for NMFS to track compliance with the 17.5 percent excessive harvesting share limit established under the AFA and discussed below in the section on excessive shares. NMFS has created an official AFA record that includes the relevant catch histories of all potentially qualifying catcher vessels and will review for verification all claims of endorsement qualification against the official AFA record.

*AFA Catcher Vessel Crab Sideboard Endorsements*

Under subparagraph 211(c)(1)(A) of the AFA, the Council is required to recommend measures to limit the participation of AFA catcher vessels in BSAI crab fisheries. Subparagraph 211(c)(2)(C) of the AFA also prohibits section 208(b) catcher vessels (i.e., AFA catcher vessels eligible to deliver to catcher/processors) ''from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997.'' At its June 1999 and June 2000 meetings, the Council developed final recommendations under Amendments 61/61/13/8 for limits on the participation of AFA catcher vessels in BSAI crab fisheries in order to comply with these two provisions of the AFA. These recommendations would apply to all AFA catcher vessels and would supersede the crab sideboards set out in subparagraph 211(c)(2)(C) of the AFA that apply to section 208(b) vessels only.

Under the proposed rule, NMFS would implement these catcher vessel crab sideboard limits through crab sideboard endorsements on AFA catcher vessel permits. The owner or operator of a catcher vessel who wishes to participate in a BSAI king or Tanner crab fishery would be required to have a sideboard endorsement for that crab species on the vessel's AFA catcher vessel permit. An AFA catcher vessel permit would be endorsed for the Bristol Bay Red King Crab (BBRKC), St. Matthew Island blue king crab, Pribilof Island red or blue king crab, Aleutian Islands brown king crab, Aleutian Islands red king crab, Opilio Tanner crab, and Bairdi Tanner crab fisheries based on the vessel's history of participation in such crab fisheries. The specific qualifying criteria for each fishery are set out in § 679.4(l)(3)(ii)(D) of this proposed rule.

The Council based some of its crab sideboard recommendations on whether a particular vessel is ''LLP qualified'' for a particular crab fishery. To implement this recommendation, the AFA catcher vessel permit application includes questions related to vessel catch history using the same qualifying years as the LLP program. This rule would require an applicant for an AFA catcher vessel permit to indicate on the permit application which AFA crab sideboard endorsements the vessel qualifies for based on the qualifying criteria set out in this rule. NMFS would verify all claims of qualification.

Finally, the Council recommended exempting from all crab harvesting sideboards, any AFA catcher vessel that made a legal landing of crab in every BBRKC, Opilio Tanner crab, and Bairdi Tanner crab fishery opening from 1991–1997. A vessel qualifying for this exemption would receive an AFA catcher vessel permit with an endorsement indicating that the vessel is exempt from all crab harvesting sideboards. The Council recommended the exemption to mitigate the adverse effect of crab sideboards on vessels that are almost exclusively crab vessels but, due to a small amount of pollock landings, fell within the criteria for AFA eligibility. The exemption would mitigate the adverse effect of the crab sideboard restrictions on such vessels.

An owner of a catcher vessel should be aware that qualification for a crab sideboard endorsement would not, in and of itself, provide sufficient authorization to participate in a BSAI crab fishery. To participate in a BSAI crab fishery, the operator of an AFA catcher vessel would be required to have a valid LLP license for that crab fishery as well as an AFA catcher vessel permit naming that vessel and containing an endorsement for that crab fishery.

*Groundfish Sideboard Exemptions*

Under this proposed rule, groundfish catcher vessel harvest sideboard limits detailed below would apply to all AFA catcher vessels in the aggregate regardless of sector and regardless of participation in a cooperative, except the Council recommended that catcher vessels less than 125 ft (38.1 m) whose annual BSAI pollock landings averaged less than 1700 mt from 1995–1997 (i.e., landed less than 5,100 mt of pollock

over the 3–year period) would be exempt from BSAI Pacific cod sideboards if they made 30 or more legal landings of BSAI Pacific cod in the BSAI directed fishery for Pacific cod during that 3–year period. In addition, AFA catcher vessels that meet the same vessel length and BSAI pollock landing criteria and that made 40 or more legal landings of GOA groundfish during the 1995–1997 time period would be exempt from groundfish sideboards in the GOA.

In recommending these exemptions, the Council noted that many of the AFA catcher vessels with relatively low catch histories of BSAI pollock have traditionally targeted BSAI Pacific cod and GOA groundfish during much of the year and may be only minor participants in the BSAI pollock fishery. The Council believed that imposing aggregate sideboards on such vessels in the BSAI Pacific cod fishery and GOA groundfish fisheries could severely harm the owners of such vessels given their historic high levels of participation in non-pollock fisheries, and the fact that their historic dedication to groundfish fisheries other than the BSAI pollock fishery fisheries may account for their lower catch histories of BSAI pollock during the AFA qualifying years. The owners of vessels who believe their vessel may be eligible for one or both of these exemptions would have to apply for the sideboard exemption on their AFA catcher vessel permit application form.

*AFA Mothership Permits*

Under subsection 208(d) of the AFA, three named vessels are eligible for AFA permits that authorize them to process pollock harvested in the BSAI directed pollock fishery for delivery to motherships. Under this proposed rule, NMFS would issue to the owner of a mothership an AFA mothership permit if the mothership is listed by name in paragraphs 208(d)(1) through (3) of the AFA and the owner applies for such permit. However, the owner of a mothership wishing to process pollock harvested by a fishery cooperative also would need to apply for and receive a cooperative processing endorsement on its AFA mothership permit. This requirement is necessary because NMFS must identify and issue crab processing restrictions to any AFA entity that owns or controls an AFA mothership or an AFA inshore processor that receives pollock harvested by a cooperative.

Subparagraph 211(c)(2)(A) of the AFA imposes crab processing restrictions on the owners of AFA mothership and AFA inshore processors that receive pollock from a fishery cooperative. Under the AFA, these processing limits extend not only to the AFA processing facility itself, but also to any entity that directly or indirectly owns or controls a 10–percent or greater interest in the AFA mothership or in the AFA inshore processor. To implement the crab processing restrictions contained in subparagraph 211(c)(2)(A) of the AFA, NMFS would require that applicants for AFA mothership and AFA inshore processor permits disclose on their permit applications all entities directly or indirectly owning or controlling a 10–percent or greater interest in the AFA mothership or AFA inshore processor and the names of BSAI crab processors in which such entities directly or indirectly own or control a 10–percent or greater interest. An applicant for an AFA mothership or an AFA inshore processor permit who did not disclose this crab processor ownership information could still receive an AFA mothership permit or an AFA inshore processor permit but would be denied an endorsement authorizing the processor to receive and process pollock harvested by a fishery cooperative.

*AFA Inshore Processor Permits*

Under the AFA, shoreside processors and stationary floating processors (collectively known as inshore processors) may be authorized to receive and process BSAI pollock harvested in the directed fishery, based on their levels of processing in both 1996 and 1997. An inshore processor would be eligible for an unrestricted AFA inshore processing permit if the facility annually processed more than 2,000 mt round weight of pollock harvested in the BSAI inshore directed pollock fishery in both 1996 and 1997. An inshore processor would be eligible for a restricted AFA inshore processor permit if the facility processed pollock harvested in the inshore directed pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round weight of pollock in both 1996 and 1997. A restricted AFA inshore processor permit would prohibit the inshore processing facility from processing more than 2,000 mt round weight of BSAI pollock harvested in the directed fishery in any one calendar year.

The owner of an AFA inshore processor wishing to process pollock harvested by a fishery cooperative would need a cooperative processing endorsement on the AFA inshore processing permit. The requirements for an AFA inshore processor cooperative processing endorsement are the same as those listed for AFA motherships above.

Finally, AFA inshore processors would be restricted to processing BSAI pollock in a single geographic location in State waters during a fishing year. The purpose of this restriction is to implement subparagraph 208(f)(1)(A) of the AFA, which includes in the category of AFA inshore processors, vessels that operate in a single geographic location in State waters. Under the proposed rule, shoreside (land-based) processors would be restricted to operating in the physical location in which the facility first processed pollock during a fishing year. Stationary floating processors would be restricted to receiving and processing BSAI pollock in a location within Alaska state waters that is within 5 nautical miles (nm) of the position in which the stationary floating processor first processed BSAI pollock during a fishing year. NMFS believes that 5 nm is an appropriate distance for this requirement because it allows the operator of a floating processor some flexibility in choosing an appropriate anchorage, but it still requires that the processor be located in the same body of water for the duration of a fishing year while receiving and processing BSAI pollock.

*Approval of New AFA Inshore Processors*

Paragraph 208(f)(2) of the AFA provides that:

> Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

To implement this provision of the AFA, the proposed rule provides a mechanism for the Council to recommend that NMFS issue AFA inshore processor permits to inshore processors that would not otherwise be eligible under the AFA. In the event that the BSAI pollock TAC exceeds 1,274,900 mt (10 percent above the 1997 combined BSAI TAC of 1,159,000 mt), or in the event of the actual total loss or constructive loss of an AFA inshore processor, the Council may recommend that an additional inshore processor (or processors) be issued AFA inshore processing permits. The Council's recommendation to NMFS must identify (1) the processor (or processors) that would be issued AFA inshore

processing permits, (2) the type of AFA inshore processing permit(s) to be issued (restricted or unrestricted), and the duration of any such permit(s). The Council may recommend any length of duration for permits issued under this provision, from a single fishing season to the duration of the AFA. Or the Council may recommend that any such permits remain valid as long as the criteria that lead to their issuance remain in effect (i.e., TAC remains above 1,274,900 mt).

*Replacement Vessels*

The proposed rule provides that in the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may designate a replacement vessel that would be eligible in the same manner as the original vessel after submission of an application for an AFA replacement vessel that is subsequently approved by NMFS. The AFA contains specific restrictions on replacement vessels that are set out in detail in the proposed rule regulatory text at § 679.4(l)(7). Paragraph 208(g)(5) of the AFA states that a vessel may be used as a replacement vessel if:

> the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel;

NMFS believes that Congress intended this clause to apply to eligible vessels with engines incapable of producing more than 3,000 shaft horsepower rather than engines incapable of producing less than 3,000 shaft horsepower. No catcher vessel operating in Alaska has engines incapable of producing less than 3,000 shaft horsepower, and construing this clause literally would make this provision a nullity. Any vessel engine regardless of size is capable of producing less than 3,000 shaft horsepower at less than full throttle or at idle. Therefore, NMFS is using the phrase ''incapable of producing more than 3,000 shaft horsepower'' to implement paragraph 208(g)(5) of the AFA.

In the event of the loss of an approved AFA replacement vessel, the owners of the replacement vessel may designate a subsequent replacement vessel provided that the original replacement vessel is lost under conditions that meet the criteria set out in the AFA for lost vessels. In the event of multiple vessel replacements, the length, horsepower, and tonnage limits for any subsequent replacement vessels would be based on the length, horsepower, and tonnage of the originally qualifying AFA vessel.

Under the proposed rule, any vessel that meets the replacement vessel criteria may be designated as a replacement for a lost vessel including an existing AFA vessel. In the event that an existing AFA catcher vessel is designated as a replacement for a lost AFA catcher vessel, the catch histories of the two vessels would be merged for the purpose of making inshore cooperative allocations, crab sideboard endorsements, and groundfish sideboard exemptions. However the catch histories of two vessels would not be merged until NMFS receives and approves an application for a replacement vessel from the owner(s) of the affected vessels.

*Official AFA Record and Appeals*

In order to issue AFA permits, NMFS is compiling available information about vessels and processors that were used to participate in the BSAI pollock fisheries during the qualifying periods. Information in the official AFA record includes vessel ownership information, documented harvests made from vessels during AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during AFA qualifying periods. Under this proposed rule, the official AFA record would be presumed to be correct for the purpose of determining eligibility for AFA permits. An applicant for an AFA permit would have the burden of proving correct any information submitted in an application that is inconsistent with the AFA official record.

This proposed rule also would establish an appeals process under which the owners of vessels and processors may appeal NMFS determinations about either AFA eligibility or inshore cooperative allocations. The appeals process for AFA permits and inshore cooperative allocations would be based on the existing appeals process in place for the individual fishing quota and LLP programs.

**Restrictions on Transfer of LLP Licenses**

This proposed rule also contains a revision to the LLP program for groundfish and crab that would prevent LLP licenses earned on AFA vessels from being used on non-AFA vessels. The purpose of this restriction is to prevent the owners of retired AFA vessels from re-deploying the LLP license in the groundfish and/or crab fisheries off Alaska on a new vessel that would not be subject to the same sideboard restrictions as the retired AFA vessel. Without this restriction, owners of AFA vessels would be able to evade the harvesting sideboard restrictions contained in this rule by using the LLP licenses from their AFA vessels to deploy new vessels into the groundfish and crab fisheries that are not subject to AFA sideboards.

Under this proposed restriction, no person could use an LLP license that was derived in whole or in part from the qualifying fishing history of an AFA catcher vessel or a listed AFA catcher/processor to fish for groundfish or crab on a non-AFA catcher vessel or non-AFA catcher/processor. NMFS would identify all such licenses affected by this restriction and inform the holders of such licenses of this restriction through a letter to the permit holder and/or an endorsement printed on the face of the license. Persons would be able to file an administrative appeal of NMFS' determination under § 679.4(l)(8).

*Procedures and Formulas for Allocating the BSAI Pollock TAC*

Under this proposed rule, the procedures for allocating pollock TAC among industry sectors and apportioning each sector's TAC between seasons and/or areas would be revised to incorporate the changes required by the AFA. Ten percent of the pollock TAC specified for the Bering Sea (BS) subarea and the Aleutian Islands (AI) subarea would be allocated to the CDQ program. The remaining TAC for each subarea, after establishment of an incidental catch allowance for pollock harvested as incidental catch in other groundfish fisheries, would be allocated 50 percent to AFA catcher vessels harvesting pollock for processing by AFA inshore processors; 40 percent to AFA catcher/processors and AFA catcher vessels harvesting pollock for processing by AFA catcher/processors, with not less than 8.5 percent of this allocation made available to AFA catcher vessels delivering to catcher/processors; and 10 percent to AFA catcher vessels harvesting pollock for processing by AFA motherships. The inshore pollock TAC would be further divided into two allocations; one allocation to vessels participating in inshore fishery cooperatives, and one allocation to vessels not participating in a fishery cooperative. The annual allocation to inshore cooperatives would be equal to the aggregate annual allocations made to each inshore cooperative. The annual allocation to

the inshore open access fishery, which is composed of the remaining AFA inshore catcher vessels that are not in a cooperative, would be equal to the remaining inshore allocation after subtraction of the allocation to fishery cooperatives.

*Management of the 8.5 Percent Allocation for AFA Catcher Vessels Delivering to Catcher/Processors*

Under subsection 210(c) of the AFA ''not less than 8.5 percent of the [catcher/processor sector] directed fishing allowance . . . shall be available for harvest only by the catcher vessels eligible under section 208(b).'' Subsection 210(c) further provides that ''The owners of such catcher vessels may participate in a fishery cooperative with the owners of the catcher/processors eligible under paragraphs (1) through (20) of section 208(e).'' NMFS is proposing to implement these two related provisions by establishing two different procedures based on whether such catcher vessels are members of a cooperative with AFA catcher/processors during a given fishing year.

*Allocation procedure with cooperatives*. If prior to December 1 of each year the owners of all such AFA catcher vessels enter into a cooperative agreement, and the owners of such vessels also have entered into a cooperative agreement or inter-cooperative agreement with the owners of the listed AFA catcher/processors, and such agreement provides for at least 8.5 percent of the cooperative harvest shares for such catcher vessels, then NMFS would assume that the 8.5 percent catcher vessel allocation has been provided for within the cooperative or inter-cooperative agreement. In such event, NMFS would make a single allocation of pollock to the catcher/processor sector that is not subdivided between catcher vessels and catcher/processors. Owners of catcher/processors would then be able to enter into cooperative agreements that allow them to harvest some or all of the 8.5 percent of the TAC reserved for catcher vessels, or catcher vessels could harvest some or all of 91.5 percent catcher/processor limit.

*Allocation procedure without cooperatives*. If the AFA catcher vessels eligible to deliver to catcher/processors did not form a cooperative and did not enter into a cooperative or inter-cooperative agreement with the listed AFA catcher/processor fleet, and all such agreements were not filed with NMFS prior to December 1 of each year, then NMFS would limit AFA catcher/processors to harvesting no more than 91.5 percent of the catcher/processor sector allocation to guarantee that not less than 8.5 percent of the catcher/processor sector allocation is made available for harvest by AFA catcher vessels. In other words, AFA catcher/processors would be limited to harvesting no more than 91.5 percent of the catcher/processor allocation and only eligible catcher vessels would be able to harvest the remaining 8.5 percent of the catcher/processor sector allocation for delivery to catcher/processors. This 91.5 percent catcher/processor harvest limit would be published in the annual harvest specifications and would be applied to each fishing season.

*Management of the 0.5 percent cap for unlisted AFA catcher/processors.*

Under paragraph 208(e)(21) of the AFA, unlisted catcher/processors are ''prohibited from harvesting in the aggregate a total of more than one-half (0.5) of a percent of the pollock apportioned to the [AFA catcher/processor sector].'' Under the proposed rule, this 0.5 percent limit would be apportioned seasonally using whatever seasonal apportionment formula is in effect for the overall catcher/processor sector. This is to prevent unlisted catcher/processors from taking their entire 0.5 percent limit during the A/B season when pollock have higher value. However, NMFS would allow for the rollover of any uncaught amount of this 0.5 percent limit from the A/B to the C/D season so that unlisted catcher/processors could take their entire annual limit during the C/D season if they so choose. This 0.5 percent limit is not a separate allocation to unlisted AFA catcher/processors but rather a cap on their harvest activity within the overall catcher/processor sector allocation. Consequently, if unlisted AFA catcher/processors chose not to fish, this opportunity would be foregone in favor of other AFA catcher/processors and AFA catcher vessels delivering to catcher/processors.

**Inshore Cooperative Allocations**

Subparagraph 210(b)(1)(B) of the AFA sets out a specific formula for determining the allocation of pollock to each inshore cooperative. Under this subparagraph:

> the Secretary shall allow only such catcher vessels . . . to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels . . . in the directed pollock fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels . . . from harvesting in aggregate in excess of such percentage of such directed fishing allowance.

In other words, under the AFA, each inshore cooperative's pollock allocation is a percentage of the inshore sector allocation that is equal to the aggregate inshore landings by all member vessels in the cooperative from 1995–1997 relative to the total inshore landings during that same period.

However, paragraph 213(c)(3) of the AFA provides the Council with the authority to recommend an alternative allocation formula:

> The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act . . . that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.

Using the authority provided in paragraph 213(c)(3) of the AFA, the Council has recommended three changes that would supersede the inshore cooperative allocation formula set out in the AFA. These changes are contained in the proposed rule and described below.

*Offshore compensation*. The first change recommended by the Council at its June 1999 meeting would allow inshore catcher vessels to receive inshore catch history credit for landings made to catcher/processors if the vessel made cumulative landings to catcher/processors of more than 499 mt of BSAI pollock during the 1995 through 1997 qualifying period. The Council recommended this change to assist the cooperatives in meeting the intent of paragraph 210(b)(4) of the AFA, which requires that:

> Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel.

The Council believed that catcher vessels with sustained participation delivering to catcher/processors, but excluded from delivering to catcher/processors under subsection 208(b) of the AFA, should not be disadvantaged by the new management regime. The Council chose 499 mt as the threshold based on information presented in the EIS/RIR/IRFA, which indicated that 499 mt provided a good ''break point''

between vessels with significant history of delivering to catcher/processors and vessels that only had incidental deliveries to catcher/processors during the 1995 through 1997 qualifying period. The Council recommended that only deliveries to catcher/processors be considered for such ''compensation'' and not deliveries made to the three motherships listed in subsection 208(d) of the AFA, because any vessel with more than 250 mt of pollock deliveries to one of the three AFA motherships during the qualifying period would earn an endorsement to deliver pollock to AFA motherships under the AFA and therefore, has not ''lost'' any fishing privileges as a result of the AFA.

Using the best 2 of 3 years from 1995–1997. The second change recommended by the Council at its June, 1999, meeting, would modify the allocation formula so that the share of the BSAI pollock TAC that each catcher vessel brings into a cooperative would be based on average annual pollock landings in its best 2 out of 3 years from 1995 through 1997. This change, along with the offshore compensation formula, was unanimously endorsed by industry representatives during public testimony at the June 1999 Council meeting. These changes were viewed as a more equitable method of allocating pollock catch because some vessels may have missed all or part of the inshore fishery in a given year due to unavoidable circumstances such as vessel breakdowns or lack of markets.

*Revised open access formula*. Finally, the Council recommended a third change to the allocation formula at its June 2000 meeting. This change would reduce the denominator in the formula from ''the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component'' to ''the aggregate total amount of pollock harvested by AFA catcher vessels with inshore sector endorsements.'' The effect of this change is to eliminate from the formula all 1995 through 1997 catch history made by vessels that are not AFA catcher vessels with inshore sector endorsements. One consequence of the formula set out in the AFA is that all inshore catch history made by non-AFA vessels, and AFA catcher vessels without inshore endorsements, defaults to the open access sector. The Council believed that this resulted in an inshore open access allocation that was unfairly inflated to the detriment of vessels in cooperatives. The Council believed that inflating the open access quota in such a manner would provide incentives for vessels to leave cooperatives that could disrupt the objective of rationalizing the BSAI pollock fishery. Under the Council's recommended change, the cooperative and the open access sectors would be treated equally and allocations to both cooperatives and the open access sector would be based only on the fishing histories of the vessels in each group. All three of these changes have been incorporated into Amendments 61/61/13/8 as recommendations that supersede the AFA.

*Separate allocations for Bering Sea and Aleutian Islands Subareas*. Under the proposed rule, NMFS would use the allocation formula recommended by the Council to make annual allocations of pollock to each inshore cooperative for each subarea of the BSAI; the Bering Sea subarea and the Aleutian Islands subarea. These two subareas would be treated as separate pollock stocks under the FMP and receive separate TACs during the annual specification process. The Aleutian Islands subarea is currently closed to directed fishing for pollock as a protection measure for Steller sea lions. Consequently, under this proposed rule, as long as this closure remains in effect, NMFS would not make separate cooperative allocations of pollock for the Aleutian Islands subarea. Each cooperative would receive an annual allocation of Bering Sea subarea pollock only.

Each sector's annual Bering Sea Subarea allocation of pollock also would be further apportioned among fishing seasons. In a separate action, NMFS is implementing management measures to temporally and spatially disperse the BSAI pollock fishery to implement reasonable and prudent alternatives (RPAs) to protect endangered Steller sea lions. These temporal and spatial dispersion measures would be applied to each sector's BSAI pollock allocations in the manner set out in regulations implementing the Steller sea lion RPAs.

*Treatment of the F/V HAZEL LORRAINE AND F/V PROVIDIAN pursuant to Pub. L. 106–562*. In December 2000, the President signed Pub. L. 106–562 into law. This law, among other things, includes a provision that includes the F/V HAZEL LORRAINE and F/V PROVIDIAN as AFA inshore catcher vessels. The relevant section reads as follows:

> SEC 501. TREATMENT OF VESSEL AS AN ELIGIBLE VESSEL.Notwithstanding paragraphs (1) through (3) of sections 208(a) of the American Fisheries Act . . . the catcher vessel HAZEL LORRAINE . . . and catcher vessel PROVIDIAN . . . shall be considered to be vessels that are eligible to harvest the directed fishing allowance under section 206(b)(1) of that Act pursuant to a Federal fishing permit in the same manner as, and subject to the same requirements and limitations on that harvesting as apply to, catcher vessels that are eligible to harvest that directed fishing allowance under section 208(a) of that Act.

After reviewing the legislative history of this statute including a statement by Senator Snow in the Congressional Record (S. 11894, December 15, 2000), NMFS has determined that Pub. L. 106–562 directs NMFS to include both the F/V HAZEL LORRAINE and F/V PROVIDIAN as eligible vessels and directs NMFS to use the 1992 through 1994 pollock catch history of the F/V OCEAN SPRAY instead of 1995 through 1997 catch history of the F/V PROVIDIAN for the purpose of determining inshore cooperative quota allocations. Consequently, the proposed regulations provide that the 1992 through 1994 catch history of the F/V OCEAN SPRAY would be used to determine inshore cooperative allocations for any cooperative for which the F/V PROVIDIAN is a member.

*Excessive Shares Harvesting and Processing Limits*

*Harvesting limits*. Paragraph 210(e)(1) of the AFA establishes an excessive harvesting share cap of 17.5 percent of the directed pollock fishery as follows:

> HARVESTING. No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

To implement this provision of the AFA, NMFS would publish in the annual harvest specifications, the tonnage amount that equates to 17.5 percent of the pollock available to be harvested in the directed pollock fishery excluding CDQ. The proposed rule also contains a definition of ''AFA entity'' to identify which entities are affected by this 17.5 percent excessive harvesting share limit. The proposed definition of AFA entity is discussed in detail in the definitions section.

*Processing limits*. Paragraph 210(e)(2) of the AFA states that:

> Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their

percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

At its October 2000 meeting, the Council considered various options for processing excessive share limits for the BSAI pollock fishery and adopted a BSAI pollock excessive processing share limit of 30 percent of the non-CDQ directed fishing allowance. The Council also recommended that the same 10 percent entity rules established for excessive harvesting shares be used for excessive processing shares as well. Under this proposed rule, NMFS would publish in the annual harvest specifications, the excessive processing share limit in tons that equates to 30 percent of the pollock available to be harvested in the non-CDQ directed pollock fishery. An AFA entity would be prohibited from processing BSAI pollock from the BSAI directed pollock fishery that was in excess of this excessive processing share limit.

**Regulations Governing the Formation and Operation of Fishery Cooperatives**

This proposed rule contains regulations that would govern the formation and operation of fishery cooperatives. The first set of regulations are filing deadlines and annual reporting requirements that would apply to all cooperatives operating in the BSAI pollock fishery regardless of sector. The second set of regulations are required provisions of cooperative contracts that would be required to be included in all catcher vessel cooperatives operating in the BSAI pollock fishery that are intended to govern the harvest of sideboard species by catcher vessel cooperatives. The third set of regulations would be specific requirements and restrictions on inshore catcher vessel cooperatives that are applying for an inshore cooperative fishing permit to receive an annual allocation of the inshore sector BSAI pollock TAC.

*Regulations that Apply to all Cooperatives*

The following proposed regulations would apply to all fishery cooperatives formed for the purpose of managing directed fishing for pollock within any sector of the BSAI pollock fishery.

*Filing deadlines.* Each fishery cooperative would be required to file with NMFS and the Council, a signed copy of its cooperative contract, and any material modifications to any such contract, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. The Council and NMFS would make this information available to the public upon request. The proposed filing deadline for cooperatives operating in the catcher/processor and mothership sectors is 30 days prior to the start of any fishing activity conducted under the terms of the contract. The proposed filing deadline for cooperatives operating in the AFA inshore sector is December 1 of the year prior to the year in which fishing under the contract would occur. The December 1 deadline for inshore sector cooperatives is necessary because inshore sector cooperative allocations must be included in the BSAI interim harvest specifications that are published prior to January 31 of each year. Under this proposed rule, NMFS would not make sub-allocations of pollock to catcher/processor and mothership cooperatives. Such cooperatives operate at the sector level. Consequently, catcher/processor and mothership sector cooperative information does not need to be included in the BSAI interim harvest specifications.

*Designated representative.* Each cooperative would be required to appoint a designated representative. The designated representative would be the primary contact person for NMFS on issues related to the operation of the cooperative and would be responsible for fulfilling regulatory requirements on behalf of the cooperative including, but not limited to, filing of cooperative contracts, filing of annual reports, and in the case of inshore sector catcher vessel cooperatives, signing cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports. The owners of the member vessels would be jointly and severally responsible for compliance and ensuring that the designated representative complies with the requirements contained in this proposed rule.

*Agent for service of process.* Each cooperative would be required to appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the cooperative. The agent for service of process may be the same individual as the cooperative's designated representative, or may be a different individual. Service on or notice to the cooperative's appointed agent would constitute service on or notice to all members of the cooperative. NMFS may, at its option, attempt to serve every member of the cooperative individually in addition to service on the cooperative's appointed agent. However, failure to achieve service on the individual member would not affect the validity of notice if service is accomplished on the cooperative's appointed agent for service of process. The agent for service of process would have to be capable of accepting service on behalf of the cooperative until December 31 of the year 5 years after the calendar year for which the fishery cooperative has filed its intent to operate. If the agent is unable to complete this obligation, the cooperative would be required to appoint a replacement agent who could complete the term of service.

*Required contract elements for all fishery cooperatives.* Under the proposed rule, all cooperative contracts formed for the purpose of managing directed fishing for pollock in the BSAI must: (1) List parties to the contract, (2) list all vessels and processors that will harvest and process pollock harvested under the cooperative, (3) specify the amount or percentage of pollock allocated to each party to the contract, and (4) pursuant to subsection 210(f) of the AFA, include a contract clause under which the parties to the contract agree to make payments to the State for any pollock harvested in the directed pollock fishery which is not landed in the State, in amounts which would otherwise accrue had the pollock been landed in the State subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid would result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 *et seq.*).

*Annual reporting requirements for all cooperatives.* Under this proposed rule all cooperatives would be required to submit preliminary and final annual written reports on fishing activity to the Council. The Council would make copies of each report available to the public upon request. The preliminary report covering activities through November 1 would have to be submitted by December 1 of each year. The final report covering activities for an entire calendar year would have to be submitted by February 1 the following year.

The preliminary and final written reports would be required to contain, at a minimum: (1) The cooperative's

allocated catch of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis; (2) the cooperative's actual retained and discarded catch of pollock, sideboard species, and PSC on an area-by-area and vessel-by-vessel basis; (3) a description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and (4) a description of any actions taken by the cooperative to penalize vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries.

The purpose of this proposed annual report requirement is to assist the Council and NMFS in meeting the requirements of paragraph 210(a)(1) of the AFA, which requires that NMFS make such information available to the public in a manner that NMFS and the Council decide is appropriate. Section 210(a) requires the release of this information, despite the confidentiality provisions of the Magnuson-Stevens Act or any other law. It requires that the Secretary and Council take into account the interest of parties to any cooperative contract in protecting the confidentiality of propriety information. The Secretary and the Council have no discretion in whether to release this information, despite the possibility that it might be confidential commercial or financial information.

After analyzing various methods of providing this information to the public, the Council determined that the most appropriate method for disseminating information about each cooperative would be to require an annual report from each cooperative that could be reviewed by the Council and distributed to the public. The information that would be released is based on observer data and, except for the exception in section 210(a), such information may have been protected from public disclosure under the Freedom of Information Act.

During the development of this proposed reporting requirement, pollock industry representatives did not present to NMFS or the Council concerns about these reporting requirements, and have not indicated that disclosure of such information could reasonably be expected to cause substantial competitive harm. In addition, the annual report does require the release of observer data on specific hauls (e.g., haul location, fishing depth, and catch composition) that might disclose confidential information on specific fishing operations. The requirement that each cooperative report the actual retained and discarded catch of pollock, sideboard species, and PSC on an area-by-area and vessel-by-vessel basis would not disclose when and where individual vessels fished and what they caught at those locations which could have disclosed to competitors the identity of fishing grounds. Therefore, NMFS believes the disclosure of catch and bycatch information on an annual basis and by large management areas would not identify any vessel's specific fishing grounds and what was harvested at those specific locations.

For these reasons, NMFS has concluded that the annual reporting requirements as proposed by the Council are an appropriate way to comply with the public disclosure requirements of paragraph 210(a)(1) of the AFA.

*Regulations for Cooperatives that Contain AFA Catcher Vessels*

In addition to the general regulations described above that would apply to all fishery cooperatives operating in the BSAI directed pollock fishery, this proposed rule would impose additional contract requirements for all cooperatives that contain AFA catcher vessels. These regulations would apply to catcher vessel cooperatives operating in all sectors of the BSAI pollock fishery. The purpose of these regulations is to hold catcher vessel cooperatives responsible for managing the harvest of groundfish sideboard species and prevent an all out race for sideboard species by AFA catcher vessels.

Under the proposed rule, a cooperative contract that includes AFA catcher vessels must include adequate provisions to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard limit for each BSAI or GOA sideboard species or species group that is issued to the vessel by the cooperative in accordance with the following criteria: (1) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as announced by NMFS, or (2) in the case of two or more cooperatives that have entered into an inter-cooperative agreement, the aggregate individual vessel sideboard limits issued to all member vessels subject to the inter-cooperative agreement must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as announced by NMFS.

This requirement that catcher vessel cooperatives address the issue of sideboard management in their cooperative contracts was recommended by the Council at its December 1999 meeting as a means to prevent increased competition for sideboard species. To comply with this requirement, each cooperative contract must have penalty provisions on individual vessels that would be payable to owners of vessels outside the cooperative. The amount and type of such penalties are left to the discretion of the cooperatives. However, NMFS may disapprove an inshore cooperative fishing permit application if the Regional Administrator determines that such penalties are inadequate.

*Regulations for Inshore Catcher Vessel Cooperatives*

Under the AFA, a fundamental difference exists between the fishery cooperatives authorized to operate in the AFA catcher/processor and AFA mothership sectors, and the fishery cooperatives authorized to operate in the inshore sector. AFA catcher/processor and AFA mothership cooperatives operate at the sector level and NMFS does not make sub-allocations of each sector's BSAI pollock TAC to individual cooperatives. Inseason management of the AFA catcher/processor and AFA mothership sectors would continue to occur at the sector level regardless of the presence or absence of fishery cooperatives.

However, the inshore catcher vessel cooperatives authorized by the AFA require an entirely different management structure. Subsection 210(b) of the AFA requires that NMFS make separate TAC allocations to inshore catcher vessel cooperatives that form around an AFA inshore processor and that meet certain restrictions. For this reason, inshore cooperatives require substantially greater regulatory and management infrastructure than AFA catcher/processor and AFA mothership sector cooperatives. This proposed rule implements the following inshore cooperative management measures as required by subsection 210(b) of the AFA.

*Application for inshore cooperative fishing permits.* Under this proposed rule, inshore catcher vessel cooperatives wishing to receive an allocation of the BSAI inshore pollock TAC would be required to submit an application for an inshore cooperative fishing permit on an annual basis by December 1 of the year prior to the year in which the cooperative fishing permit would be in effect. Applications for an inshore cooperative fishing permit would need to be accompanied by a copy of the cooperative contract itself and by a copy of a letter from a party to the contract

requesting a business review letter on the fishery cooperative from the U.S. Department of Justice and any response to such request. Inshore cooperative fishing permit applications that are not received by NMFS by December 1 would be disapproved.

As part of the application for an inshore cooperative fishing permit, the cooperative's designated representative, who is signing the permit application on behalf of the various members, would be required to certify that: (1) Each catcher vessel in the cooperative is a ''qualified catcher vessel'' according to the definition of qualified catcher vessel described below, (2) the cooperative contract was signed by the owners of at least 80 percent of the qualified catcher vessels that delivered pollock harvested in the BSAI directed pollock fishery to the cooperative's designated AFA inshore processor during the year prior to the year in which the cooperative fishing permit would be in effect, (3) the cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor, and (4) each member vessel has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI. A catcher vessel that cannot legally harvest BSAI pollock due to enforcement action, permit sanctions, lack of a valid AFA catcher vessel permit, or lack of other required permit, would be barred from membership in an inshore cooperative that receives an inshore cooperative fishing permit.

To add or subtract a qualified catcher vessel, the cooperative would be required to submit a new application prior to the December 1 deadline, and the new application must be subsequently approved by the Regional Administrator.

*Definition of qualified catcher vessel.* At its June, 2000, meeting, the Council voted to recommend a definition of ''qualified catcher vessel'' that would supersede the definition contained in the AFA. Paragraph 210(b)(3) of the AFA defines ''qualified catcher vessel'' as follows:

QUALIFIED CATCHER VESSEL. For the purposes of this subsection, a catcher vessel shall be considered a ''qualified catcher vessel'' if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

The effect of this definition was to prevent the retirement of catcher vessels that are no longer needed to harvest a cooperative's annual allocation of pollock because each vessel was required to make a qualifying landing every year to remain in the cooperative in each subsequent year. At its June 2000, meeting, the Council recommended that this definition be replaced with a new definition under which an inactive vessel would remain qualified to join the cooperative that is associated with the processor where it delivered more pollock to than any other inshore processor in the last year in which the vessel participated in the inshore sector of the BSAI directed pollock fishery. The Council's recommended change would not affect vessels that were active in the BSAI pollock fishery during the year prior to the year in which the cooperative fishing permit would be in effect.

The Council derives its authority to recommend an alternative definition of ''qualified catcher vessel'' from paragraph 213(c)(1) of the AFA, which provides the Council with the authority to recommend measures to supersede certain provisions of the AFA. Paragraph 213(c)(1) provides that:

CHANGES TO FISHERY COOPERATIVE LIMITATIONS AND POLLOCK CDQ ALLOCATION. The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act

(1) that supersede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery;

In making the recommendation under Amendments 61/61/13/8 to supersede the AFA definition of ''qualified catcher vessel'' the Council determined that this change would mitigate adverse effects on some owners of fewer than three catcher vessels. Some independently owned AFA catcher vessels are relatively small vessels that may be less safe to operate at great distances from shore under the new Steller sea lion RPA protection measures which have closed many nearshore areas to pollock fishing. A requirement that all such vessels fish each year to remain qualified to join a cooperative each following year would impose unnecessary risks that could be mitigated with a revision to the definition of qualified catcher vessel. In addition, some catcher vessels that are eligible to fish for pollock under the AFA have since been lost or may no longer be safe to operate without major rebuilding. Under this change, the owners of such vessels could remain in cooperatives without the need to rebuild or deploy new vessels into the BSAI pollock fishery. In making this recommendation, the Council also noted that a primary objective of the AFA is to reduce excess capacity in the BSAI pollock fishery and that changing the definition of ''qualified catcher vessel'' would further that objective.

This proposed rule also makes an additional clarification to the definition of ''qualified catcher vessel.'' Under the proposed rule, only pollock harvested in the BSAI directed pollock fishery would be used to determine vessel qualification. Pollock that is landed as incidental bycatch in other fisheries would not be used to determine which cooperative a catcher vessel is qualified to join and a catcher vessel cannot qualify to join a cooperative based on incidental catch of pollock in other fisheries. This clarification is necessary to prevent a vessel's incidental bycatch of pollock in other fisheries from inadvertently affecting its cooperative qualification. Counting pollock bycatch could create the unintended effect of restricting the ability of catcher vessels to deliver non-pollock groundfish to other markets. Because pollock is a common bycatch species in the Pacific cod fishery and other groundfish fisheries, AFA catcher vessels fishing for Pacific cod may land significant amounts of pollock as incidental bycatch that would be counted against the pollock incidental catch allowance and not the vessel's cooperative quota. The AFA makes no restrictions on either the delivery or processing of non-pollock groundfish species in the BSAI. Consequently, AFA catcher vessels fishing for Pacific cod are free to deliver their Pacific cod and associated incidental catch of pollock to any processor, not just to one of the eight AFA processors that are authorized to receive pollock harvested in the BSAI directed pollock fishery.

If an AFA vessel's cooperative qualification were based on all catch of pollock and not just pollock harvested in the directed fishery, then an AFA catcher vessel fishing for Pacific cod and delivering to a processor other than its AFA pollock processor could inadvertently disqualify itself from its cooperative of choice due to incidental pollock harvests in other fisheries. In fact, because Pacific cod processors other than the eight AFA inshore pollock processors also operate in the BSAI, an active AFA catcher vessel delivering Pacific cod to a non-AFA processor could inadvertently find itself ineligible to join any inshore cooperative because the processor to

which it delivered more pollock than any other processor may be a non-AFA processor.

*Additional contract requirements.* Inshore cooperatives wishing to receive an allocation of pollock would have several additional contract requirements. An inshore cooperative contract eligible for a pollock allocation must be signed by the owners of at least 80 percent of the qualified catcher vessels. In addition, inshore cooperative contracts must specify that the cooperative will deliver at least 90 percent of the pollock harvested in the directed pollock fishery to its designated inshore processor during the year in which the fishery cooperative would be in effect and that its designated inshore processor has agreed to process such pollock. Finally, a catcher vessel would be barred from membership in an inshore cooperative if the vessel does not have all necessary permits to engage in directed fishing for pollock in the BSAI, or if the vessel is subject to any permit sanction that would prevent it from engaging in directed fishing for pollock in the BSAI. The purpose of this restriction is to prevent the granting of a limited access fishing quota to any catcher vessel that cannot legally fish for pollock in the BSAI. If an inshore cooperative fishing permit application does not meet all of these requirements, the permit application would be denied by NMFS and the cooperative would be provided the opportunity to submit a revised contract and permit application.

*Inshore Cooperative Fishing Restrictions.* This proposed rule would impose a variety of requirements and management standards on inshore fishery cooperatives. First, only catcher vessels listed on the cooperative's AFA inshore cooperative fishing permit would be permitted to harvest the cooperative's annual cooperative allocation. Second, all BSAI inshore pollock harvested by a member vessel while engaging in directed fishing for inshore pollock would accrue against the cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded and regardless of where the pollock was delivered. Third, each inshore pollock cooperative would be responsible for reporting to NMFS its BSAI pollock harvest on a weekly basis according to recordkeeping and reporting requirements published as part of the annual revisions to recordkeeping and reporting requirements for the groundfish fisheries of the BSAI and GOA. Fourth, each inshore pollock cooperative would be prohibited from exceeding its annual allocation of BSAI pollock, and the owners and operators of all vessels listed on the cooperative fishing permit would be held jointly and severally liable for overages of the cooperative's annual allocation.

*Inseason Management of Inshore Cooperatives.* Under this proposed rule, NMFS would manage the inshore cooperative sector and inshore open access sector as two separate inshore pollock fisheries. The various inshore cooperatives would be managed as a single aggregate allocation for the purpose of making season and area TAC apportionments and for the purpose of issuing directed fishing closures. When NMFS determines that the cooperative sector has reached a season or area apportionment of BSAI pollock, NMFS would close inshore cooperative fishing for that season or area. Under this system, each inshore cooperative would be given the opportunity to harvest its entire annual allocation of BSAI pollock, but would receive no harvest guarantee for each season and area. NMFS is encouraging the various inshore cooperatives to form an inter-cooperative agreement to govern cooperative fishing activities within each season and area. Such an inter-cooperative agreement was formed in January 2000 to manage cooperative fishing under the emergency interim rules and has operated successfully to date. The proposed management approach is that NMFS would manage the cooperative pollock quota and various sideboard quotas in the aggregate and encourage the various cooperatives to work together to develop a cooperative management program to govern activities by individual cooperatives and individual vessels. Such cooperation between cooperatives will be necessary to prevent the activities of one cooperative from affecting the plans of another cooperative.

## Harvesting and Processing Sideboard Restrictions

The AFA requires that harvesting and processing limits be placed on AFA vessels and processors in other groundfish, crab, and scallop fisheries to protect the participants in other fisheries from spillover effects resulting from the rationalization of the BSAI pollock fishery and the formation of fishery cooperatives in the BSAI pollock fishery. Potential spillover effects could take many forms. Most obviously, excess harvesting and processing capacity from the rationalization of the BSAI pollock fishery could flood into other fisheries as a result of the AFA to the detriment of current participants in other fisheries. In addition, fishery cooperatives provide vessels with greater flexibility to schedule their fishing activity because they are no longer racing for pollock at the start of every season. As a result, vessels in cooperatives would have the ability to enter other fisheries that might previously have been conducted concurrent with the BSAI pollock fishery. Finally, companies involved in the AFA pollock fishery are expected to benefit financially from the formation of fishery cooperatives and non-AFA companies fear that such profits may be used to expand into other groundfish and crab fisheries.

To address these potential negative effects of the AFA on the participants in other groundfish, crab, and scallop fisheries, the AFA sets out a complex set of harvest and processing restrictions, which have become known as ''sideboards''. These sideboard measures have been further refined by the Council's recommendations for catcher/processor and catcher vessel sideboards under Amendments 61/61/13/8. The Council's recommendations have been incorporated into this proposed rule and are summarized below.

### *Catcher/Processor Harvesting Sideboards*

The AFA establishes harvest restrictions or ''sideboards,'' that restrict the participation of listed AFA catcher/processors in other BSAI groundfish fisheries and completely prohibit listed AFA catcher/processors from fishing in the GOA. These sideboards apply only to AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and are not extended to unlisted AFA catcher/processors that qualify to fish for pollock under paragraph 208(e)(21) of the AFA. The language establishing catcher/processor harvest caps is set out in paragraphs 211(b)(1) and (2) of the AFA as follows:

(b) CATCHER/PROCESSOR RESTRICTIONS.—

(1) GENERAL. The restrictions in this subsection shall take effect on January 1, 1999 and shall remain in effect thereafter except that they may be superceded (with the exception of paragraph (4)) by conservation and management measures recommended after the date of the enactment of this Act by the North Pacific Council and approved by the Secretary in accordance with the Magnuson-Stevens Act.

(2) BERING SEA FISHING. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate

(A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/

processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;

(B) exceeding the percentage of the prohibited species available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total of the prohibited species harvested by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount of prohibited species available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997; and

(C) fishing for Atka mackerel in the eastern area of the Bering Sea and Aleutian Islands and from exceeding the following percentages of the directed harvest available in the Bering Sea and Aleutian Islands Atka mackerel fishery

(i) 11.5 percent in the central area; and

(ii) 20 percent in the western area.

For the 1999 fishing year, NMFS implemented these provisions by publishing the harvest limits in the 1999 BSAI harvest specifications and prohibiting listed AFA catcher/processors from engaging in directed fishing for a groundfish species or species group when NMFS determined that the sideboard limit was likely to be met or exceeded. For the 2000 and 2001 fishing years these limits were set out by emergency interim rule (65 FR 4520, January 28, 2000; extended at 65 FR 39107, June 23, 2000; and 66 FR 7276, January 22, 2001).

At its June 1999 meeting, the Council recommended that catcher/processor harvest limits for BSAI groundfish other than Atka mackerel be based on the 1995 through 1997 retained catch of such groundfish species by the 20 listed AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA, except for Pacific cod which would be based on 1997 retained catch only. The Council made a distinction between retained and total catch for the purpose of calculating sideboards and felt that AFA vessels should not receive sideboard credit for groundfish that was discarded and not utilized. Given NMFS' and the Council's longstanding emphasis on reduction of discards and waste in the groundfish fisheries off Alaska, the Council believed it was reasonable not to allow the members of a sector of the groundfish fleet to claim fishing privileges based on catch that they discarded and did not utilize, especially given that such discards may have resulted in foregone catch and loss of fishing opportunities for other sectors of the industry.

In addition, the Council recommended several other relatively minor changes to the catcher/processor sideboard formula set out in the AFA. The Council recommended that only 1997 catch history be used to determine Pacific cod harvest limits, because 1997 was the first year in which the BSAI Pacific cod trawl gear allocation was split between catcher/processors and catcher vessels. Prior to 1997 the BSAI Pacific cod TAC was not allocated between catcher/processors and catcher vessels, meaning that pre–1997 Pacific cod TACs and harvest percentages by AFA catcher/processors are not directly comparable to present day Pacific cod allocations. The Council also recommended that only the years 1996 and 1997 be used to calculate Pacific ocean perch (POP) sideboard amounts because 1996 was the first year in which the POP TAC was divided between the Bering Sea and Aleutian Islands subareas.

The Atka mackerel catcher/processor sideboard percentages set out in subparagraph 211(b)(1)(C) of the AFA would be implemented unchanged. The AFA catcher/processor sideboard limit for Atka mackerel would be zero percent of the Bering Sea subarea and Eastern Aleutians annual TAC, 11.5 percent of the Central Aleutians annual TAC, and 20 percent of the Western Aleutians annual TAC. These Atka mackerel sideboard amounts would be divided by area and season and would be limited inside critical habitat in the same manner as the overall Atka mackerel TAC for each area.

The Council did not recommend any changes to the formula for establishing prohibited species catch (PSC) bycatch limits set out in subparagraph 211(b)(2)(B) of the AFA. However, the Council recommended that NMFS not implement catcher/processor sideboards for salmon and herring because extensive management measures are already in place to limit bycatch of those PSC species in the BSAI pollock fishery and incidental bycatch of salmon or herring is primarily a concern in the pollock fishery and not in the directed fisheries for other groundfish species.

*Management of Catcher/Processor Harvest Sideboards*

Under this proposed rule, catcher/processor sideboards would be managed through directed fishing closures. NMFS would evaluate each groundfish harvest limit specified according to the formula outlined previously and would authorize directed fishing by listed AFA catcher/processors only for those BSAI groundfish species for which the harvest limit is large enough to support a directed fishery by listed AFA catcher/processors. Groundfish species for which the catcher/processor harvest limit is too small to support a directed fishery would be closed to directed fishing by listed AFA catcher/processors at the beginning of the fishing year. The sideboard amounts for these species would then be specified as the incidental catch amounts harvested in other directed groundfish fisheries.

In some instances where catcher/processors have a history of harvesting a particular species as bycatch in the pollock fishery and have not traditionally retained that species, the retained catch formula for setting sideboard amounts would result in a sideboard amount for that species that likely would be far below its intrinsic bycatch rate in the BSAI pollock fishery. Squid and POP fall into this category. An expected consequence of basing sideboard amounts on retained catch rather than total catch is that actual harvests of some species as bycatch in the directed pollock fishery would exceed the published sideboard amount. As a result, NMFS proposes a management approach in the proposed rule that would allow for continued incidental catch of species under sideboard provisions that acknowledge historical bycatch needs, while ensuring that listed AFA catcher/processors would not participate in directed fisheries for other BSAI groundfish species at levels that would exceed their level of participation in such fisheries from 1995 through 1997. NMFS believes that this approach is consistent with the language and intent of the AFA.

*Catcher Vessel Sideboards*

This proposed rule would establish catcher vessel harvest limits for BSAI crab, BSAI and GOA groundfish, and the Alaska scallop fishery. These measure are required under subparagraph 211(c)(1)(A) of the AFA which states:

By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to . . . prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery.

The Council met this requirement by adopting a comprehensive suite of catcher vessel sideboard measures at its June 1999 meeting as part of Amendments 61/61/13/8.

Because the BSAI king and Tanner crab fisheries and the Alaska scallop

fishery are managed by the State under Federal oversight, the Council recommended that crab and scallop catcher vessel sideboards be implemented jointly through State and Federal actions. Amendment 4 to the scallop FMP was approved by NMFS on June 8, 2000 and authorized a license limitation program (LLP) for the Alaska scallop fishery under which only one AFA catcher vessel is eligible to receive a scallop license. NMFS and the Council have determined that the scallop LLP program effectively prevents additional effort in the scallop fishery by other AFA catcher vessels and that additional restrictions on entry by AFA catcher vessels are unnecessary. As a further measure under Amendments 61/61/13/8, the Council also has recommended that the State implement an AFA catcher vessel scallop sideboard limit equal to the percentage of the scallop guideline harvest level that was harvested by the AFA catcher vessel in 1997. This sideboard harvest restriction would be implemented under State regulations. Therefore, scallop sideboard measures are not included in this proposed rule.

Under Amendments 61/61/13/8, the Council has recommended that NMFS limit participation in BSAI crab fisheries through crab sideboard endorsements on AFA catcher vessel permits. The Council has recommended that only AFA catcher vessels with a demonstrated history in a particular crab fishery may continue participating in that fishery. A catcher vessel that lacks the appropriate crab sideboard endorsements on its AFA permit would be prohibited from retaining BSAI king and Tanner crab even if that vessel was authorized to do so under an LLP for that crab fishery. These sideboard endorsements are described above in the discussion of AFA catcher vessel permits.

In addition to permit restrictions, the Council also recommended that the State implement AFA catcher vessel harvest limits for the Bristol Bay red king crab and Bairdi Tanner crab fisheries to keep the AFA vessels from harvesting more such crab than they had traditionally harvested. With respect to the Bristol Bay red king crab fishery, the Council recommended an AFA catcher vessel sideboard limit equal to the percentage of Bristol Bay red king crab harvested by AFA catcher vessels from 1991 through 1997, excluding 1994 and 1995 when the fishery was closed. For the Bairdi Tanner crab fishery, the Council recommended that AFA catcher vessels be excluded from the fishery until the Council's Bairdi rebuilding goal is reached, and then be limited to their historic catch percentage from 1995–1996. The Alaska Board of Fisheries has developed a management program to implement these restrictions which has been in effect since the 2000 Bristol Bay red king crab fishery.

For the BSAI and GOA groundfish fisheries, the Council recommended that AFA catcher vessel sideboards be established based on landed catch and be managed through directed fishing closures in the same manner as AFA catcher/processor sideboards. However, a significant difference between catcher/processor and catcher vessel groundfish sideboards is that the Council recommended that certain AFA catcher vessels be exempt from some BSAI and GOA groundfish sideboards while no exemptions were recommended for listed AFA catcher/processors. These sideboard exemptions were described previously under the section on AFA catcher vessel permits. This proposed rule contains the Council's recommended BSAI and GOA groundfish and PSC sideboards for AFA catcher vessels, which are summarized below.

*Catcher Vessel Groundfish Sideboards in the BSAI*

Catcher vessel groundfish sideboards would be established for all BSAI groundfish species using a formula based on the retained catch of all non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 (1997 only for BSAI Pacific cod) divided by the available TAC for that species over the same period. AFA catcher vessel sideboards would apply to all non-exempt AFA catcher vessels regardless of sector and regardless of participation in a cooperative. The criteria for catcher vessel sideboard exemptions were outlined in the AFA catcher vessel permit section.

In addition, AFA catcher vessels with mothership endorsements would be exempt from Pacific cod sideboard closures after March 1 of each year. The March 1 exemption for AFA catcher vessels with mothership endorsements was recommended for several reasons. In most years, the BSAI Pacific cod fishery is largely concluded by March 1 and fishing is often less productive in terms of catch per unit effort after that date. Given that as few as two non-AFA catcher vessels have fished for BSAI Pacific cod in recent years, the Council believed that some additional vessels might be needed after this date to completely harvest the TAC so that processors are not faced with a slow trickle of Pacific cod deliveries that are uneconomical to process. The Council recommended that AFA catcher vessels with mothership endorsements be allowed to re-enter the BSAI Pacific cod fishery after March 1 because the mothership sector received a relatively smaller pollock quota under the AFA and mothership catcher vessels are more likely to be finished with their pollock operations by that date.

Catcher vessel PSC sideboards for BSAI groundfish fisheries would be managed in the same manner as catcher/processor PSC sideboards, however the sideboard amounts would be calculated differently. Because individual vessel PSC catch histories are not available for AFA catcher vessels, PSC sideboard amounts would be pro-rated based on percentage of groundfish catch in each BSAI groundfish fishery.

*Catcher Vessel Groundfish Sideboards in the GOA*

Catcher vessel sideboards for GOA groundfish fisheries would be established and managed in the same manner as the catcher vessel sideboards in the BSAI groundfish fisheries except that catcher vessels less than 125 ft (38.1 m) LOA whose annual BSAI pollock landings averaged less than 1700 mt from 1995 through 1997 (i.e., landed less than 5,100 mt of pollock over the 3–year period) and that made 40 or more GOA groundfish landings over the same period would be exempt from sideboard closures for GOA groundfish fisheries. The catch histories of the exempt vessels would not be counted towards the sideboard amounts for non-exempt vessels. As with the BSAI Pacific cod fishery, the Council noted that many AFA catcher vessels with relatively low catch histories in BSAI pollock have traditionally participated in GOA groundfish fisheries. Indeed, many of these vessels are based in Kodiak and other GOA ports and have historically concentrated their fishing effort in GOA fisheries. The Council believed that it would be inequitable to limit such vessels from participating in GOA fisheries when they have historically fished in the GOA and may have relatively low pollock catch histories in the BSAI during the AFA qualifying years due to their history of fishing primarily in the GOA.

The Council specifically limited both the BSAI Pacific cod and GOA groundfish sideboard exemptions to vessels with a significant history of participation in those fisheries and indicated that it believed such exemptions were consistent with the catcher vessel sideboard provisions at paragraph 211(c)(1) of the AFA, which require that:

By not later than July 1, 1999, the North Pacific Council shall recommend for

approval by the Secretary conservation and management measures to

(A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery . . . .

NMFS estimates that 12 catcher vessels would be exempt from BSAI Pacific cod sideboards in the BSAI and 12 catcher vessels would be exempt from groundfish sideboards in the GOA. The Council noted that because these exempt vessels traditionally have participated at high levels in the BSAI Pacific cod and GOA groundfish fisheries, such exemptions were not likely to cause the aggregate harvest levels of all AFA catcher vessels to exceed traditional levels in these fisheries. However, the Council noted that, even if fishing in the BSAI Pacific cod and GOA groundfish fisheries by exempt vessels does cause the aggregate harvest of all AFA catcher vessels to exceed historic levels in other groundfish fisheries, the exemptions are warranted and within the authority of the Council to recommend under paragraph 213(c)(1) of the AFA, which states:

The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act

(1) that supersede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery.

The Council believed that these two exemptions are warranted to mitigate adverse economic effects as described above on owners of fewer than three vessels in the directed pollock fishery given that the exempt vessels are primarily owned by independent fishermen who own fewer than three vessels in the directed pollock fishery.

*Crab Processing Sideboards*

Subparagraph 211(c)(2)(A) of the AFA establishes limits on crab processing by AFA inshore processors and AFA motherships that receive pollock harvested by a fishery cooperative:

Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, 1997. For the purposes of this subparagraph, the term ''facilities'' means any processing plant, catcher/ processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

These crab processing limits were implemented by NMFS in the emergency interim rule published January 28, 2000 (65 FR 4520, extended at 65 FR 39107). However, at its September 2000 meeting, the Council recommended that the basis years used to calculate crab processing sideboard amounts be revised by adding 1998 and giving it double-weight. Some crab fishermen and AFA processors expressed concern that too many non-AFA processors have left the crab fisheries since 1997 and that the 1995–1997 years do not accurately reflect the composition of the crab processing industry at the time of passage of the AFA. Some crab fishermen were concerned that AFA crab processing caps were restricting markets for crab fishermen and having a negative effect on exvessel prices. By adding 1998 and giving it double-weight relative to 1995–1997, the Council believed that the crab processing caps would more accurately reflect the status of the crab processing industry at the time of passage of the AFA and that such a change to supersede this provision of the AFA was warranted to mitigate adverse effects on markets for crab fishermen.

*Entity-based processing caps.* NMFS has developed a definition of ''AFA entity'' for the purpose of implementing these crab processing limits and for the purpose of implementing the 17.5 percent excessive harvesting share limit discussed above. This definition is explained below in the section on definitions. To implement these crab processing limits, NMFS would require that the owners of an AFA mothership or AFA inshore processor intending to process pollock harvested by a cooperative identify on their permit applications all individuals, corporations, or other entities that directly or indirectly own or control a 10–percent or greater interest in the AFA mothership and/or inshore processor (collectively the AFA inshore or mothership entity), and any other crab processors in which such entities have a 10–percent or greater interest (the associated AFA crab facilities). For each BSAI king and Tanner crab fishery, NMFS would calculate the average percentage of the total crab harvest processed by the associated AFA crab facilities and issue entity-wide crab processing caps for each crab fishery to each AFA inshore or mothership entity on its AFA mothership or AFA inshore processor permit. Each individual, corporation, or other concern comprising an AFA inshore or mothership entity would be responsible for ensuring that the AFA crab processing facilities associated with the AFA inshore or mothership entity do not exceed the entity's caps. The individuals, corporations and other concerns comprising the AFA inshore or mothership entity would be held jointly and severally liable for any overage.

*Determining crab processing percentages.* Upon receipt of an application for a cooperative processing endorsement from the owners of an AFA mothership or AFA inshore processor, the Regional Administrator would calculate a crab processing cap percentage for the associated AFA inshore or mothership entity. The crab processing cap percentage for each BSAI king or Tanner crab species would be equal to the percentage of the total catch of each BSAI king or Tanner crab species that the AFA crab facilities associated with the AFA inshore or mothership entity processed in the aggregate, on average, in 1995, 1996, 1997, and 1998 with 1998 given double-weight (counted twice).

Each AFA inshore or mothership entity's crab processing cap percentage for each BSAI king or Tanner crab species would be listed on the AFA mothership or AFA inshore processor permit that contains a cooperative pollock processing endorsement.

Conversion of crab processing sideboard percentages to poundage caps. Prior to the start of each BSAI king or Tanner crab fishery, NMFS would convert each AFA inshore or mothership entity's crab processing sideboard percentage to a poundage cap by multiplying the crab processing sideboard percentage by the pre-season guideline harvest level established for that crab fishery by ADF&G. Each entity and the public would be notified of the crab processing poundage caps through notification in the Federal Register and/or through information bulletins published on the NMFS-Alaska Region world wide web home page (*http:www.fakr.noaa.gov*).

*CDQ crab harvest.* Under the proposed rule, processing of CDQ crab would not accrue against an entity's

crab processing cap. Only crab harvested in the non-CDQ directed crab fisheries would accrue against an entity's crab processing cap. Custom processing. These crab processing caps would apply to all crab processed by the associated AFA crab processing facilities including any ''custom processing'' activity. Custom processing refers to a contractual relationship in which one processing facility processes crab on behalf of another processor. Custom processing of crab would not be prohibited, but any custom processing of crab done under contract with an AFA crab processor would be counted against the associated AFA inshore or mothership entity's crab processing cap.

**Observer Coverage Requirements for AFA Vessels and Processors**

Under Amendments 61/61/13/8, NMFS proposes new observer coverage requirements for AFA catcher/processors, AFA motherships, and AFA inshore processors. However, no changes to observer coverage requirements are proposed for AFA catcher vessels. These proposed new observer coverage requirements are described below.

*Listed AFA Catcher/Processors and AFA Motherships*

*Two observer requirement.* Subparagraph 211(b)(6)(A) of the AFA requires that unrestricted AFA catcher/processors have two observers on board at any time the vessel is fishing for groundfish in the BSAI. This proposed rule would set out this requirement in regulation and extend the requirement to AFA motherships. NMFS believes it is appropriate to extend this requirement to AFA motherships because AFA motherships operate in a similar manner to AFA catcher/processors in that they receive unsorted codends from catcher vessels. In a mothership operation, all weighing and sorting of catch occurs on the mothership rather than the catcher vessel. The only practical difference between catcher/processor and mothership operations is that motherships do not actually engage in trawling. Under this proposed rule, a listed AFA catcher/processor or AFA mothership would be required to have aboard two NMFS certified observers for each day that the vessel is used to harvest, process, or take deliveries of groundfish. In addition, at least one observer on board each AFA catcher/processor and AFA mothership would have to be a lead level 2 observer at all times that the vessel is fishing for groundfish or processing groundfish harvested in the BSAI or GOA.

*Observer workload requirement.* This proposed rule also would extend the CDQ program observer workload limits to AFA catcher/processor and AFA motherships. These workload limits are necessary to insure that all groundfish harvested and processed by AFA catcher/processors and motherships can be sampled by a NMFS observer. Consequently, more than two observers might be required to allow each haul brought on board the vessel to be sampled by an observer. This situation may occur for some AFA motherships, depending on how many deliveries they receive from catcher vessels in a day.

Lead level 2 observer requirement. Under this proposed rule, at least one observer on board each AFA catcher/processor and AFA mothership would have to be a lead level 2 observer (formerly known as a lead CDQ observer) and would allow the second observer position to be filled by any NMFS certified observer. Observers are an increasingly important element of NMFS' monitoring program for AFA catcher/processor and AFA mothership sector pollock harvests. Prior to the AFA, NMFS monitored offshore pollock harvests using a blend of observer data and processor weekly production reports. However, under the AFA with its statutory requirement that AFA catcher/processors carry two observers at all times and weigh their catch using NMFS-approved scales, NMFS is now relying only on observers and scale weights to provide inseason harvest data for the AFA catcher/processor sector and is no longer using vessel production data for quota management purposes. In addition, NMFS relies on observers to monitor catcher/processor groundfish sideboards as well as catcher vessel sideboards for catcher vessels delivering to catcher/processors and AFA motherships. Given this increased reliance on observers and scales, NMFS believes that the lead level 2 observer requirement is necessary to ensure that at least one of the observers aboard each AFA catcher/processor and AFA mothership has prior experience sampling on a trawl catcher/processor or mothership, is trained and experienced in the use of on-board scales, and is available to monitor the use and calibration of such scales. In addition, NMFS believes that the requirement for at least one lead level 2 observer is necessary to ensure that the compliance monitoring role of the observers aboard AFA catcher/processors can be successfully accomplished.

In order to monitor and enforce the newly imposed harvest limitations for unrestricted AFA catcher/processors and AFA motherships, observers with more experience and training must be aboard. NMFS-certified lead level 2 observers have that experience and training. Level 2 observers receive special training in sampling for species composition in situations where bycatch may be limiting, in working with vessel personnel to resolve access to catch and other sampling problems, and in using flow scales for catch weight measurements. Monitoring by level 2 observers is essential for accurate catch accounting, given the fact that a fishery cooperative has been established and that the potential exists for fishing to be curtailed when either groundfish or prohibited species harvest limitations specified for unrestricted AFA catcher/processors have been reached.

*Consolidation of CDQ and AFA observer requirements.* Under the emergency interim rules governing the AFA pollock fishery in 1999 and 2000, AFA catcher/processors and motherships were required to have one lead level 2 observer at all times but the second observer requirement could be filled by any NMFS-certified observer. However, the CDQ program imposed a higher requirement of one lead level 2 observer and a second level 2 observer for catcher/processor and motherships participating in the CDQ pollock fishery. Under this proposed rule, the observer requirements for catcher/processors and motherships in the AFA and CDQ pollock fisheries would be consolidated into a single standard that would require at least one lead level 2 observer on board at all times but would allow the second observer position to be filled by any NMFS certified observer.

Data quality needs for the AFA fishery take into account the vessel-specific nature of the fishery and the operational environment under which observers collect the data. This vessel-specific nature of the AFA has increased the responsibility of the observer to generate data of a quality equivalent to a ''final post-debrief'' level prior to the structured NMFS debriefing process. This raises the standard for experience and advanced training requirements. Since implementation of the AFA, the quality of data collected by observers at-sea has been assessed by the rigorous post-cruise debriefing process and has overall been found to meet expectations of high quality data at the point of collection.

The catcher/processors and motherships involved in this fishery provide the most straightforward sampling situations for observers in the groundfish fleet due to typically minimal bycatch, as well as excellent working conditions for the observer.

Multiple opportunities for oversight of the work performed by the second, potentially less experienced, observer has been shown to successfully ensure all data collected from each AFA catcher/processor or mothership meets high data quality standards. Oversight of data collection and recording by the second observer is performed by the lead observer who has extensive observer experience on trawl catcher/processors. Additionally, in-season advising and supervision for observers at sea is provided on an on-going basis by NMFS Observer Program staff through communication via the ATLAS at-sea reporting system required on all catcher/processors and motherships. The NMFS Observer Program has also substantially increased field support for observers. Finally, catcher/processors operating in the BSAI pollock fishery have been considered the best assignments for new trainees, preparing them for further development as an observer. The need to keep open this opportunity to develop observer experience is essential to ensure the continued existence of a pool of qualified level 2 lead observers.

Consistency in observer requirements between the AFA program and the directed pollock fishery in the Multi-species Community Development Quota (MS CDQ) program is essential. The data quality needs for MS CDQ and AFA pollock catch accounting are virtually identical. Further, vessels often fish for MS CDQ and AFA-allocated pollock during the same fishing trip. Uniform observer requirements would simplify observer deployment logistics for such vessels. Therefore, NMFS is proposing to change the current observer requirements under the MS CDQ program for only those catcher/processors and motherships participating in directed fishing and/or processing of MS CDQ-allocated pollock to be consistent with the proposed AFA observer requirements for those vessel classes.

Requirements for unlisted AFA catcher/processors. Under this proposed rule, vessels receiving unlisted AFA catcher/processor permits under paragraph 208(e)(21) of the AFA would be required to meet the same observer coverage, scale, and sampling station requirements as for listed AFA catcher/processors during any fishing trip in which the vessel engages in directed fishing for BSAI pollock or receives deliveries of pollock from AFA catcher vessels engaged in directed fishing for BSAI pollock. This proposed requirement is necessary because NMFS must monitor the 0.5 percent pollock harvest limit on unlisted AFA catcher/processors and cannot adequately do so without scales and an observer on duty at all times. However, because the AFA catcher/processor sideboard limits in other groundfish fisheries do not apply to unlisted AFA catcher/processors, NMFS is not proposing to change the observer coverage requirements for unlisted AFA catcher/processors when such vessels are engaged in directed fishing for groundfish other than pollock. Unlisted AFA catcher/processors participating in non-pollock fisheries would simply be required to meet whatever observer coverage requirements are in place for the fishery in question.

AFA Inshore Processors. Under this proposed rule, an AFA inshore processor would be required to have a NMFS-certified observer for each consecutive 12–hour period in which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in directed fishing for BSAI pollock. An AFA inshore processor that takes delivery of or processes pollock during more than 12 consecutive hours in any calendar day would be required to have two NMFS-certified observers available during that calendar day. At least one observer assigned to work at each AFA inshore processor must be a level 2 observer during each calendar day that the processor receives or processes pollock harvested in the BSAI directed pollock fishery. Furthermore, under this proposed rule, observers working at AFA inshore processors may not be assigned to cover more than one processing plant during a calendar day.

NMFS is proposing these new observer coverage requirements for AFA inshore processors so that NMFS can adequately monitor cooperative pollock allocations at each AFA inshore processor. Prior to the AFA, the inshore pollock fishery was managed in the aggregate across the entire sector with NMFS issuing a single closure for the entire inshore sector upon the attainment of a seasonal allocation of pollock TAC. Under the inshore cooperative system set out in this proposed rule, each inshore processor and its affiliated cooperative would be operating on its own proprietary pollock allocation. Because NMFS would no longer manage the inshore sector in the aggregate, increased monitoring is required at each individual processor to ensure that cooperative allocations are not exceeded.

*AFA Catcher Vessels*

Catcher vessels fishing for pollock may deliver an unsorted codend directly to a mothership or inshore processor, in which case sorting or weighing the catch prior to delivery is not possible. Alternatively, they may bring the codend onto the deck and put the catch into tanks for delivery to a mothership or inshore processor. Depending on the size of the trawl alley, sorting and discarding prohibited species at sea also may not be possible. For these reasons, complete at-sea sorting and weighing of catch is rarely possible. Because of these constraints, much of the data concerning catch weight and composition is gathered when the catch is delivered to a mothership or inshore processor. Thus, NMFS does not believe it is necessary for AFA catcher vessels to provide the same level of observer coverage or equipment that is required for AFA processors.

For this reason, NMFS does not propose any changes to existing observer coverage levels for AFA catcher vessels. Under the management program set out in this proposed rule, the primary location for pollock and sideboard catch accounting is at the processor and NMFS is increasing monitoring at all AFA processors to accommodate these increased monitoring needs. AFA catcher vessels would continue to be required to meet the observer coverage requirements for catcher vessels set out at 50 CFR 679.50(c).

*Scales and Catch-Weighing Requirements*

The AFA authorizes eligible vessels and processors to form cooperatives in all sectors of the BSAI pollock fishery. Inshore cooperatives that meet the criteria set out in this proposed rule would be eligible to receive an inshore cooperative fishing permit authorizing the member vessels in the cooperative to harvest a specific allocation of the BSAI pollock TAC. The members of the cooperative may decide among themselves how to share the allocation made to that cooperative. While not an individual fishing quota (IFQ) program per se, the inshore cooperative quota program established by the AFA does share many characteristics with traditional IFQ programs in terms of how the program would operate. In effect, fishery cooperatives are privately operated IFQ programs under which the cooperative, rather than NMFS, makes individual allocations to member vessels. Fishing patterns and behaviors under the inshore cooperative program are expected to be similar to those that would be seen under a traditional IFQ program and the management demands are much the same. Just as with IFQ programs, individual cooperative members and the cooperative as a whole

would have a strong incentive to maximize the amount of pollock harvested and processed in any given year within the constraints of a fixed quota of pollock granted to the cooperative. While catcher/processor and mothership sector cooperatives do not receive individual allocations of pollock from NMFS, they function in the same manner as inshore cooperatives because NMFS makes allocations of pollock to each sector and the cooperatives include all eligible participants in each sector.

To manage the AFA pollock fishery properly, NMFS must have data that will provide reliable independent estimates of the total catch by species and area for each cooperative. Because pollock cooperatives are operating under their own individual quotas, they have a vested interest in ensuring that catch data do not overestimate the pollock harvest by that cooperative. Based on experience gained under the CDQ program, NMFS anticipates that observer or NMFS estimates of catch will be routinely questioned by industry. Under a system of fishery cooperatives, a processor stands to benefit directly if catch is underweighed because that processor is operating under an individual allocation. For this reason, NMFS is proposing a catch-weighing system for AFA pollock that is more rigorous than that required in open access groundfish fisheries.

In the draft EIS prepared for Amendments 61/61/13/8, NMFS identified two primary objectives for monitoring catch in the AFA fisheries. First, NMFS must be able to ensure that the total weight, species composition, and catch location for each delivery are reported accurately. An acceptable catch-monitoring system based on this objective must allow for independent verification of catch weight, species composition and haul location data; ensure that all catch is weighed accurately; and provide a record of the weight of each delivery that may be audited by NMFS. Second, the quality and level of catch monitoring should be functionally equivalent between sectors. This objective recognizes that a catch-monitoring approach that is appropriate for one sector of the industry may not be appropriate for all sectors while, at the same time, acknowledging that the overall quality of catch data should be equivalent, and no sector should be given a competitive advantage because of differences in catch monitoring standards. Based on these objectives, NMFS has developed the following catch monitoring regulations for each sector.

*Scale and Catch-Weighing Requirements for AFA Catcher/Processors*

Subparagraph 211(b)(6)(B) of the AFA requires that all listed AFA catcher/processors ''weigh [their] catch on a scale onboard approved by the National Marine Fisheries Service while harvesting groundfish in fisheries under the authority of the North Pacific Council.'' To implement this requirement of the AFA, NMFS proposes to extend the existing catch weighing and observer sampling station requirements for catcher/processors participating in the CDQ fisheries, found at 50 CFR 679.28, to AFA catcher/processors. These catch-weighing requirements include the following:

1. Scales must meet the performance and technical requirements specified in appendix A to 50 CFR 679. At this time, Marel hf and Skanvaegt International A/S produce scales that have been approved by NMFS for weighing total catch. Marel hf, Skanvaegt International A/S and Pols hf manufacture scales that have been approved for use in observer sampling stations.
2. Each scale must be inspected and approved annually by a NMFS-approved scale inspector.
3. Each observer sampling station scale must be accurate within 0.5 percent when its use is required.
4. The observer sampling station scale must be accompanied by accurate test weights sufficient to test the scale at 10, 25 and 50 kg.
5. Each scale used to weigh total catch must be tested daily by weighing at least 400 kg of fish or test material on the total catch weighing scale and then weighing it again on an approved observer-sampling station scale.
6. When tested, the total catch weighing scale and the observer sampling station scale must agree within 3 percent.

Observer sampling stations provide a location where observers can work safely and effectively. On June 4, 1998, NMFS published a final rule that established requirements for observer sampling stations and required their use on specified vessels participating in CDQ fisheries (63 FR 30381). Further information on, and the rationale for, observer sampling stations may be found in that rule. Observer sampling stations must meet specifications for size and location and be equipped with an observer sampling station scale, a table, adequate lighting and running water. Each observer sampling station must be inspected and approved by NMFS annually.

AFA listed catcher/processors would be required to comply with the regulations for additional observer coverage, scales, observer sampling stations, and an approved vessel monitoring system (VMS) when participating in any groundfish fishery off Alaska. Unless other regulations require them to do so, unlisted AFA catcher/processors would only be required to comply with these regulations when engaged in directed fishing for BSAI pollock or when processing pollock harvested in the BSAI directed pollock fishery. Because unlisted AFA catcher/processors are not bound by sideboard limits when participating in other groundfish fisheries, NMFS does not believe that imposing this more rigorous catch-weighing and monitoring regime on such vessels is necessary when they are not fishing for pollock. Such unlisted AFA catcher/processors would continue to be bound by all catch-weighing and monitoring requirements that are in effect for any non-pollock fishery in which they participate.

*Scale and Catch-weighing Requirements for AFA Motherships*

The AFA does not require that motherships weigh all catch or provide additional observer coverage. However, because motherships receive and process groundfish in a manner similar to catcher/processors, NMFS proposes that similar regulations be implemented for AFA motherships. Requirements for catch weighing, observer sampling stations and observer coverage would be identical to those described above for AFA listed catcher/processors and would apply at all times that the AFA mothership is receiving or processing groundfish harvested in the BSAI or GOA.

*Scale and Catch-Weighing Requirements for AFA Inshore Processors*

This proposed rule would establish a new catch monitoring system for inshore processors. The catch management goals established by NMFS for the AFA pollock fishery are the same for the inshore and offshore sectors. However, NMFS does not believe that the regulations developed for catcher/processors and motherships are appropriate for inshore processors for two reasons. First, inshore processors vary more in size, facilities and layout than do catcher/processors or motherships. Second, the State is responsible for approving scales used for trade by inshore processors and has developed an effective program for their inspection and approval.

Catch monitoring and control plans. The catch weighing and monitoring

system developed by NMFS for catcher/processors and motherships is based on the vessel meeting a series of design criteria. Because of the wide variations in factory layout, NMFS believes that a performance based catch monitoring system is more appropriate for inshore processors. Under this system, each plant would be required to submit a Catch Monitoring and Control Plan (CMCP) to NMFS for approval. The CMCP would detail how the plant would meet the following standards:

1. All catch delivered to the plant must be sorted and weighed by species. The CMCP must detail the amount and location of space for sorting catch, the number of staff devoted to catch sorting and the maximum rate that catch will flow through the sorting area.

2. Each processor must designate an ''observation area.'' The observation area is the location designated in the CMCP where an individual may monitor the flow of fish during a delivery. From the observation area, an individual must be able to monitor the entire flow of fish and ensure that no removals of catch have occurred between the delivery point and a location where all sorting has taken place and each species has been weighed.

3. Each processor must designate a ''delivery point.'' The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. The delivery point would most likely be the location where the pump first discharges the catch. If catch is removed from a vessel by brailing, this would most likely be the bin or belt where the brailer discharges the catch.

4. The observation area must be located near the observer work station.

5. The observer workstation must be located where the observer has access to unsorted catch.

6. An observer work station, for the exclusive use of the observer, must provide: a platform scale of at least 50 kg capacity; an indoor working area of at least 4.5 square meters, a table, and a secure and lockable cabinet.

7. Designation of a plant liaison, who would be responsible for orienting new observers to the plant, ensuring that the CMCP is implemented, and assisting in the resolution of observer concerns.

The plant would be inspected by NMFS to ensure that the plant layout conforms to the elements of the plan. A CMCP that meets all of the performance standards would be approved by NMFS for 1 year, unless during the year changes are made in plant operations or layout that do not conform to the CMCP. After 1 year, NMFS would review the CMCP with plant management to ensure that the CMCP has been implemented and that the performance standards continue to be met.

A single individual cannot effectively monitor the flow of fish from the delivery point to where they have been completely sorted and weighed at any of the existing AFA inshore processors. Therefore, none of the current AFA inshore processors would meet the proposed performance standards without modifying the layout of the plant or developing alternative methods of monitoring catch flow. As a consequence, the process of developing the CMCP may be fairly complex. NMFS anticipates that plant management would wish to work closely with NMFS staff before making any modifications to the plant layout or purchasing equipment. NMFS staff would review draft CMCPs and would pre-inspect inshore processors as requested by plant management.

Scale requirements for AFA inshore processors. Catch weighing for catcher/processors and motherships is based on the use of scales approved by NMFS. Because NMFS and the State use different standards when approving scales, most NMFS-approved scales are not legal for trade in Alaska and most State-approved scales do not meet NMFS criteria for inseason testing and auditing. NMFS believes that the State should be the primary authority responsible for approving and testing scales in shoreplants and that weighing all catch on scales approved by NMFS is unnecessary. Inshore processors are required, under State regulations, to weigh all catch that is being bought or sold on State-approved scales. These scales must be inspected annually by inspectors authorized by the Division of Measurement Standards and Commercial Vehicle Enforcement.

However, State regulations do not provide for inseason testing of scales nor do they require that scales produce a printed record of each delivery. NMFS believes that these are essential features of an acceptable catch weighing system. Therefore, in cooperation with the State, NMFS has developed a catch-weighing system that implements these additional features within the existing framework of State scale inspection and approval. The development of this system involved consultation with the Alaska State Division of Measurement Standards in acknowledgment of the State's role to ensure that scales used for trade in the State are accurate. Personnel from the Alaska Division of Measurement Standards are responsible for inspecting and approving those scales. Scales that are not used in a trade related transaction, or scales that are used outside of State waters are generally not required to be inspected and approved.

This proposed rule would implement two sets of catch weighing requirements. The first, is that catcher/processors and motherships would be required to weigh all catch on scales approved by NMFS. These vessels weigh their catch outside of State waters and the approval and inspection of those scales does not in any way interfere with existing State programs.

The second set of conditions would require AFA inshore processors to weigh all of their catch on scales approved by the State and that those scales meet additional requirements for printouts and inseason testing. In order to prevent duplicative regulations or involve itself in an existing State function, NMFS worked closely with the Alaska Division of Measurement Standards to develop these requirements. NMFS staff met with the Director of the Division and his staff twice during 2000 to discuss these requirements, and draft versions of the proposed regulations were provided to Division personnel for review and comment. In October 2000, the Administrator, Alaska Region, sent a letter to the Director of the Division of Measurement Standards expressing his acknowledgment and appreciation for the work that the State had put into assisting NMFS in developing the catch weighing regulations.

Thus, this propose rule reflects cooperative State and Federal development of catch weighing requirements for AFA inshore processors and includes the following provisions:

1. Each scale used to weigh catch and its intended use would have to be identified by serial number in the CMCP. Each scale would have to be inspected and approved by the State annually.

2. As part of the CMCP, each plant would submit a scale testing plan that gives the procedure the plant would use to test each scale identified in the CMCP. The testing plan would list: the test weights and equipment required to test the scale; where the test weights and equipment are stored; and, the plant personnel responsible for testing the scale. Test amounts for various scale types are shown in Table 1.

3. Test weights would have to be certified at least biannually by a metrology laboratory approved by the National Institute of Standards and Technology.

4. Authorized officers or NMFS-authorized personnel could request that any scale be tested in accordance with

the testing plan, provided that the scale had not been tested and found accurate within the past 24 hours.

5. Each scale would have to be accurate within the limits specified in Table 2 (maximum permissible errors and test weight amounts) when tested by the plant staff.

6. Each scale used to weigh catch would have to be equipped with a printer, and a printout or printouts showing the total weight of each delivery would have to be generated after each delivery had been weighed. The printouts would have to be retained by the plant and made available to NMFS-authorized personnel including observers.

TABLE 1. SCALE TYPES AND TEST WEIGHT AMOUNTS

| Scale Type | Capacity[1] | Test Weights[2] | Test Loads[3] |
|---|---|---|---|
| Automatic Hopper | 0 to 150 kg | Minimum Weighment[1] or 10 kg (20 lb), whichever is greater.<br>Maximum[1] | Minimum[1]<br>Maximum[1] |
| Automatic Hopper | >150 kg | Minimum Weighment[1] or 10 kg, whichever is greater<br>25 percent of Maximum or 150 kg, whichever is greater. | Minimum[1]<br>Maximum[1] |
| Platform or flatbed | 0 to 150 kg | 10 kg<br>Midpoint<br>Maximum[1] | Not Acceptable |
| Platform or flatbed | >150 kg | 10 kg<br>12.5 percent of Maximum[1] or 75 kg, whichever is greater<br>25 percent of Maximum[1] or 150 kg, whichever is greater. | Not Acceptable<br>50 percent of Maximum[1] or 75 kg, whichever is greater<br>75 percent of Maximum[1] or 150 kg, whichever is greater |
| Observer sampling scale | ≥50 kg | 10 kg<br>25 kg<br>50 kg | Not Acceptable |

[1]These amounts will be shown on the scale marking plate.
[2]Test Weights are weights that have been approved by a NIST-approved laboratory.
[3]Test load is any combination of approved test weights and other material that is specified in the scale testing plan. Test material other than test weights must be weighed on an accurate observer platform scale at the time of each use.

TABLE2. MAXIMUM PERMISSIBLE ERRORS FOR INSEASON SCALE TESTING[1]

| | Maximum Error in Scale Divisions[2] | | | |
|---|---|---|---|---|
| | | | | 5 |
| Accuracy Class[3] | 1 | 2 | 3 | Test Load in Scale Divisions[2] |
| III | 0–500 | 501–2,000 | 2,001–4,000 | >4,000 |
| IIII | 0–50 | 51–200 | 201–400 | >400 |
| IIIL | 0–500 | 501–1,000 | Add 1 d for each additional 500d or fraction thereof. | |

[1] Maximum permissible errors and testing procedure for inseason testing are not the same as for State scale approval. A scale that is accurate for the purposes of inseason testing may or may not be accurate enough to be approved by the State.
[2] Division size is shown on the scale's marking plate.
[3] Scales are divided into accuracy classes according to the number and value of scale divisions. The accuracy class is shown on the scale's marking plate.

**Vessel Monitoring System (VMS) Requirements**

Under the proposed rule, all AFA catcher/processors and AFA catcher vessels would be required to deploy an operating NMFS-approved VMS transmitter at all times that the vessel is fishing for groundfish in the BSAI or GOA. In a final rule published October 17, 2000 (65 FR 61264), NMFS established VMS requirements for trawl vessels engaged in directed fishing for Atka mackerel. These requirements would be extended to AFA catcher/processors and AFA catcher vessels. An AFA catcher/processor or AFA catcher vessel would be required to carry and use a NMFS-approved VMS transmitter whenever fishing for groundfish off Alaska. These transmitters automatically determine the vessel's location several times per hour using Global Positioning System (GPS) satellites and send the position information to NMFS via a mobile communication service provider. The VMS transmitters are designed to be tamper-resistant and automatic. The vessel owner should be unaware of exactly when the unit is transmitting and would be unable to alter the signal or the time of transmission.

NMFS believes that a VMS system is an essential component of a monitoring program for the AFA pollock fishery. A VMS system would allow NMFS to verify catch locations inside and outside of the Steller Sea Lion Conservation Area (SCA). Under the proposed rule, each sector and cooperative would be limited in the amount of BSAI pollock that can be taken inside the SCA during

each season. Without the means to verify fishing location on a vessel-by-vessel basis, NMFS would be forced to implement a more conservative management program in which all catch by a sector is assumed to have been taken inside the SCA until that sector's SCA limit has been reached. Such a management program would not allow individual vessels to be credited for fishing location and would not allow cooperatives to manage their SCA harvest limits on an individual vessel basis. In addition, a VMS program would provide necessary management information that would enable NMFS to track participation in various sideboard fisheries and better ensure that small sideboard amounts are not exceeded.

In the proposed rule to require VMS in the Atka mackerel fishery (65 FR 36810) NMFS established criteria for the approval of VMS components. At this time, only one transmitter, the ArgoNet Mar GE, and its associated communications service provider, North American Collection and Location by Satellite, Inc. (NACLS), have been approved by NMFS. A vessel owner wishing to purchase this system may contact the provider or NMFS for additional information (see **ADDRESSES**).

The MAR GE transmitter and NACLS communications service provider have also been approved for use in the Atlantic Highly Migratory Species Fisheries. Additional details concerning these VMS components may be found in the NMFS notice of approval of these VMS components published in the Federal Register on September 9, 1999 (64 FR 48988).

*Definition of AFA Entity and the Concept of Affiliation*

The proposed rule would establish a definition for ''AFA entity'' that would be used to determine compliance with the 17.5 percent pollock excessive harvesting share limit and the 30 percent pollock excessive processing limit, and would be used for establishing crab processing sideboard limits. An ''AFA entity'' would be defined as a group of affiliated individuals, corporations, or other business concerns that harvest or process pollock in the BSAI directed pollock fishery.

*Definition of ''Affiliation''*

The concept of ''affiliation'' is central to the definition of ''AFA entity.'' Simply stated, ''affiliation'' means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10 percent or greater interest in the other, exerts 10 percent or greater control over the other, or has the power to exert 10 percent or greater control over the other; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts 10 percent or greater control over both, or has the power to exert 10 percent or greater control over both. Ownership and control are two overlapping concepts that may arise through a wide variety of relationships between two or more individuals, corporations, or other concerns. The following forms of affiliation are included in the proposed rule.

*Affiliation through ownership.* Affiliation would arise between two or more individuals, corporations, or other concerns if one individual, corporation, or other concern holds a 10 percent or greater direct or indirect interest in another, or a third party holds a 10 percent or greater direct or indirect interest in both. An indirect interest is one that passes through one or more intermediate entities. NMFS is proposing a multiplicative rule to measure levels of indirect interest. Under this multiplicative rule, an entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

*Affiliation through shared assets and/or liabilities.* Affiliation would arise if two or more individuals, corporations, or other concerns have 10 percent or greater shared assets and/or liabilities.

*Affiliation through stock ownership.* Affiliation would arise if an individual, corporation, or other business concern directly or indirectly owns or controls, or has the power to control, 10 percent or more of the voting stock of a second corporation or other business concern.

*Affiliation through management control.* Affiliation would arise if an individual, corporation, or other business concern has the right to direct the business of a second corporation or business concern; or limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of a second corporation or business concern.

*Affiliation through cooperative agreements.* Affiliation would arise if an individual, corporation, or other business concern (1) has the power to control a fishery cooperative through 10 percent ownership or control over a majority of the voting rights of the cooperative, (2) has the power to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or (3) has the power to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instances the individual, corporation, or other entity in question would be deemed to have 10 percent or greater control over all member vessels of the cooperative.

*Affiliation through control over operations and manning.* Affiliation would arise if an individual, corporation, or other business concern has the power to direct the operation or manning of a vessel or processor. In such instances, the individual, corporation, or other business concern in question would be deemed to have 10 percent or greater control over the vessel or processor;

*Potential for multiple affiliations.* Under this definition of affiliation, an individual or corporation could be affiliated with more than one AFA entity. This could occur, for example, if two different AFA entities have partial ownership in a single fishing vessel or processor. In such instances, any fishing or processing activity by a vessel or processor that is affiliated with more than one AFA entity would count against the excessive harvesting or processing share limits of both AFA entities simultaneously. However, the two parent entities would not necessarily be considered to be affiliated and, therefore, part of a single entity unless they are directly affiliated with each other.

**Extension of Inshore/Offshore Regime in the GOA**

Amendment 61 to the FMP for groundfish of the GOA also would extend the expiration date for inshore/offshore allocations of GOA pollock and Pacific cod until December 31, 2004. The Council elected to extend the GOA inshore/offshore expiration date so that BSAI inshore/offshore allocations under the AFA and GOA inshore/offshore allocations would expire on the same date and could be reevaluated at the same time. Extensive background information on GOA inshore/offshore allocations is contained in the EA/RIR/FRFA prepared for Amendment 51/51, the most recent inshore/offshore amendments for the BSAI and GOA. Both EA/RIR/FRFA documents are available from the Council (see *ADDRESSES*).

**Changes to Definitions**

*Added Definitions.* Under the proposed rule, the following new definitions would be added to describe vessels and processors eligible to participate in the BSAI pollock fishery under the AFA: ''AFA catcher/

processor,'' ''AFA catcher vessel,'' ''AFA inshore processor,'' ''AFA mothership,'' ''Designated primary processor,'' ''Listed AFA catcher/processor,'' ''Official AFA record,'' ''Restricted AFA inshore processor,'' ''Stationary floating processor,'' ''Unlisted AFA catcher/processor,'' and ''Unrestricted AFA inshore processor.'' A definition of ''Designated primary processor'' would be added to describe the processor to which an inshore fishery cooperative will deliver at least 90 percent of its BSAI pollock. A definition for ''Official AFA record'' would be added to describe the relevant catch histories of all potentially qualifying vessels in the BSAI pollock fisheries. The definition for ''Stationary floating processor'' would be added to define a vessel of the United States operating solely as a mothership in Alaska State waters that remains anchored or otherwise remains stationary while processing groundfish harvested in the GOA or BSAI.

*Revised Definitions.* In the GOA, the inshore/offshore definitions would be revised to remove reference to the BSAI.

Removed Definitions. The definitions for ''Inshore component in the BSAI'' and ''Offshore component in the BSAI'' would be removed because the previous inshore/offshore regime for pollock in the BSAI has been superseded by the AFA.

**Classification**

At this time, NMFS has not determined that the FMP amendments that this rule would implement are consistent with the national standards of the Magnuson-Stevens Act, the AFA, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an initial regulatory flexibility analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from the Council (see **ADDRESSES**). The IRFA describes in detail the reasons why this action is being proposed, namely to fulfill the statutory requirements of the AFA as outlined under **SUPPLEMENTARY INFORMATION** and AFA-Background information. The IRFA describes the objectives and legal basis for the proposed rule. With regard to commercial fishing vessels operating in the directed pollock fishery in the BSAI, the AFA provides the legal basis for taking actions to achieve the objective of reducing excessive fishing capacity and establishes regulatory conditions that could foster operational efficiencies in this fishery (Division C, Title II of Public Law 105–277), including cooperative formation and development of sideboard measures. Mitigation of potential adverse impacts to non-AFA fishermen and processors is mandated by the AFA.

The IRFA contains a description of and an estimate of the number of small entities to which the proposed rule would apply. The IRFA concluded that none of the catcher/processors, motherships and inshore processors affected by this proposed rule are small entities. All of the inshore and mothership processors participating in the BSAI pollock fishery are subsidiaries or close affiliates of corporations with more than 500 employees worldwide, and exceed the criterion for small entities. In addition, all 21 AFA catcher/processors have estimated annual gross revenues in excess of the $3 million small entity criterion for fish harvesting operations. Therefore, none of the catcher/processors, motherships, or inshore processors in the BSAI pollock fishery appear to meet the RFA criteria for small entities.

With respect to the catcher vessel fleet, NMFS expects that approximately 120 catcher boats will be eligible to harvest BSAI pollock under this rule (7 in the offshore delivery sector, 92 in the inshore sector, 7 in the mothership sector, and 14 which are eligible in both the inshore and mothership sectors). Ownership information presented in the IRFA indicates that, of the 92 catcher boats that operated exclusively or partly in the inshore sector, the available ownership data identify 26 vessels owned, in whole or in part, by inshore processors. These 26 vessels may be considered to be affiliated with their respective inshore processor owners and cannot be considered small entities because none of the inshore processors in the BSAI pollock fishery, themselves, are small entities for RFA purposes. An additional 5 catcher boats have been identified as closely affiliated with an inshore floating processor. These 5 catcher boats, taken together with their affiliated processor, exceed the $3 million criterion for fish harvesting operations and are, therefore, not believed to be small entities.

Furthermore, an additional 20 catcher boats have ownership affiliations with other catcher boats or catcher processors. The gross annual receipts of each of these groups of affiliated catcher boats is believed to exceed the $3 million criterion for small entities, when all their fisheries earnings are taken as a whole. The remaining 40 catcher boats operating exclusively or partly in the inshore sector are believed to be small entities.

Twenty-eight catcher boats operated in the offshore sector exclusively (e.g., delivering to catcher/processors and motherships), while 22 operated in both inshore and offshore sectors for a total of 50 offshore catcher boats. Of the combined offshore catcher boat sector, 13 have ownership affiliations with large inshore or offshore processors and, therefore, do not meet the $3 million criterion for small entities. An additional 13 catcher boats have ownership affiliations with other vessels or operations that, taken together with their affiliated entities, are believed to exceed the $3 million gross receipts criterion for small entities. The remaining 24 catcher boats operating exclusively or partly in the offshore sector are believed to qualify as ''small entities'' (and are among the same 120 total vessels described earlier).

The IRFA further concluded that the formation of inshore fishery cooperatives among predetermined groups of catcher vessels and a corresponding inshore processor will create distinct sets of entities, large and small, and their potential for inter-related economic effects resulting from such affiliation. In the context of an RFA analysis, a fish harvesting concern is a small entity if it has annual receipts not in excess of $3 million or it is not dominant in its field (defined in 13 CFR part 121, Standard Industrial Code categorizations). An independent catcher vessel operating in the ''open access'' or non-cooperative directed pollock fishery would typically meet that criteria. However, under SBA regulations for determining entity size, businesses that are affiliated with each other through joint-venture or cooperative arrangements are not considered ''independent'' and the affiliated businesses must be taken as a whole when determining entity size. In the case of AFA inshore cooperatives, the $3 million criterion will be exceeded for every inshore cooperative meaning that once independent catcher vessels join a cooperative, they can no longer be considered a small business concern for RFA purposes.

Despite the fact that catcher vessels will lose their small entity size status upon entry into cooperatives, the IRFA nonetheless examined the economic consequences of cooperative formation on independent catcher vessels. Approximately 43 small entities, including 40 independent catcher vessels delivering to inshore processors and three neighboring communities, would be expected to be directly

impacted by the establishment of AFA cooperatives. The significance of these impacts on small independent catcher vessel businesses will depend primarily on the contractual relationship between such vessels, and their delivery processor as moderated by their collective cooperative agreement and cooperative by-laws. The IRFA concluded that if conventional cooperative motives exist between processor and catcher vessel business members as to foster a mutually beneficial economic relationship, this cooperative action would not be expected to significantly impact a substantial number of these small entities. Indeed, the action would be a net gain for cooperative members and their neighboring communities. Conversely, if the processor associated with the cooperative decides to exploit its position as the sole purchaser of pollock from cooperative co-members that operate as catcher vessels, then it would be highly probable that a substantial number of small entities would be significantly impacted by this action implementing such fishery cooperatives as authorized under AFA. Until empirical data become available, likely after cooperatives have been in operation for 2 or more years, these questions cannot be definitively addressed.

At its June 2000 meeting in Portland, OR, the Council considered and postponed action on a proposal from independent fishermen, known as the ''Dooley-Hall'' proposal, that would have allowed catcher vessel owners to switch cooperatives from year-to-year without needing to spend a year in the open access fishery to qualify for the new cooperative. Independent fishermen made this proposal to reduce negative economic impacts of this action on their sector of small entities. The IRFA concluded that the economic implications of the Dooley-Hall alternative on independent catcher vessels would be positive. It would also allow them to both retain the exclusive harvesting privilege associated with their cooperative's collective pollock allocation as well as provide for their ability to accept the highest exvessel price for such pollock landings as offered by an eligible inshore processor.

The IRFA concluded that potentially significant economic and institutional efficiencies could be further achieved if inshore catcher vessel operators were allowed to establish cooperatives comprised of memberships which they choose themselves. This is in contrast to the proposed inshore AFA cooperative structure requiring cooperative membership strictly as a function of historical landings to a given processor. Establishment of more efficient long-term cooperative relationships would exist among members if they are based on commonly shared objectives as well as on economic efficiencies of scale created by business affiliation decisions. The IRFA concluded that sales to a specific processor is a less than optimal index of commonality in operational objectives among a sub-set of inshore catcher vessels. The long-term viability of cooperatives has traditionally proven most successful when they are naturally organized among members who share commitment and loyalty based on their inherent commonalities such as business focus, institutional structure, operational philosophy, geographic relationship, or cultural orientation. The IRFA concluded that such factors should be given due consideration when managers seek to foster the development of inshore pollock fishery cooperatives that will realize long-term benefits to both the fishery participants specifically, and to the Nation in general.

The proposed AFA cooperative structure does not allow a catcher vessel to change its cooperative affiliation from year to year while maintaining cooperative membership. To change cooperative membership (and exvessel buyer affiliation), the catcher vessel must fish in the open-access fishery for 1 year. For this open-access year, the AFA does not allow the vessel to retain its harvest privilege of pollock ''quota share''. It must compete for its share of pollock in the race-for-fish scenario of the open-access fishery. Should the vessel owner choose to join an AFA cooperative the following year and sell to the cooperative's designated inshore processor, the harvest privilege for the catcher vessel would be reauthorized. This open-access transition year requirement creates economic and resource inefficiencies associated with the catcher vessel's harvest allocation amount. This same amount of pollock would probably be harvested over a shorter time period in the open-access fishery than if harvested under a cooperative arrangement. As a result, open-access pollock harvests would generally yield lower recovery rates and create conditions for less than optimal market prices due to the surge in supply. Furthermore, per unit operating costs would likely be higher for the open-access operation than what could be expected under a more flexible inshore cooperative structure. The transition year constraint imposed by the AFA on inshore catcher vessel owners who seek to shift their vessel's membership between AFA cooperatives, will create the potential for more, rather than less, inefficiency in the inshore component of the BSAI directed pollock fishery.

To further explore the effects of inshore cooperatives on independent catcher vessels, the Council supplemented the IRFA by contracting with experts in the fields of economics and industrial organization from the University of Washington to prepare a supplemental analysis. This supplemental analysis examined the economic and policy issues associated with the formation of catcher vessel cooperatives and included analysis of three alternatives to the proposed structure for inshore cooperatives and is incorporated into the EIS/RIR/IRFA as an appendix.

The supplemental analysis concluded that an independent catcher vessel is likely to be worse off if inshore cooperatives form and the vessel chooses to remain independent. Under the most plausible scenario, per-vessel share of the remaining TAC allocated on open-access or non-cooperative fishing would be much lower than in the absence of cooperatives. Catcher vessels with large cooperative catch histories would be most likely to join cooperatives in order to preserve this catch history while vessels with little or no catch history during the qualifying years would have less incentive to join cooperatives. Therefore, if inshore cooperatives form, the vessels choosing not to join cooperatives will likely be faced with increased competition for a smaller portion of the TAC.

The supplemental analysis also noted that the presence of processor-owned vessels in a cooperative could have a negative effect on independent vessels if processors are able to exert undue influence over the cooperative by virtue of their ownership of member vessels. Therefore, the analysis concluded that independent catcher vessels likely will be adversely affected by the AFA's provisions for cooperatives. However, the supplemental analysis also noted that, to the extent that the cooperatives are implemented, the race for fish will abate. The resulting rationalization will increase both the total rents in the fishery and the effective amount of capacity in harvesting and processing.

The IRFA (and supplemental analysis) considered three alternatives that would mitigate adverse effects of this rule to small entities. The analysis concluded that under the Dooley-Hall proposal cited previously, independent catcher vessels would be better off, and processors worse off than under the AFA provisions in this proposed rule.

Another alternative would supersede paragraph 210(b)(6) of the AFA to raise the 10 percent limit on the amount of pollock that a cooperative could deliver to a processor other than its designated processor. Raising this limit would facilitate rationalization under the AFA. Whether it would reduce the probability of adverse economic effects on independent catcher vessels would depend in part on whether they could exercise the transfer option without hindrance from processors. The third alternative would supersede paragraph 210(b)(3) of the AFA by eliminating the qualification requirement for cooperative membership, so that a catcher vessel could change processors without having to spend a year fishing in the open access pollock fishery.

Finally, the IRFA examined the impacts of catcher vessel sideboard measures on small entities, and examined the effects of this proposed rule on small vessels excluded from the pollock fishery under the AFA. With respect to the effects of catcher vessel sideboards on AFA catcher vessels, the IRFA examined a range of alternatives that would mitigate adverse effects on small entities, especially small catcher vessels that may have little pollock catch history in the BSAI and would therefore receive little benefit under the AFA. The Council recommended, and this rule contains, an exemption from BSAI Pacific cod and GOA groundfish sideboards for catcher vessels that have less than 1700 mt average annual pollock harvests in the BSAI from 1995–1997. The intent of this alternative is to eliminate the impact of sideboards on AFA catcher vessels that have not traditionally focused the bulk of their effort in BSAI pollock, and that are more dependent on GOA groundfish fisheries.

This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by OMB under control numbers 0648–0393, 0648–0401, and 0648–0425.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person will be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The estimated response times shown include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. The estimated time for the operator to complete the AFA catcher vessel permit application is 2 hours; the estimated time for an operator of an AFA mothership or manager of an inshore processor to complete the AFA mothership and inshore processor permit application is 2 hours; the estimated time for a cooperative representative to complete the AFA inshore cooperative permit application is 2 hours; the estimated time for an operator to complete the AFA permit application for a replacement vessel is 30 minutes; the estimated time for a manager to complete the shoreside processor electronic logbook is 30 minutes; the estimated time for a manager to electronically submit the shoreside processor electronic logbook report is 5 minutes; the estimated time for an operator to complete the at-sea scale inspection request is 2 minutes; the estimated time for an operator to retain the at-sea scale inspection request is 1 minute; the estimated time for an operator to complete the at-sea scale test report is 45 minutes; the estimated time for an operator to print the record of haul weight is 5 minutes; the estimated time for an operator to retain a scale audit trail print-out is 3 minutes; the estimated time for an operator to complete the observer sampling station inspection request is 2 minutes; the estimated time for an operator of a mothership or catcher/processor to electronically submit the weekly production report is 5 minutes; the estimated time for a cooperative representative to complete a catcher vessel cooperative pollock catch report is 5 minutes; the estimated time for a cooperative representative to submit a copy of the cooperative contract is 5 minutes; the estimated time for a cooperative representative to complete a annual written report from each AFA cooperative is 8 hours.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and to OIRA, OMB (see **ADDRESSES**).

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

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 1, 2001

**William T. Hogarth**

*Assistant Administrator for Fisheries,National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57.

2. In § 679.1, paragraph (k) is revised to read as follows:

### § 679.1 Purpose and scope.

* * * * *

(k)*American Fisheries Act measures.* Regulations in this part were developed by NMFS and the Council under the Magnuson-Stevens Act and American Fisheries Act (AFA) to govern commercial fishing for BSAI pollock according to the requirements of the AFA.This part also governs payment and collection of the loan, under the AFA, the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all those persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

3. In § 679.2, the definitions of ''Appointed agent for service of process (applicable through December 31, 2001)''''Designated cooperative representative (applicable through December 31, 2001),'' ''Directed fishing'' paragraph (3), ''Inshore component in the GOA,'' and ''Offshore component of the GOA,'' are removed; definitions of ''ADF&G processor code,'' ''AFA catcher/processor,'' ''AFA catcher vessel,'' ''AFA crab processing facility,'' ''AFA entity,'' ''AFA inshore processor,'' ''AFA mothership,'' ''Affiliation for the purpose of defining AFA entities,'' ''Appointed agent for service of process,'' ''Designated cooperative representative,'' ''Designated primary processor,'' ''Listed AFA catcher/processor,'' ''Official AFA record,'' ''Restricted AFA inshore processor,'' ''Stationary floating processor,'' ''Unlisted AFA catcher/processor,'' '' and Unrestricted AFA inshore processor,'' are added in alphabetical order, and under the

definition of ''Directed fishing,'' paragraph (5) is redesignated as paragraph (3), and paragraph (4) is revised to read as follows:

**§ 679.2 Definitions.**

* * * * *

*ADF&G processor code* means State of Alaska Department of Fish & Game (ADF&G) Intent to operate processor license number (example: F12345).

*AFA catcher/processor* means a catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2).

*AFA catcher vessel* means a catcher vessel permitted to harvest BSAI pollock under § 679.4(l)(3).

*AFA crab processing facility* means a processing plant, catcher/processor, mothership, floating processor or any other operation that processes any FMP species of BSAI crab, and that is affiliated with an AFA entity that processes pollock harvested by a catcher vessel cooperative operating in the inshore or mothership sectors of the BSAI pollock fishery.

*AFA entity* means a group of affiliated individuals, corporations, or other business concerns that harvest or process pollock in the BSAI directed pollock fishery.

*AFA inshore processor* means a shoreside processor or stationary floating processor permitted to process BSAI pollock under § 679.4(l)(5).

*AFA mothership* means a mothership permitted to process BSAI pollock under § 679.4(l)(5).

* * * * *

*Affiliation for the purpose of defining AFA entities* means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10 percent or greater interest in another, exerts 10 percent or greater control over another, or has the power to exert 10 percent or greater control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts 10 percent or greater control over both, or has the power to exert 10 percent or greater control over both.

(1) *What is 10-percent or greater ownership*? For the purpose of determining affiliation, 10-percent or greater ownership is deemed to exist if any of the following relationships are present:

(i) *Direct or indirect interest*. If an individual, corporation, or other business concern directly or indirectly owns 10 percent or greater interest in a second corporation or other business concern, or

(ii) *Shared assets and liabilities*. If 10 percent or more of the assets and/or liabilities of one corporation or other business concern are the same as those of a second corporation or other business concern.

(2) *What is an indirect interest*? An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *What is 10-percent or greater control*? For the purpose of determining affiliation, 10-percent or greater control is deemed to exist if an individual, corporation, or other business concern has any of the following relationships or forms of control over another individual, corporation, or other business concern:

(i) Controls 10 percent or more of the voting stock of another corporation or business concern;

(ii) Has the authority to direct the business of the entity which owns the fishing vessel or processor. The authority to ''direct the business of the entity'' does not include the right to simply participate in the direction of the business activities of an entity which owns a fishing vessel or processor;

(iii) Has the authority in the ordinary course of business to limit the actions of or to replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of an entity that holds 10 percent or greater interest in a fishing vessel or processor. Standard rights of minority shareholders to restrict the actions of the entity are not included in this definition of control provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all the assets, to enter into a different business, to contract with the major investors or their affiliates or to guarantee the obligations of majority investors or their affiliates;

(iv) Has the authority to direct the transfer, operation or manning of a fishing vessel or processor. The authority to ''direct the transfer, operation, or manning'' of a vessel or processor does not include the right to simply participate in such activities;

(v) Has the authority to control the management of or to be a controlling factor in the entity that holds 10 percent or greater interest in a fishing vessel or processor;

(vi) Absorbs all the costs and normal business risks associated with ownership and operation of a fishing vessel or processor;

(vii) Has the responsibility to procure insurance on the fishing vessel or processor, or assumes any liability in excess of insurance coverage;

(viii) Has the authority to control a fishery cooperative through 10 percent or greater ownership or control over a majority of the voting members of the cooperative, has the authority to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or has the authority to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instance, all members of the cooperative are considered affiliates of the individual, corporation, or other business concern that exerts 10 percent or greater control over the cooperative;

(ix) Has the ability through any other means whatsoever to control the entity that holds 10 percent or greater interest in a fishing vessel or processor.

* * * * *

*Appointed agent for service of process* means an agent appointed by the members of an inshore catcher vessel cooperative to serve on behalf of the cooperative. The appointed agent for service of process may be the owner of a vessel listed as a member of the cooperative or a registered agent. If at any time the cooperative's appointed agent for service of process becomes unable to accept service, then the cooperative members are required to notify the Regional Administrator of a substitute appointed agent.

* * * * *

*Designated cooperative representative* means an individual who is designated by the members of an inshore pollock cooperative to fulfill requirements on behalf of the cooperative including, but not limited to, the signing of cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports.

*Designated primary processor* means an AFA inshore processor that is designated by an inshore pollock cooperative as the AFA inshore processor to which the cooperative will deliver at least 90 percent of its BSAI pollock allocation during the year in which the AFA inshore cooperative fishing permit is in effect.

* * * * *

*Directed fishing* means * * *

* * * * *

(4) With respect to the harvest of groundfish by AFA catcher/processors

and AFA catcher vessels, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under § 679.20.

* * * * *

*Listed AFA catcher/processor* means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(i).

* * * * *

*Official AFA record* means the information prepared by the Regional Administrator about vessels and processors that were used to participate in the BSAI pollock fisheries during the qualifying periods specified in § 679.4(l). Information in the official AFA record includes vessel ownership information, documented harvests made from vessels during AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during AFA qualifying periods. The official AFA record is presumed to be correct for the purpose of determining eligibility for AFA permits. An applicant for an AFA permit will have the burden of proving correct any information submitted in an application that is inconsistent with the official record.

* * * * *

*Restricted AFA inshore processor* means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(B).

* * * * *

*Stationary floating processor* means a vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI.

* * * * *

*Unlisted AFA catcher/processor* means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(ii).

*Unrestricted AFA inshore processor* means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(A).

* * * * *

4. In § 679.4 paragraph (k)(9) is added and paragraph (l) is revised to read as follows:

**§ 679.4 Permits.**

* * * * *

(k) * * *

(9) *Restrictions on licenses earned on AFA catcher vessels and listed AFA catcher/processors*. No person may use an LLP license that was derived in whole or in part from the qualifying fishing history of an AFA catcher vessel or a listed AFA catcher/processor to fish for groundfish or crab on a non-AFA catcher vessel or non-AFA catcher/processor. NMFS will identify all such licenses affected by this restriction and inform the holders of such licenses of this restriction through a restriction printed on the face of the license.

(l) *AFA permits*—(1) *General*—(i) *Applicability*. In addition to any other permit and licensing requirements set out in this part, any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI must have a valid AFA permit onboard the vessel or at the facility location at all times while non-CDQ pollock is being harvested or processed. An AFA permit does not exempt a vessel operator, vessel, or processor from any other applicable permit or licensing requirement required under this part or in other state or Federal regulations.

(ii) *Duration*. Except as provided in paragraphs (l)(5)(v)(B)(*3*) and (l)(6)(iii) of this section, and unless suspended or revoked, AFA vessel and processor permits are valid until December 31, 2004.

(iii) *Application for permit*. NMFS will issue AFA vessel and processor permits to the current owner(s) of a qualifying vessel or processor if the owner(s) submits to the Regional Administrator a completed AFA permit application that is subsequently approved.

(iv) *Amended permits*. AFA vessel and processor permits may not be used on or transferred to any vessel or processor that is not listed on the permit. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. An application to amend an AFA permit must include the following:

(A) The original AFA permit to be amended, and

(B) A completed AFA permit application signed by the new vessel or processor owner.

(v) *Application deadline*. All AFA vessel and processor permits must be received by the Regional Administrator by [*INSERT DATE 60 DAYS AFTER EFFECTIVE DATE OF FINAL RULE*]. AFA vessel and processor permits received after [*INSERT DATE 60 DAYS AFTER EFFECTIVE DATE OF FINAL RULE*] will not be accepted by the Regional Administrator and will be permanently ineligible to receive the requested AFA permit.

(2) *AFA catcher/processor permits*—(i) *Listed AFA catcher/processors*. NMFS will issue to an owner of a catcher/processor a listed AFA catcher/processor permit if the catcher/processor is one of the following (as listed in AFA paragraphs 208(e)(1) through (20)):

AMERICAN DYNASTY (USCG documentation number 951307);

KATIE ANN (USCG documentation number 518441);

AMERICAN TRIUMPH (USCG documentation number 646737);

NORTHERN EAGLE (USCG documentation number 506694);

NORTHERN HAWK (USCG documentation number 643771);

NORTHERN JAEGER (USCG documentation number 521069);

OCEAN ROVER (USCG documentation number 552100);

ALASKA OCEAN (USCG documentation number 637856);

ENDURANCE (USCG documentation number 592206);

AMERICAN ENTERPRISE (USCG documentation number 594803);

ISLAND ENTERPRISE (USCG documentation number 610290);

KODIAK ENTERPRISE (USCG documentation number 579450);

SEATTLE ENTERPRISE (USCG documentation number 904767);

US ENTERPRISE (USCG documentation number 921112);

ARCTIC STORM (USCG documentation number 903511);

ARCTIC FJORD (USCG documentation number 940866);

NORTHERN GLACIER (USCG documentation number 663457);

PACIFIC GLACIER (USCG documentation number 933627);

HIGHLAND LIGHT (USCG documentation number 577044);

STARBOUND (USCG documentation number 944658).

(ii) *Unlisted AFA catcher/processors*. NMFS will issue to an owner of a catcher/processor an unlisted AFA catcher/processor permit if the catcher/processor is not listed in § 679.4(l)(2)(i) and is determined by the Regional Administrator to have harvested more than 2,000 mt of pollock in the 1997 BSAI directed pollock fishery.

(iii) *Application for AFA catcher/processor permit*. A completed application for an AFA catcher/processor permit must contain:

(A) *Vessel information*. The vessel name, ADF&G registration number, USCG documentation number, vessel telephone number (if any), gross tons, shaft horsepower, and registered length (in feet);

(B) *Ownership information*—(*1*) *Managing owner*. The managing owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(*2*) *Identification of affiliated persons*. The name, registered address, and percentage of ownership of all persons that are ''affiliated'' with the vessel by virtue of holding 10 percent or greater direct or indirect ownership or control of the vessel as defined in § 679.2.

(C) *Certification of notary and applicant*. Managing owners signature(s), date of signature, printed name(s), and the notary stamp, signature, and date commission expires of a notary public.

(3) *AFA catcher vessel permits*. NMFS will issue to an owner of a catcher vessel an AFA catcher vessel permit containing sector endorsements and sideboard restrictions upon receipt and approval of a completed application for an AFA catcher vessel permit.

(i) *Qualifying criteria*—(A) *Catcher vessels delivering to catcher/processors*. NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to a catcher/processor if the catcher vessel:

(*1*) Is one of the following (as listed in paragraphs 208(b)(1) through (7) of the AFA):

AMERICAN CHALLENGER (USCG documentation number 633219);

FORUM STAR (USCG documentation number 925863);

MUIR MILACH (USCG documentation number 611524);

NEAHKAHNIE (USCG documentation number 599534);

OCEAN HARVESTER (USCG documentation number 549892);

SEA STORM (USCG documentation number 628959);

TRACY ANNE (USCG documentation number 904859); or

(*2*) Is not listed in § 679.4(l)(3)(i)(A)(*1*) and is determined by the Regional Administrator to have delivered at least 250 mt and at least 75 percent of the pollock it harvested in the directed BSAI pollock fishery in 1997 to catcher/processors for processing by the offshore component.

(B) *Catcher vessels delivering to AFA motherships*. NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA mothership if the catcher vessel:

(*1*) Is one of the following (as listed in paragraphs 208(c)(1) through (19) and in subsection 211(e) of the AFA):

ALEUTIAN CHALLENGER (USCG documentation number 603820);

ALYESKA (USCG documentation number 560237);

AMBER DAWN (USCG documentation number 529425);

AMERICAN BEAUTY (USCG documentation number 613847);

CALIFORNIA HORIZON (USCG documentation number 590758);

MAR-GUN (USCG documentation number 525608);

MARGARET LYN (USCG documentation number 615563);

MARK I (USCG documentation number 509552);

MISTY DAWN (USCG documentation number 926647);

NORDIC FURY (USCG documentation number 542651);

OCEAN LEADER (USCG documentation number 561518);

OCEANIC (USCG documentation number 602279);

PACIFIC ALLIANCE (USCG documentation number 612084);

PACIFIC CHALLENGER (USCG documentation number 518937);

PACIFIC FURY (USCG documentation number 561934);

PAPADO II (USCG documentation number 536161);

TRAVELER (USCG documentation number 929356);

VESTERAALEN (USCG documentation number 611642);

WESTERN DAWN (USCG documentation number 524423);

LISA MARIE (USCG documentation number 1038717); or

(*2*) Is not listed in § 679.4(l)(3)(i)(B)(*1*) and is determined by the Regional Administrator to have delivered at least 250 mt of pollock for processing by motherships in the offshore component of the BSAI directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998, and is not eligible for an endorsement to deliver pollock to catcher/processors under § 679.4(l)(3)(i)(A).

(C) *Catcher vessels delivering to AFA inshore processors*. NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA inshore processor if the catcher vessel is:

(*1*) One of the following vessels authorized by statute to engage in directed fishing for inshore sector pollock:

(*i*) HAZEL LORRAINE (USCG documentation number 592211),

(*ii*) LISA MARIE (USCG documentation number 1038717),

(*iii*) PROVIDIAN (USCG documentation number 1062183); or

(*2*) Is not listed in § 679.4(l)(3)(i)(A), and:

(*i*) Is determined by the Regional Administrator to have delivered at least 250 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998; or

(*ii*) Is less than 60 ft (18.1 meters) LOA and is determined by the Regional Administrator to have delivered at least 40 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998.

(ii) *Application for AFA catcher vessel permit*. A completed application for an AFA catcher vessel permit must contain:

(A) *Vessel information*. The vessel name, ADF&G registration number, USCG documentation number, vessel telephone number (if any), gross tons, shaft horsepower, and registered length (in feet);

(B) *Ownership information*—(*1*) *Managing owner*. The managing owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(*2*) *Identification of affiliated persons*. The name, registered address, and percentage of ownership of all persons that are ''affiliated'' with the vessel by virtue of holding 10% or greater direct or indirect ownership or control of the vessel as defined in § 679.2.

(C) *Vessel AFA qualification information*. AFA catcher vessel permit endorsement(s) requested; and

(D) *Vessel crab activity information required for crab sideboard endorsements*. The owner of an AFA catcher vessel wishing to participate in any BSAI king or Tanner crab fishery must apply for a crab sideboard endorsement authorizing the catcher vessel to retain that crab species. An AFA catcher vessel permit may be endorsed for a crab species if the owner requests a crab sideboard endorsement and provides supporting documentation that the catcher vessel made the required legal landing(s) of a crab species and if the Regional Administrator verifies the legal landing(s) according to the following criteria:

(*1*) *Bristol Bay Red King Crab (BBRKC)*. A legal landing of any BSAI king or Tanner crab species in 1996, 1997, or on or before February 7, 1998. A BBRKC sideboard endorsement also authorizes a vessel to retain Bairdi Tanner crab harvested during the duration of a BBRKC opening if the vessel is otherwise authorized to retain

Bairdi Tanner crab while fishing for BBRKC under state and Federal regulations.

(*2*) *St. Matthew Island blue king crab.* A legal landing of St. Matthew Island blue king crab in that fishery in 1995, 1996, or 1997.

(*3*) *Pribilof Island red and blue king crab.* A legal landing of Pribilof Island blue or red king crab in that fishery in 1995, 1996, or 1997.

(*4*)*Aleutian Islands (Adak) brown king crab.* A legal landing of Aleutian Islands brown king crab during in each of the 1997/1998 and 1998/1999 fishing seasons.

(*5*) *Aleutian Islands (Adak) red king crab.* A legal landing of Aleutian Islands red king crab in each of the 1995/1996 and 1998/1999 fishing seasons.

(*6*) *Opilio Tanner crab.* A legal landing of Chionoecetes(C.) opilio Tanner crab in each of 4 or more years from 1988 to 1997.

(*7*) *Bairdi Tanner crab.* A legal landing of C. bairdi Tanner crab in 1995 or 1996.

(*8*)*Exemption to crab harvesting sideboards.* An AFA catcher vessel permit may be endorsed with an exemption from all crab harvesting sideboards if the owner requests such exemption and provides supporting documentation that the catcher vessel made a legal landing of crab in every BBRKC, Opilio Tanner crab, and Bairdi Tanner crab fishery opening from 1991 to 1997 and if the Regional Administrator verifies the legal landings.

(E) *Vessel exemptions from AFA catcher vessel groundfish sideboard directed fishing closures.* An AFA catcher vessel permit may contain exemptions from certain groundfish sideboard directed fishing closures. If a vessel owner is requesting an exemption from groundfish sideboard-directed closures, the application must provide supporting documentation that the catcher vessel qualifies for the exemption based on the criteria set out below. The Regional Administrator will review the vessel's catch history according to the following criteria:

(*1*) *BSAI Pacific cod.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the BSAI Pacific cod fishery, the catcher vessel must: Be less than 125 ft (38.1 m) LOA, have landed a combined total of less than 5,100 mt of BSAI pollock in the BSAI directed pollock fishery from 1995 through 1997, and have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod from 1995 through 1997.

(*2*) *GOA groundfish species.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the GOA groundfish fisheries, the catcher vessel must: Be less than 125 ft (38.1 m) LOA, have landed a combined total of less than 5,100 mt of BSAI pollock in the BSAI directed pollock fishery from 1995 through 1997, and made 40 or more legal landings of GOA groundfish in a directed fishery for GOA groundfish from 1995 through 1997.

(F) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and the notary stamp, signature, and date commission expires of a notary public.

(4) AFA mothership permits. NMFS will issue to an owner of a mothership an AFA mothership permit if the mothership is one of the following (as listed in paragraphs 208(d)(1) through (3) of the AFA):

EXCELLENCE (USCG documentation number 967502);

GOLDEN ALASKA (USCG documentation number 651041); and

OCEAN PHOENIX (USCG documentation number 296779).

(i) *Cooperative processing endorsement.* The owner of an AFA mothership who wishes to process pollock harvested by a fishery cooperative formed under § 679.61 must apply for and receive a cooperative processing endorsement on the vessel's AFA mothership permit.

(ii) *Application for AFA mothership permit.* A completed application for an AFA mothership permit must contain:

(A) *Type of permit requested.* Type of processor and whether requesting an AFA cooperative endorsement.

(B) *Vessel information.* The mothership name, ADF&G processor code, USCG documentation number, Federal fisheries permit number, gross tons, shaft horsepower, and registered length (in feet).

(C) *Ownership information*—(*1*) *Managing owner.* The managing owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(*2*) *Identification of affiliated persons.* The name, registered address, and percentage of ownership of all persons that are ''affiliated'' with the vessel by virtue of holding 10 percent or greater direct or indirect ownership or control of the vessel as defined in § 679.2.

(D) *AFA crab facility ownership information.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must list the name, type of facility, ADF&G processor code, and percentage of ownership or control of each AFA crab facility that is affiliated with the AFA entity that owns or controls the AFA mothership;

(E) *Data confidentiality waiver.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must contain a valid signed data confidentiality waiver for each crab processing facility listed on the permit application that authorizes public release of the 1995–1998 total processing history of each BSAI king and Tanner crab species, and

(F) Certification of notary and applicant. Owner signature(s), date of signature, printed name(s), and the notary stamp, signature, and date commission expires of a notary public.

(5)*AFA inshore processor permits.* NMFS will issue to an owner of a shoreside processor or stationary floating processor an AFA inshore processor permit upon receipt and approval of a completed application.

(i) *Qualifying criteria*—(A) *Unrestricted processors.* NMFS will issue an unrestricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the processor facility processed annually more than 2,000 mt round-weight of pollock harvested in the inshore component of the directed BSAI pollock fishery during each of 1996 and 1997.

(B) *Restricted processors.* NMFS will issue a restricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the facility processed pollock harvested in the inshore component of the directed BSAI pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round-weight of BSAI pollock during each of 1996 and 1997.

(ii) *Cooperative processing endorsement.* The owner of an AFA inshore processor who wishes to process pollock harvested by a fishery cooperative formed under § 679.62 must apply for and receive a cooperative processing endorsement on the AFA inshore processor permit.

(iii) *Single geographic location requirement.* An AFA inshore processor permit authorizes the processing of pollock harvested in the BSAI directed pollock fishery only in a single geographic location during a fishing year. For the purpose of this paragraph, single geographic location means:

(A) *Shoreside processors.* The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the

BSAI directed pollock fishery during a fishing year;

(B) *Stationary floating processors.* A location within Alaska state waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(iv) Application for permit. A completed application for an AFA inshore processor permit must contain:

(A) *Type of permit requested.* Type of processor, whether requesting an AFA cooperative endorsement, and amount of BSAI pollock processed in 1996 and 1997;

(B) *Stationary floating processor information.* The vessel name, Federal processor code, ADF&G processor code, USCG documentation number, Federal processor permit number, gross tons, shaft horsepower, registered length (in feet), and business telephone number, business FAX number, and business E-mail address used onboard the vessel.

(C) *Shoreside processor information.* The processor name, Federal processor permit number, ADF&G processor code, business street address; business telephone and FAX numbers, and business e-mail address.

(D) *Ownership information*—(*1*) *Managing owner.* The managing owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(*2*) *Identification of affiliated persons.* The name, registered address, and percentage of ownership of all persons that are ''affiliated'' with the processor by virtue of holding 10 percent or greater direct or indirect ownership or control of the processor as defined in § 679.2.

(E) *AFA crab facility ownership information.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA inshore processor application must list the name, type of facility, ADF&G processor code, and list the percentage of ownership or control and describe the nature of the interest in each AFA crab facility that is affiliated with the AFA entity that owns or controls the AFA inshore processor;

(F) *Data confidentiality waiver.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must contain a valid signed data confidentiality waiver for each crab processing facility listed on the permit application that authorizes public release of the 1995–1998 total processing history of each BSAI king and Tanner crab species by that facility, and

(G) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and notary stamp and signature of a notary public.

(v) *Authorization of new AFA inshore processors.* If the Council recommends and NMFS approves a combined BSAI pollock TAC that exceeds 1,274,900 mt for any fishing year, or in the event of the actual total loss or constructive loss of an existing AFA inshore processor, the Council may recommend that an additional inshore processor (or processors) be issued AFA inshore processing permits.

(A) *Timing of Council action.* At any time prior to or during a fishing year in which the combined BSAI pollock TAC exceeds 1,274,900, or at any time after the actual total loss or constructive total loss of an existing AFA inshore processor, the Council may, after opportunity for public comment, recommend that an additional inshore processor (or processors) be issued AFA inshore processor permits.

(B) *Required elements in Council recommendation.* Any recommendation from the Council to add an additional inshore processor (or processors) must include the following information:

(*1*) *Identification of inshore processor(s).* The Council recommendation must identify by name the inshore processor(s) to which AFA inshore processor permits would be issued;

(*2*)*Type of AFA inshore processor permit(s).* The Council recommendation must specify whether the identified inshore processor(s) should be issued a restricted or unrestricted AFA inshore processor permit.

(*3*) *Duration of permit.* The Council recommendation must specify the recommended duration of the permit. Permit duration may be for any duration from a single fishing season to the duration of section 208 of the AFA. Alternatively, the Council may recommend that the permit be valid as long as the conditions that led to the permit remain in effect. For example, the Council could recommend that a permit issued under this paragraph remain valid as long as the combined annual BSAI pollock TAC remains above 1,274,900 mt. or a lost AFA inshore processor is not reconstructed.

(*4*) *Council procedures.* The Council may establish procedures for the review and approval of requests to authorize additional AFA inshore processors. However, such procedures must be consistent with the Magnuson-Stevens Act, the national standards, and other applicable law.

(*5*) *Action by NMFS.* Upon receipt of a recommendation from the Council to authorize additional AFA inshore processors, NMFS may issue an AFA inshore processor permit to the identified inshore processor(s) of the type and duration recommended by the Council, provided the Council has met the requirements identified in paragraphs (l)(5)(v)(B)(*1*) through (*4*) of the same section, and the owner(s) of the identified inshore processor has submitted a completed application for an AFA inshore processor permit that is subsequently approved.

(6) *Inshore cooperative fishing permits*—(i) *General.* NMFS will issue to an inshore catcher vessel cooperative formed pursuant to(15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor an AFA inshore cooperative fishing permit upon receipt and approval of a completed application.

(ii) *Application for permit.* A completed application for an inshore cooperative fishing permit must contain the following information:

(A) *Cooperative contact information.* Name of cooperative; name of cooperative representative; and business mailing address, business telephone number, business fax number, and business e-mail address of the cooperative;

(B) *Designated cooperative processor.* The name and physical location of AFA Inshore Processor who is designated in the cooperative contract as the processor to whom the cooperative has agreed to deliver at least 90 percent of its BSAI pollock catch. If the processor is a stationary floating processor, the single geographic location (latitude and longitude) at which the processor will process BSAI pollock under the AFA; and Federal processor permit number of the AFA inshore processor;

(C)*Cooperative contract information.* A copy of the cooperative contract and a written certification that:

(*1*) The contract was signed by the owners of at least 80 percent of the qualified catcher vessels;

(*2*) The cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor; and

(*3*) Each catcher vessel in the cooperative is a qualified catcher vessel and is otherwise eligible to fish for groundfish in the BSAI, has an AFA catcher vessel permit with an inshore endorsement, and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI;

(D) *Qualified catcher vessels.* For the purpose of this paragraph, a catcher vessel is a qualified catcher vessel if it meets the following permit and landing requirements:

(*1*) *Permit requirements*—(*i*) *AFA permit.* The vessel must have a valid AFA catcher vessel permit with an inshore endorsement;

(*ii*) *LLP permit.* The vessel must be named on a valid LLP permit authorizing the vessel to engage in trawling for pollock in the Bering Sea subarea and in the Aleutian Islands subarea if the vessel's Aleutian Islands subarea fishing history is used to generate a cooperative allocation for the Aleutian Islands subarea; and

(*iii*)*Permit sanctions.* The vessel has no permit sanctions that otherwise make it ineligible to engage in fishing for pollock in the BSAI.

(*2*) *Landing requirements*—(*i*) *Active vessels.* The vessel delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect; or

(*ii*) *Inactive vessels.* The vessel delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the last year in which the vessel delivered BSAI pollock harvested in the BSAI directed pollock fishery to an AFA inshore processor.

(E) *Business review letter.* A copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and of any response to such request;

(F) *Vessel information.* For each cooperative catcher vessel member: Vessel name, ADF&G registration number, USCG documentation number, AFA permit number; and

(G) *Certification of notary and applicant.* Signature and printed name of cooperative representative, date of signature, and notary stamp or seal, signature and date commission expires of a notary public.

(iii) *Duration of cooperative fishing permits.* Inshore cooperative fishing permits are valid for 1 calendar year.

(iv) *Addition or subtraction of vessels.* The cooperative representative must submit a new application to add or subtract a catcher vessel to or from an inshore cooperative fishing permit to the Regional Administrator prior to the application deadline. Upon approval by the Regional Administrator, NMFS will issue an amended cooperative fishing permit.

(v) *Application deadline.* An inshore cooperative fishing permit application and any subsequent contract amendments that add or subtract vessels must be received by the Regional Administrator by December 1 prior to the year in which the inshore cooperative fishing permit will be in effect. Inshore cooperative fishing permit applications or amendments to inshore fishing cooperative permits received after December 1 will not be accepted by the Regional Administrator for the subsequent fishing year.

(7) *Replacement vessels.* (i) In the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may replace such vessel with a replacement vessel. The replacement vessel will be eligible in the same manner as the original vessel after submission and approval of an application for an AFA replacement vessel, provided that:

(A) Such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

(B) The replacement vessel was built in the United States and, if ever rebuilt, rebuilt in the United States;

(C) The USCG certificate of documentation with fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(D) If the eligible vessel is greater than 165 ft (50.3 meters (m)) in registered length, or more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(E) If the eligible vessel is less than 165 ft (50.3 m) in registered length, fewer than 750 gross registered tons, and has engines incapable of producing more than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons, or shaft horsepower of the eligible vessel; and

(F) If the replacement vessel is already an AFA catcher vessel, the inshore cooperative catch history of both vessels may be merged in the replacement vessel for the purpose of determining inshore cooperative allocations except that a catcher vessel with an endorsement to deliver pollock to AFA catcher/processors may not be simultaneously endorsed to deliver pollock to AFA motherships or AFA inshore processors.

(G) *Replacement of replacement vessels.* In the event that a permitted replacement vessel is lost under the circumstances described in paragraph (l)(7)(i)(A) of this section, the replacement vessel may be replaced according to the provisions of this paragraph (l) (7). However, the maximum length, tonnage, and horsepower of any subsequent replacement vessels are determined by the length, tonnage, and horsepower of the originally qualifying AFA vessel and not by those of any subsequent replacement vessels.

(ii) *Application for permit.* A completed application for an AFA permit for a replacement vessel must contain:

(A) Identification of lost AFA eligible vessel.

(*1*) Name, ADF&G vessel registration number, USCG documentation number, AFA permit number, gross tons, shaft horsepower, and registered length from USCG documentation of the vessel;

(*2*) Name(s), tax ID number(s), business mailing address(es), telephone number(s), FAX number(s), and e-mail address(es) of owner(s);

(*3*) The last year in which the vessel harvested or processed pollock in a BSAI directed pollock fishery; and

(*4*) Description of how the vessel was lost or destroyed. Attach a USCG Form 2692 or insurance papers to verify the claim.

(B) Identification of replacement vessel.

(*1*) Name, ADF&G vessel registration number, USCG documentation number, gross tons, shaft horsepower, registered length, net tons for USCG documentation, length overall (in feet), and Federal Fisheries Permit number of the vessel;

(*2*) Name(s), tax ID number(s), business mailing address(es), business telephone number(s), business FAX number(s), and business e-mail address(es) of the owner(s);

(*3*) YES or NO indication of whether the vessel was built in the United States; and

(*4*) YES or NO indication of whether the vessel has ever been rebuilt, and if so whether it was rebuilt in the United States.

(C) Certification of applicant and notary. Signature(s) and printed name(s)

of owner(s) and date of signature; signature, notary stamp or seal of notary public, and date notary commission expires.

(8) *Application evaluations and appeals*—(i) *Initial evaluation*. The Regional Administrator will evaluate an application for an AFA fishing or processing permit submitted in accordance with paragraph (l)(1) of this section and compare all claims in the application with the information in the official AFA record. Claims in the application that are consistent with information in the official AFA record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless supported by evidence, will not be accepted. An applicant who submits claims based on inconsistent information or fails to submit the information specified in the application for an AFA permit will be provided a single 60–day evidentiary period to submit the specified information, submit evidence to verify the applicant's inconsistent claims, or submit a revised application with claims consistent with information in the official AFA record. An applicant who submits claims that are inconsistent with information in the official AFA record has the burden of proving that the submitted claims are correct.

(ii) *Additional information and evidence*. The Regional Administrator will evaluate the additional information or evidence submitted to support an applicant's claims within the 60–day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official AFA record will be amended and the information will be used in determining whether the applicant is eligible for an AFA permit. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination that the applicant did not meet the burden of proof to change information in the official AFA record.

(iii) *Sixty-day evidentiary period*. The Regional Administrator will specify by letter a 60–day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official AFA record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit required information will have 60 days to provide that information. An applicant will be limited to one 60–day evidentiary period. Additional information or evidence, or a revised application received after the 60–day evidentiary period specified in the letter has expired will not be considered for the purposes of the initial administrative determination.

(iv) *Initial administrative determinations (IAD)*. The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60–day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official AFA record is correct or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60–day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will receive an interim AFA permit that authorizes a person to participate in an AFA pollock fishery and will have the specific endorsements and designations based on the claims in his or her application. An interim AFA permit based on claims contrary to the Official Record will expire upon final agency action.

(v) *Effect of cooperative allocation appeals*. An AFA inshore cooperative may appeal the pollock quota share issued to the cooperative under § 679.62; however, final agency action on the appeal must occur prior to December 1 for the results of the appeal to take effect during the subsequent fishing year.

5. In § 679.7, paragraph (k) is revised to read as follows:

**§ 679.7 Prohibitions.**

* * * * *

(k) *Prohibitions specific to the AFA*. It is unlawful for any person to do any of the following:

(1) *Catcher/processors*—(i) *Permit requirement*. Use a catcher/processor to engage in directed fishing for non-CDQ BSAI pollock without a valid AFA catcher/processor permit on board the vessel.

(ii) *Fishing in the GOA*. Use a listed AFA catcher/processor to harvest any species of fish in the GOA.

(iii) *Processing BSAI crab*. Use a listed AFA catcher/processor to process any species of crab harvested in the BSAI.

(iv) *Processing GOA groundfish*. Use a listed AFA catcher/processor to process any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

(v) *Directed fishing after a sideboard closure*. Use a listed AFA catcher/processor to engage in directed fishing for a groundfish species or species group in the BSAI after the Regional Administrator has issued an AFA catcher/processor sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv) or § 679.21(e)(3)(v).

(vi) *Catch weighing*—(A) *Listed AFA catcher/processors*. Process any groundfish that was not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch may not be sorted before it is weighed and each haul must be sampled by an observer for species composition.

(B) *Unlisted AFA catcher processors*. Process groundfish harvested in the BSAI pollock fishery that was not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch may not be sorted before it is weighed and each haul must be sampled by an observer for species composition.

(vii) *Observer sampling station*.—(A) *Listed AFA catcher/processors*. Process any groundfish without an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report must be on board at all times when an observer sampling station is required.

(B) *Unlisted AFA catcher/processors*. Process groundfish harvested in the BSAI pollock fishery without an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report must be on board at all times when an observer sampling station is required.

(viii) *VMS*. Use a listed or unlisted AFA catcher processor to participate in any groundfish fishery or process any groundfish harvested in the BSAI or GOA unless that vessel carries a NMFS-

approved Vessel Management System (VMS) transmitter and complies with the requirements described at § 679.28(f).

(2) *Motherships*—(i) *Permit requirement*. Use a mothership to process pollock harvested by an AFA catcher vessel with an inshore or mothership sector endorsement in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA permit on board the vessel.

(ii) *Cooperative processing endorsement*. Use an AFA mothership to process groundfish harvested by a fishery cooperative formed under § 679.61 unless the AFA mothership permit contains a valid cooperative pollock processing endorsement.

(iii) *Catch weighing*. Process any groundfish that was not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch may not be sorted before it is weighed and each delivery must be sampled by an observer for species composition.

(iv) *Observer sampling station*. Process any groundfish without an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report must be on board at all times when an observer sampling station is required.

(3) *AFA inshore processors*—(i) *Permit requirement*. Use a shoreside processor or stationary floating processor to process groundfish harvested in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA inshore processor permit at the facility or vessel.

(ii) *Cooperative processing endorsement*. Use a shoreside processor or stationary floating processor required to have an AFA inshore processor permit to process groundfish harvested by a fishery cooperative formed under § 679.62 unless the AFA inshore processor permit contains a valid cooperative pollock processing endorsement.

(iii) *Restricted AFA inshore processors*. Use an AFA inshore processor with a restricted AFA inshore processor permit to process more than 2,000 mt round weight of non-CDQ pollock harvested in the BSAI directed pollock fishery in any one year.

(iv) *Single geographic location requirement*. Use an AFA inshore processor to process pollock harvested in the BSAI directed pollock fishery at a location other than the single geographic location defined as follows:

(A) *Shoreside processors*. The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year;

(B) *Stationary floating processors*. A location within Alaska State waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(v) *Catch weighing*. Process any groundfish that was not weighed on a scale approved by the State of Alaska and meeting the requirements specified in § 679.28(c).

(vi) *Catch monitoring and control plan (CMCP)*. Take deliveries or process groundfish delivered by a vessel engaged in directed fishing for BSAI pollock without following an approved CMCP as described at § 679.28(g). A copy of the CMCP must be maintained on the premises and made available to authorized officers or NMFS-authorized personnel upon request.

(4) *Catcher vessels*—(i) *Permit requirement*. Use a catcher vessel to engage in directed fishing for non-CDQ BSAI pollock for delivery to any AFA processing sector (catcher/processor, mothership, or inshore) unless the vessel has a valid AFA catcher vessel permit on board that contains an endorsement for the sector of the BSAI pollock fishery in which the vessel is participating.

(ii) *Crab sideboard endorsement*. Use an AFA catcher vessel to retain any BSAI crab species unless the catcher vessel's AFA permit contains a crab sideboard endorsement for that crab species.

(iii) Groundfish sideboard closures. Use an AFA catcher vessel to engage in directed fishing for a groundfish species or species group in the BSAI or GOA after the Regional Administrator has issued an AFA catcher vessel sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv), § 679.21(d)(8) or § 679.21(e)(3)(iv), if the vessel's AFA permit does not contain a sideboard exemption for that groundfish species or species group.

(iv) *VMS*. Participate in any groundfish fishery or transport any groundfish without carrying a NMFS-approved Vessel Management System (VMS) transmitter and complying with the requirements of § 679.28(f).

(5) *AFA inshore fishery cooperatives*—(i) *Quota overages*. Use an AFA catcher vessel listed on an AFA inshore cooperative fishing permit to harvest non-CDQ pollock in excess of the cooperative's annual allocation of pollock specified under § 679.62.

(ii) *Liability*. An inshore pollock cooperative is prohibited from exceeding its annual allocation of BSAI pollock TAC. The owners and operators of all vessels listed on the cooperative fishing permit are responsible for ensuring that all cooperative members comply with all applicable regulations contained in part 679. The owners and operators will be held jointly and severally liable for overages of an annual cooperative allocation, and for any other violation of these regulations committed by a member vessel of a cooperative.

(6) *Excessive harvesting shares*. It is unlawful for an AFA entity to harvest, through a fishery cooperative or otherwise, an amount of BSAI pollock that exceeds the 17.5 percent excessive share limit specified under § 679.20(a)(5)(i)(A)(*6*). The owners and operators of the individual vessels comprising the AFA entity that harvests BSAI pollock will be held jointly and severally liable for exceeding the excessive harvesting share limit.

(7) *Excessive processing shares*. It is unlawful for an AFA entity to process an amount of BSAI pollock that exceeds the 30 percent excessive share limit specified under § 679.20(a)(5)(i)(A)(*7*). The owners and operators of the individual processors comprising the AFA entity that processes BSAI pollock will be held jointly and severally liable for exceeding the excessive processing share limit.

(8) *Crab processing limits*. It is unlawful for an AFA entity that processes pollock harvested in the BSAI directed pollock fishery by an AFA inshore or AFA mothership catcher vessel cooperative to use an AFA crab facility to process crab in excess of the crab processing sideboard cap established for that AFA inshore or mothership entity under § 679.66. The owners and operators of the individual entities comprising the AFA inshore or mothership entity will be held jointly and severally liable for any overages of the AFA inshore or mothership entity's crab processing sideboard cap.

6. In § 679.20, paragraph (a)(5)(ii) is redesignated as paragraph (a)(5)(iii), a new paragraph (a)(5)(ii) is added, and paragraphs (a)(5)(i)(A), (a)(6), (b)(1)(i), (c)(4), and (d)(1)(iv) are revised to read as follows:

**§ 679.20 General limitations.**

* * * * *

(a) * * *

(5) * * *

(i) *Bering Sea Subarea*—(A) *AFA allocations (applicable through December 31, 2004)*. The pollock TAC apportioned to the Bering Sea Subarea, after subtraction of the 10 percent CDQ

reserve under § 679.31 (a), will be allocated as follows:

(*1*) *Incidental catch allowance*. The Regional Administrator will establish an incidental catch allowance to account for projected incidental catch of pollock by vessels engaged in directed fishing for groundfish other than pollock and by vessels harvesting non-pollock CDQ. If during a fishing year, the Regional Administrator determines that the incidental catch allowance has been set too high or too low, he/she may issue inseason notification in the Federal Register that reallocates pollock to/from the directed pollock fisheries to/from the incidental catch allowance according to the proportions established under paragraph (a)(5)(i)(A) of this section.

(*2*) *Directed fishing allowance*. The remaining pollock TAC apportioned to the Bering Sea subarea is established as a directed fishing allowance.

(*3*) *Inshore sector allocation*. Fifty percent of the directed fishing allowance will be allocated to AFA catcher vessels harvesting pollock for processing by AFA inshore processors. The inshore allocation will be further divided into separate allocations for cooperative and open access fishing.

(*i*) *Inshore cooperatives*. The inshore cooperative allocation will be equal to the aggregate annual allocations of all AFA inshore catcher vessel cooperatives that receive pollock allocations under § 679.62(e).

(*ii*) *Inshore open access*. The inshore open access allocation will equal that portion of the inshore sector allocation that is not allocated to inshore cooperatives.

(*4*) *Catcher/processor sector allocation*. Forty percent of the directed fishing allowance will be allocated to AFA catcher/processors and AFA catcher vessels delivering to catcher processors.

(*i*) *Catcher/processor and catcher vessel cooperatives*. If by December 1 of the year prior to the year when fishing under the cooperative agreement will begin, NMFS receives filing of cooperative contracts and/or an inter-cooperative agreement entered into by listed AFA catcher/processors and all AFA catcher vessels with catcher/processor sector endorsements, and the Regional Administrator determines that such contracts provide for the distribution of harvest between catcher/processors and catcher vessels in a manner agreed to by all members of the catcher/processor sector cooperative(s), then NMFS will not subdivide the catcher/processor sector allocation between catcher vessels and catcher/processors.

(*ii*) *Catcher vessel allocation*. If such contract is not filed with NMFS by December 1 of the preceding year, then NMFS will allocate 91.5 percent of the catcher/processor sector allocation to AFA catcher/processors engaged in directed fishing for pollock and 8.5 percent of the catcher/processor sector allocation to AFA catcher vessels delivering to catcher/processors.

(*iii*) *Unlisted AFA catcher processors*. Unlisted AFA catcher/processors will be limited to harvesting not more than 0.5 percent of catcher/processor sector allocation.

(*5*) *Mothership sector allocation*. Ten percent of the directed fishing allowance will be allocated to AFA catcher vessels harvesting pollock for processing by AFA motherships.

(*6*) *Excessive harvesting share*. NMFS will establish an excessive harvesting share limit equal to 17.5 percent of the directed fishing allowance. The excessive harvesting share limit will be published in the annual harvest specifications.

(*7*) *Excessive processing share*. NMFS will establish an excessive processing share limit equal to 30.0 percent of the directed fishing allowance. The excessive processing share limit will be published in the annual harvest specifications.

(ii) *Aleutian Islands Subarea and Bogoslof District.* If the Aleutian Islands subarea and/or Bogoslof District is open to directed fishing for pollock by regulation, then the pollock TAC for those areas will be allocated according to the same procedure established for the Bering Sea subarea at paragraph (a)(5)(i) of this section. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation then the entire TAC for those areas will be allocated as an incidental catch allowance.

(6) *GOA inshore/offshore allocations*—(i) *GOA pollock*. The apportionment of pollock in all GOA regulatory areas and for each season allowance described in paragraph (a)(5)(iii) of this section will be allocated entirely to vessels harvesting pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

(ii) *GOA Pacific cod.* The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component in the GOA and 10 percent to vessels harvesting Pacific cod for processing by the offshore component in the GOA.

* * * * *

(b) *Reserves*—(1) *BSAI*—(i) *General*. Fifteen percent of the BSAI TAC for each target species and the ''other species'' category, except pollock and the hook-and-line and pot gear allocation for sablefish, is automatically placed in a reserve, and the remaining 85 percent of the TAC is apportioned for each target species and the ''other species'' category, except pollock and the hook-and-line and pot gear allocation for sablefish.

* * * * *

(c) * * *

(4) *AFA and inshore/offshore allocations*—(i) *BSAI pollock.* The annual harvest specifications will specify the allocation of pollock for processing by each AFA industry component in the BSAI, and any seasonal allowances thereof, as authorized under paragraph (a)(5) of this section.

(ii) *GOA pollock and Pacific cod.* The annual harvest specifications will specify the allocation of GOA pollock and GOA Pacific cod for processing by the inshore component in the GOA and the offshore component in the GOA, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(6) of this section.

* * * * *

(d) * * *

(1) * * *

(iv) *AFA sideboard limitations* (applicable through December 31, 2004)--(A) If the Regional Administrator determines that any sideboard harvest limit for a group of AFA vessels established under § 679.64 has been or will be reached, the Regional Administrator may establish a sideboard directed fishing allowance for the species or species group applicable only to the identified group of AFA vessels.

(B) In establishing a directed fishing allowance under paragraph (d)(1)(iv)(A) of this section, the Regional Administrator will consider the amount of the sideboard limit established for a group of AFA vessels under § 679.64 that will be taken as incidental catch by those vessels in directed fishing for other species.

(C) If the Regional Administrator determines that a sideboard amount is insufficient to support a directed fishery for that species then the Regional Administrator may set the sideboard directed fishing allowance at zero for that species or species group.

* * * * *

7. In § 679.21, paragraphs (d)(8) and (e)(3)(v) are revised to read as follows:

**§ 679.21 Prohibited species bycatch management.**

* * * * *

(d) * * *

(8) *AFA halibut bycatch limitations* (applicable through December 31, 2004). Halibut bycatch limits for AFA catcher vessels will be established according to the procedure and formula set out in § 679.64(b) and managed through directed fishing closures for AFA catcher vessels in the groundfish fisheries to which the halibut bycatch limit applies.

* * * * *

(e) * * *

(3) * * *

(v) *AFA prohibited species catch limitations* (applicable through December 31, 2004). Halibut and crab PSC limits for AFA catcher/processors and AFA catcher vessels will be established according to the procedures and formulas set out in § 679.64 (a) and (b) and managed through directed fishing closures for AFA catcher/processors and AFA catcher vessels in the groundfish fisheries for which the PSC limit applies.

* * * * *

8. In § 679.28, paragraph (c) is revised, and a new paragraph (g) is added to read as follows:

**§ 679.28 Equipment and operational requirements.**

* * * * *

(c)*Scales approved by the State of Alaska.* Scale requirements in this paragraph are in addition to those requirements set forth by the State of Alaska, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State of Alaska or its territorial sea. Scales used to weigh groundfish catch that are also required to be approved by the State of Alaska under Alaska Statute 45.75 must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid State of Alaska sticker indicating that the scale was inspected and approved within the previous 12 months.

(2) Visibility. The owner and manager of the processor must ensure that the scale and scale display are visible simultaneously to the observer. Observers, NMFS personnel, or an authorized officer must be allowed to observe the weighing of fish on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights.* (i) The owner and manager of the processor must ensure that printouts of the scale weight of each haul, set, or delivery are made available to observers, NMFS personnel, or an authorized officer at the time printouts are generated and thereafter upon request for the duration of the fishing year. The owner and manager must retain scale printouts as records as specified in § 679.5(a)(13).

(ii) A scale identified in a CMCP (see paragraph g of this section) must produce a printed record for each delivery, or portion of a delivery, weighed on that scale. If approved by NMFS as part of the CMCP, scales not designed for automatic bulk weighing may be exempted from part or all of the printed record requirements. The printed record must include:

(A) The processor name;

(B) The weight of each load in the weighing cycle;

(C) The total weight of fish in each delivery, or portion of the delivery that was weighed on that scale;

(D) The total cumulative weight of all fish or other material weighed on the scale since the last annual inspection;

(E) The date and time the information is printed;

(F) The name and ADF&G number of the vessel making the delivery. This information may be written on the scale printout in pen by the scale operator at the time of delivery.

(4) *Inseason scale testing.* Scales identified in an approved CMCP (see paragraph (g) of this section) must be tested by plant personnel in accordance with the CMCP when testing is requested by NMFS-staff or NMFS-authorized personnel. Plant personnel must be given no less than 20 minutes notice that a scale is to be tested and no testing may be requested if a scale test has been requested and the scale has been found to be accurate within the last 24 hours.

(i) *How does a scale pass an inseason test?* To pass an inseason test, NMFS staff or NMFS-authorized personnel will verify that the scale display and printed information are clear and easily read under all conditions of normal operation, weight values are visible on the display until the value is printed, and the scale does not exceed the maximum permissible errors specified below:

| Test Load in Scale Divisions | Maximum Error in Scale Divisions |
|---|---|
| 0–500 | 1 |
| 501–2,000 | 2 |
| 2,001–4,000 | 3 |
| >4000 | 5 |

(ii) How much weight is required to do an inseason scale test? Scales must be tested with the amount and type of weight specified below.

| Scale Type | Capacity | Certified Test Weights | Other test material |
|---|---|---|---|
| Automatic Hopper | 0 to 150 kg (0 to 300 lb) | Minimum Weighment or 10 kg (20 lb), whichever is greater<br>Maximum | Minimum<br>Maximum |
| Automatic Hopper | >150 kg (300 lb) | Minimum Weighment or 10 kg (20 lb), whichever is greater<br>25 percent of Maximum or 150 kg (300 lb), whichever is greater.. | Minimum<br>Maximum |
| Platform or flatbed | 0 to 150 kg (0 to 300 lb) | 10 kg (20 lb)<br>Midpoint<br>Maximum | Not Acceptable |
| Platform or flatbed | >150 kg (300 lb) | 10 kg (20 lb)<br>12.5 percent of Maximum or 75 kg (150 lb), whichever is greater.<br>25 percent of Maximum or 150 kg (300 lb), whichever is greater.. | Not Acceptable<br>50 percent of Maximum or 75 kg (150 lb), whichever is greater<br>75 percent of Maximum or 150 kg (300 lb), whichever is greater |
| Observer sampling scale | ≥50 kg | 10 kg<br>25 kg<br>50 kg | Not Acceptable |

(iii) *Certified test weights.* Each test weight used for inseason scale testing must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be certified by a National Institute of Standards and Technology approved metrology laboratory every 2 years. An observer platform scale must be provided with sufficient test weights to test the scale at 10 kg, 25 kg and 50 kg. All other scales identified in an approved CMCP must be provided with sufficient test weights to test the scale as described in this paragraph (c)(4). Test weights for observer platform scales must be denominated in kilograms. Test weights for other scales may be denominated in pounds.

(iv) *Other test material.* When permitted in paragraph (c)(4)(ii) of this section, a scale may be tested with test material other than certified test weights. This material must be weighed on an accurate observer platform scale at the time of each use.

(v) *Observer sampling scales.* Platform scales used as observer sampling scales must:

(A) Have a capacity of no less than 50 kg;

(B) Have a division size of no less than 5 g;

(C) Indicate weight in kilograms and decimal subdivisions; and

(D) Be accurate within plus or minus 0.5 percent when tested at 10 kg, 25 kg and 50 kg by NMFS staff or a NMFS-certified observer.

* * * * *

(g) *Catch monitoring and control plan (CMCP).* A CMCP is a plan submitted by the owner and manager of a processing plant, and approved by NMFS, detailing how the processing plant will meet the catch monitoring and control standards detailed in paragraph (g)(6) of this section.

(1) *Who is required to prepare and submit a CMCP for approval?* The owner and manager of an AFA inshore processor is required to prepare and submit a CMCP which must be approved by NMFS prior to the receipt of pollock harvested in the BSAI directed pollock fishery.

(2) *How is a CMCP approved by NMFS?* NMFS will approve a CMCP if it meets all the performance standards specified in paragraph (g)(6) of this section. The processor must be inspected by NMFS prior to approval of the CMCP to ensure that the processor conforms to the elements addressed in the CMCP. NMFS will complete its review of the CMCP within 14 working days of receiving a complete CMCP and conducting a CMCP inspection. If NMFS disapproves a CMCP, the plant owner or manager may resubmit a revised CMCP or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43.

(3) *How is a CMCP inspection arranged?* The time and place of a CMCP inspection may be arranged by submitting a written request for an inspection to NMFS, Alaska Region. NMFS will schedule an inspection within 10 working days after NMFS receives a complete application for an inspection. The inspection request must include:

(i) Name and signature of the person submitting the application and the date of the application;

(ii) Address, telephone number, fax number, and email address (if available) of the person submitting the application;

(iii) A proposed CMCP detailing how the processor will meet each of the performance standards in paragraph (g)(6) of this section.

(4) *For how long is a CMCP approved?* NMFS will approve a CMCP for 1 year if it meets the performance standards specified in paragraph (e)(2) of this section. An owner or manager must notify NMFS in writing if changes are made in plant operations or layout that do not conform to the CMCP.

(5) *How do I make changes to my CMCP?* An owner and manager may change an approved CMCP by submitting a CMCP addendum to NMFS. NMFS will approve the modified CMCP if it continues to meet the performance standards specified in paragraph (e)(2) of this section. Depending on the nature and magnitude of the change requested, NMFS may require a CMCP inspection as described in paragraph (g)(3) of this section. A CMCP addendum must contain:

(i) Name and signature of the person submitting the addendum;

(ii) Address, telephone number, fax number and email address (if available) of the person submitting the addendum;

(iii) A complete description of the proposed CMCP change.

(6) *Catch monitoring and control standards*—(i) Catch sorting and weighing requirements. All groundfish delivered to the plant must be sorted and weighed by species. The CMCP must detail the amount and location of space for sorting catch, the number of staff assigned to catch sorting and the maximum rate that catch will flow through the sorting area.

(ii) *Scales used for weighing groundfish.* The CMCP must identify by serial number each scale used to weigh groundfish and describe the rational for its use.

(iii) *Scale testing procedures.* Scales identified in the CMCP must be accurate within the limits specified in paragraph (c)(4)(i) of this section. For each scale identified in the CMCP a testing plan must be developed that:

(A) Describes the procedure the plant will use to test the scale;

(B) Lists the test weights and equipment required to test the scale;

(C) Lists where the test weights and equipment will be stored;

(D) Lists the plant personnel responsible for conducting the scale testing.

(iv) *Printed record.* The owner and manager must ensure that the scale produces a complete and accurate printed record of the weight of each species in a delivery. All of the groundfish in a delivery must be weighed on a scale capable of producing a complete printed record as described in paragraph (c)(3) of this section. However, NMFS may exempt scales not designed for automatic bulk weighing from some or all of the printed record requirements if the CMCP identifies any scale that cannot produce a complete printed record, states how the processor will use the scale, and states how the plant intends to produce a complete record of the total weight of each delivery.

(v) *Delivery point.* Each CMCP must identify a single delivery point. The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. It the catch is pumped from the hold of a catcher vessel or a codend, the delivery point normally will be the location where the pump first discharges the catch. If catch is removed from a vessel by brailing, the delivery point normally will be the bin or belt where the brailer discharges the catch.

(vi) *Observation area.* Each CMCP must designate an observation area. The observation area is a location designated on the CMCP where an individual may monitor the flow of fish during a delivery. The owner and manager must ensure that the observation area meets the following standards:

(A) *Access to the observation area.* The observation area must be freely accessible to NMFS staff or NMFS-authorized personnel at any time a valid CMCP is required.

(B) *Monitoring the flow of fish.* From the observation area, an individual must have an unobstructed view or otherwise be able to monitor the entire flow of fish between the delivery point and a location where all sorting has taken place and each species has been weighed.

(vii) *Observer work station.* Each CMCP must identify and include an observer work station for the exclusive use of NMFS-certified observers. Unless otherwise approved by NMFS, the work station must meet the following criteria:

(A) *Location of observer work station.* The observer work station must be located in an area protected from the weather where the observer has access to unsorted catch.

(B)*Platform scale.* The observer work station must include a platform scale as described in paragraph (c)(4) of this section;

(C) *Proximity to observer work station.* The observer area must be located near the observer work station. The plant liaison must be able to walk between the work station and the observation area in less than 20 seconds without encountering safety hazards.

(D) *Workspace.* The observer work station must include: A working area of at least 4.5 square meters, a table as specified in paragraph (d)(4) of this section, and meet the other requirements as specified in paragraph (d)(6) of this section.

(E) *Lockable cabinet.* The observer work station must include a secure and lockable cabinet or locker of at least 0.5 cubic meters.

(viii) *Communication with observer.* The CMCP must describe what communication equipment such as radios, pagers or cellular phones, is used to facilitate communications within the plant. The plant owner must ensure that the plant manager provides the NMFS-certified observer with the same communications equipment used by plant staff.

(ix) *Plant liaison.* The CMCP must designate a plant liaison. The plant liaison is responsible for:

(A) Orienting new observers to the plant;

(B) Assisting in the resolution of observer concerns;

(C) Informing NMFS if changes must be made to the CMCP.

(x) *Scale drawing of plant.* The CMCP must be accompanied by a scale drawing of the plant showing:

(A) The delivery point;

(B) The observation area;

(C) The observer work station;

(D) The location of each scale used to weigh catch;

(E) Each location where catch is sorted.

9. In § 679.31, paragraph (a) is revised to read as follows:

**§ 679.31 CDQ reserves.**

* * * * *

(a) *Pollock CDQ reserve*—(1) *Bering Sea.* In the annual harvest specifications required by § 679.20(c), 10 percent of the Bering Sea subarea pollock TAC will be allocated to a CDQ reserve.

(2) *Aleutian Islands Subarea and Bogoslof District.* In the annual harvest specifications required by § 679.20(c), 10 percent of the Aleutian Islands subarea and Bogoslof District pollock TAC will be allocated to a CDQ reserve unless the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation then no pollock CDQ reserve will be established for those areas and incidental harvest of pollock by CDQ groups will accrue against the incidental catch allowance for pollock established under § 679.20(a)(5)(i)(A)(*1*).

* * * * *

10. In § 679.32, a new paragraph (c)(3)(vi) is added to read as follows:

**§ 679.32 Groundfish and halibut CDQ catch monitoring.**

* * * * *

(c) * * *

(3) * * *

(vi) *AFA inshore processors.* Take deliveries from a vessel engaged in directed fishing for pollock CDQ without following an approved CMCP as described at § 679.28(g).

* * * * *

11. In § 679.50, paragraph (c)(4)(i) is revised, paragraphs (c)(6) and (d)(6) are redesignated as paragraphs (c)(5) and (d)(5), respectively, and newly redesignated paragraphs (c)(5) and (d)(5) are revised to read as follows:

**§ 679.50 Groundfish Observer Program applicable through December 31, 2002.**

* * * * *

(c) * * *

(4) * * *

(i) *Motherships or catcher/processors using trawl gear* —(A) *Multi-species CDQ fishery.* A mothership or catcher/processor using trawl gear to participate in the multi-species CDQ fishery must have at least two level 2 observers as described at paragraphs (h)(1)(i)(D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead level 2 observer.

(B) *Pollock CDQ fishery.* A mothership or catcher/processor using trawl gear to participate in a directed fishery for pollock CDQ must have at least two NMFS-certified observers aboard the vessel, at least one of whom must be certified as a lead level 2 observer.

* * * * *

(5) *AFA catcher/processors and motherships (applicable through December 31, 2004)* —(i) *Coverage requirement*— (A) *Listed AFA catcher/processors and AFA motherships.* The owner or operator of a listed AFA catcher/processor or AFA mothership must provide at least two NMFS-certified observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction at § 679.50(c)(5)(iii) would otherwise preclude sampling as required under § 679.63(a)(1).

(B) *Unlisted AFA catcher/processors.* The owner or operator of an unlisted AFA catcher/processor must provide at least two NMFS-certified observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or takes deliveries of pollock harvested in the BSAI. At least one observer must be certified as a lead level 2 observer. When an unlisted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving deliveries of pollock harvested in the BSAI, the observer coverage requirements at § 679.50(c)(1)(iv) apply.

(ii) *Observer work load.* The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24–hour period, and, the observer may not sample more than 9 hours in each 24–hour period.

* * * * *

(d) * * *

(5) *AFA inshore processors (applicable through December 31, 2004)*—(i) *Coverage level.* An AFA inshore processor is required to provide a NMFS certified observer for each 12 consecutive hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BSAI. An AFA inshore processor that takes delivery of or processes pollock harvested in the BSAI directed pollock fishery for more than 12 consecutive hours in a calendar day is required to provide two NMFS-certified observers for each such day.

(ii) *Multiple processors.* An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BSAI directed pollock fishery.

(iii) *Observers transferring between vessels and processors.* An observer transferring from an AFA catcher vessel

to an AFA inshore processor may not be assigned to cover the AFA inshore processor until at least 12 hours after offload and sampling of the catcher vessel's delivery is completed.

* * * * *

12. In 50 CFR part 679, Subpart F—American Fisheries Act Management Measures is revised to read as follows:

**Subpart F--American Fisheries Act Management Measures (applicable through December 31, 2004)**

679.60 Authority and related regulations.
679.61 Formation and operation of fishery cooperatives.
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**§ 679.60 Authority and related regulations.**

Regulations under this subpart were developed by the National Marine Fisheries Service and the North Pacific Fishery Management Council to implement the American Fisheries Act (AFA) [Div. C, Title II, Subtitle II, Pub. L. No. 105–277, 112 Stat. 2681 (1998)]. Additional regulations in this part that implement specific provisions of the AFA are set out at § 679.2 Definitions, 679.4 Permits, 679.5 Recordkeeping and reporting, 679.7 Prohibitions, 679.20 General limitations, 679.21 Prohibited species bycatch management, 679.28 Equipment and operational requirements for Catch Weight Measurement, 679.31 CDQ reserves, and 679.50 Groundfish observer program. Regulations developed by the Department of Transportation to implement provisions of the AFA are found at 50 CFR part 356.

**§ 679.61 Formation and operation of fishery cooperatives.**

(a) *Who must comply this section*? Any fishery cooperative formed under section 1 of the Fisherman's Collective Marketing Act 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for BSAI pollock must comply with the provisions of this section.

(b) *Who is responsible for compliance*? The owners and operators of all the member vessels that are signatories to a fishery cooperative are jointly and severally responsible for compliance with the requirements of this section. Each cooperative also must appoint a designated representative and agent for service of process and must ensure that the cooperative's designated representative and agent for service of process comply with the regulations in this part.

(1) *Designated representative*. Any cooperative formed under this section must appoint a designated representative to fulfill regulatory requirements on behalf of the cooperative including, but not limited to, filing of cooperative contracts, filing of annual reports, and in the case of inshore sector catcher vessel cooperatives, signing cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports. The designated representative is the primary contact person for NMFS on issues relating to the operation of the cooperative.

(2) *Agent for service of process*. Any cooperative formed under this section must appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the cooperative. The cooperative must provide the Regional Administrator with the name, address and telephone number of the appointed agent. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative.

(c) *What is the term of service and process for replacing the agent for service of process*? The agent for service of process must be capable of accepting service on behalf of the cooperative until December 31 of the year five years after the calendar year for which the fishery cooperative has filed its intent to operate. The owners and operators of all member vessels of a cooperative are responsible for ensuring that a substitute agent is designated and the Agency is notified of the name, address and telephone number of the substitute agent in the event the previously designated agent is no longer capable of accepting service on behalf of the cooperative or the cooperative members within that 5–year period.

(d) *What is the requirement for annual filing of cooperative contracts?* You must file on an annual basis with the Council and NMFS a signed copy of your fishery cooperative contract, and any material modifications to any such contract, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. The Council and NMFS will make this information available to the public upon request.

(e) *Where must contracts be filed*? You must send a signed copy of your cooperative contract and the required supporting materials to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK; 99501; and to the NMFS Alaska Region. The mailing address for the NMFS Alaska Region is P.O. Box 21668, Juneau, AK, 99802. The street address for delivery by private courier is 709 West 9th St., Suite 401, Juneau, AK 99801.

(f) *What is the deadline for filing*? The contract and supporting materials must be received by NMFS and by the Council at least 30 days prior to the start of any fishing activity conducted under the terms of the contract. In addition, an inshore cooperative that is also applying for an allocation of BSAI pollock under § 679.62 must file its contract, any amendments hereto, and supporting materials no later than December 1 of the year prior to the year in which fishing under the contract will occur.

(g) *What are the required elements in all fishery cooperative contracts*? Any cooperative contract filed under paragraph (b) of this section must:

(1) List of parties to the contract,

(2) List of all vessels and processors that will harvest and process pollock harvested under the cooperative,

(3) Specify the amount or percentage of pollock allocated to each party to the contract, and

(4) Specify a designated representative and agent for service of process.

(5) Include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery which is not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid will result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 *et seq*.).

(h) *What are the required elements in all fishery cooperatives that include AFA catcher vessels*? A cooperative contract that includes catcher vessels must include adequate provisions to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard limit for each BSAI or GOA sideboard species or species group that is issued to the vessel by the cooperative in accordance with the following formula:

(1) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed

the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.64(b) and as announced to the cooperative by the Regional Administrator, or

(2) In the case of two or more cooperatives that have entered into an inter-cooperative agreement, the aggregate individual vessel sideboard limits issued to all member vessels subject to the inter-cooperative agreement must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.64(b) and as announced by the Regional Administrator.

(i) *Annual reporting requirements for fishery cooperatives*. Any fishery cooperative governed by this section must submit preliminary and final annual written reports on fishing activity to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501. The Council will make copies of each report available to the public upon request.

(j) *What are the deadlines for submission*? The preliminary report covering activities through November 1 must be submitted by December 1 of each year. The final report covering activities for an entire calendar year must be submitted by February 1 the following year.

(k)*What information must be included in the annual reports*? The preliminary and final written reports must contain, at a minimum:

(1) The cooperative's allocated catch of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis;

(2) The cooperative's actual retained and discarded catch of pollock, sideboard species, and PSC on an area-by-area and vessel-by-vessel basis;

(3) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and

(4) A description of any actions taken by the cooperative in response to any vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries.

(l) *What is the minimum number of copies and required format*? The minimum number of copies that must be submitted is one. However, cooperatives are welcome and encouraged to submit multiple copies of their annual report to the Council for distribution to the public. At least one copy of each annual report must be submitted to the Council ready for duplication on unbound single-sided 8.5- by 11–inch paper.

**§ 679.62 Inshore sector cooperative allocation program.**

(a) *How will inshore sector cooperative allocations be made*? An inshore catcher vessel cooperative that applies for and receives an AFA inshore cooperative fishing permit under § 679.4(l)(6) will receive a sub-allocation of the annual Bering Sea subarea inshore sector directed fishing allowance. If the Aleutian Islands Subarea is open to directed fishing for pollock then the cooperative also will receive a sub-allocation of the annual Aleutian Islands Subarea inshore sector directed fishing allowance. Each inshore cooperative's annual allocation amount(s) will be determined using the following procedure:

(b) *How will individual vessel catch histories be calculated*? The Regional Administrator will calculate an official AFA inshore cooperative catch history for every inshore-sector endorsed AFA catcher vessel according to the following steps:

(1) *Determination of annual landings*. For each year from 1995 through 1997 the Regional Administrator will determine each vessel's total non-CDQ inshore pollock landings from the Bering Sea Subarea and Aleutian Islands Subarea separately, except for the F/V PROVIDIAN (USCG documentation number 1062183).

(2) *Determination of annual landings for the F/V PROVIDIAN*. For the F/V PROVIDIAN, pursuant to Public Law 106–562, the Regional Administrator will substitute the 1992 through 1994 total Bering Sea subarea and Aleutian Islands subarea pollock non-CDQ inshore landings made by the F/V OCEAN SPRAY (USCG documentation number 517100 for the purpose of determining annual quota share percentage.

(3) *Offshore compensation*. If a catcher vessel made a total of 500 or more mt of landings of non-CDQ Bering Sea Subarea pollock or Aleutian Islands Subarea pollock to catcher/processors or offshore motherships other than the EXCELLENCE (USCG documentation number 967502); GOLDEN ALASKA (USCG documentation number 651041); or OCEAN PHOENIX (USCG documentation number 296779) over the 3–year period from 1995 through 1997, then all non-CDQ offshore pollock landings made by that vessel during from 1995 through 1997 will be added to the vessel's inshore catch history by year and subarea.

(4) *Best two out of three years*. After steps (i) and (ii) are completed, the 2 years with the highest landings will be selected for each subarea and added together to generate the vessel's official AFA inshore cooperative catch history for each subarea. A vessel's best 2 years may be different for the Bering Sea subarea and the Aleutian Islands Subarea.

(c) *How will individual vessel catch histories be converted to annual cooperative quota share percentages*? Each inshore pollock cooperative that applies for and receives an AFA inshore pollock cooperative fishing permit will receive an annual quota share percentage of pollock for each subarea of the BSAI that is equal to the sum of each member vessel's official AFA inshore cooperative catch history for that subarea divided by the sum of the official AFA inshore cooperative catch histories of all inshore-sector endorsed AFA catcher vessels. The cooperative's quota share percentage will be listed on the cooperative's AFA pollock cooperative permit.

(d) *How will annual quota share percentages be converted to annual TAC allocations*? Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of Bering Sea and/or Aleutian Islands pollock that is equal to the cooperative's quota share percentage for that subarea multiplied by the annual inshore pollock allocation for that subarea. Each cooperative's annual pollock TAC allocation may be published in the interim, and final BSAI TAC specifications notices.

(e) *What are the restrictions on fishing under an inshore cooperative fishing permit*? Any cooperative that receives a cooperative fishing permit under § 679.4(l)(6) must comply with the following fishing restrictions. The owners and operators of all the member vessels that are named on an inshore cooperative fishing permit are jointly and severally responsible for compliance.

(f) *What vessels are eligible to fish under an inshore cooperative fishing permit*? Only catcher vessels listed on a cooperative's AFA inshore cooperative fishing permit are permitted to harvest any portion of an inshore cooperative's annual pollock allocation.

(g) *What harvests accrue against the cooperative allocation*? All BSAI inshore pollock harvested by a member vessel while engaging in directed fishing for inshore pollock in the BSAI during the fishing year for which the annual cooperative allocation is in effect will accrue against the cooperative's annual pollock allocation regardless of

whether the pollock was retained or discarded.

(h) *How must cooperative harvests be reported*? Each inshore pollock cooperative must report its BSAI pollock harvest to NMFS on a weekly basis according to the recordkeeping and reporting requirements set out at § 679.5(o).

**§ 679.63 Catch weighing requirements for vessels and processors.**

(a) *What are the requirements for listed AFA catcher/processors and AFA motherships*? (1) *Catch weighing*. All groundfish landed by listed AFA catcher/processors or received by AFA motherships must be weighed on a NMFS-certified scale and made available for sampling by a NMFS certified observer. The owner and operator of a listed AFA catcher/processor or an AFA mothership must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each groundfish haul is weighed separately, and that no sorting of catch takes place prior to weighing.

(2) *Observer sampling station*. The owner and operator of a listed AFA catcher/processor or AFA mothership must provide an observer sampling station as described at § 679.28(d) and must ensure that the vessel operator complies with the observer sampling station requirements described at § 679.28(d) at all times that the vessel harvests groundfish or receives deliveries of groundfish harvested in the BSAI or GOA.

(b) *What are the requirements for unlisted AFA catcher/processors*? The owner or operator of an unlisted AFA catcher/processor must comply with the catch weighing and observer sampling station requirements set out in paragraph (a) of this section at all times the vessel is engaged in directed fishing for pollock in the BSAI.

(c) *What are the requirements for AFA inshore processors*? (1) *Catch weighing*. All groundfish landed by AFA catcher vessels engaged in directed fishing for pollock in the BSAI must be sorted and weighed on a scale approved by the State of Alaska as described in § 679.28(c), and be made available for sampling by a NMFS certified observer. The observer must be allowed to test any scale used to weigh groundfish in order to determine its accuracy.

(2) The plant manager or plant liaison must notify the observer of the offloading schedule for each delivery of BSAI pollock by an AFA catcher vessel at least 1 hour prior to offloading. An observer must monitor each delivery of BSAI pollock from an AFA catcher vessel and be on site the entire time the delivery is being weighed or sorted.

**§ 679.64 Harvesting sideboards limits on other fisheries.**

(a) *Harvesting sideboards for listed AFA catcher/processors*. The Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for non-pollock groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery.

(1) *How will groundfish sideboard limits for AFA listed catcher/processors be calculated*? (i) For each groundfish species or species group in which a TAC is specified for an area or subarea of the BSAI, the Regional Administrator will establish annual AFA catcher/processor harvest limits as follows:

(ii) *Pacific cod*. The Pacific cod harvest limit will be equal to the 1997 aggregate retained catch of Pacific cod by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the amount of Pacific cod caught by trawl catcher/processors in 1997 multiplied by the Pacific cod TAC available for harvest by trawl catcher/processors in the year in which the harvest limit will be in effect.

(2) *Aleutian Islands Pacific ocean perch*. (i) The Aleutian Islands Pacific ocean perch harvest limit will be equal to the 1996 through 1997 aggregate retained catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch catch in 1996 and 1997 multiplied by the Aleutian Islands Pacific ocean perch TAC available for harvest in the year in which the harvest limit will be in effect.

(ii) If the amount of Pacific ocean perch calculated under paragraph (a)(1)(ii)(A) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs of AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for Aleutian Islands Pacific ocean perch by AFA catcher processors and establish the sideboard amount equal to the amount of Aleutian Islands Pacific ocean perch caught by AFA catcher processors incidental to directed fishing for other groundfish species.

(3) *Atka mackerel*. The Atka mackerel harvest limit for each area and season will be equal to:

(i) Bering Sea subarea and Eastern Aleutian Islands, zero;

(ii) Central Aleutian Islands, 11.5 percent of the annual TAC specified for Atka mackerel; and

(iii) Western Aleutian Islands, 20 percent of the annual TAC specified for Atka mackerel.

(4) *Remaining groundfish species*. (i) Except as provided for in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in paragraphs 208(e)(1) through (20) and section 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(ii)If the amount of a species calculated under paragraph (a)(1)(iv) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs for AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for that species by AFA catcher processors and establish the sideboard amount equal to the amount of that species caught by AFA catcher processors incidental to directed fishing for other groundfish species.

(5) *How will halibut and crab PSC sideboard limits be calculated*? For each halibut or crab PSC limit specified for catcher/processors in the BSAI, the Regional Administrator will establish an annual listed AFA catcher/processor PSC limit equal to the estimated aggregate 1995 through 1997 PSC bycatch of that species by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA while engaged in directed fishing for species other than pollock divided by the aggregate PSC bycatch limit of that species for catcher/processors from 1995 through 1997 multiplied by the PSC limit of that species available to catcher/processors in the year in which the harvest limit will be in effect.

(6) *How will AFA catcher/processor sideboard limits be managed*? The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher/processors through directed fishing closures in non-pollock groundfish fisheries in accordance with the

procedures set out in §§ 679.20(d)(1)(iv), and 679.21(e)(3)(v).

(b) *Harvesting sideboards for AFA catcher vessels*. The Regional Administrator will restrict the ability of AFA catcher vessels to engage in directed fishing for other groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery.

(1) *To whom do the catcher vessel sideboard limits apply*? Catcher vessel harvest limits and PSC bycatch limits apply to all AFA catcher vessels participating in all GOA groundfish fisheries and all non-pollock groundfish fisheries in the BSAI except vessels qualifying for sideboard exemptions in the specific fisheries identified in paragraph (b)(2) of this section.

(2) *Who is exempt from catcher vessel sideboards*? (i) *BSAI Pacific cod sideboard exemptions*—(A) AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested a combined total of less than 5,100 mt of BSAI pollock, and to have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod from 1995 through 1997 are exempt from sideboard closures for BSAI Pacific cod.

(B) AFA catcher vessels with mothership endorsements are exempt from BSAI Pacific cod catcher vessel sideboard directed fishing closures after March 1 of each fishing year.

(ii) *GOA groundfish sideboard exemptions*. AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested less than 5100 mt of BSAI pollock and to have made 40 or more landings of GOA groundfish from 1995 through 1997 are exempt from GOA groundfish catcher vessel sideboard directed fishing closures.

(3) *How will groundfish sideboard limits be calculated*? For each groundfish species or species group in which a TAC is specified for an area or subarea of the GOA and BSAI; the Regional Administrator will establish annual AFA catcher vessel groundfish harvest limits as follows:

(i) *BSAI groundfish other than Pacific cod*. The AFA catcher vessel groundfish harvest limit for each BSAI groundfish species or species group other than BSAI Pacific cod will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by all AFA catcher vessels; divided by the sum of the TACs available to catcher vessels for that species or species group from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(ii) *BSAI Pacific cod*. The AFA catcher vessel groundfish harvest limit for BSAI Pacific cod will be equal to the retained catch of BSAI Pacific cod in 1997 by AFA catcher vessels not exempted under § 679.64(b)(2)(i)(A) divided by the BSAI Pacific cod TAC available to catcher vessels in 1997; multiplied by the BSAI Pacific cod TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(iii) *GOA groundfish*. The AFA catcher vessel groundfish harvest limit for each GOA groundfish species or species group will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by AFA catcher vessels not exempted under § 679.64(b)(2)(ii); divided by the sum of the TACs of that species or species group available to catcher vessels from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(4) *How will PSC bycatch limits be calculated*? The AFA catcher vessel PSC bycatch limit for halibut in the BSAI and GOA, and each crab species in the BSAI for which a trawl bycatch limit has been established will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997.

(5) *How will catcher vessel sideboard limits be managed*? The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher vessels using directed fishing closures according to the procedures set out at § 679.20(d)(1)(iv) and 679.21(d)(8) and (e)(3)(v).

**§ 679.65 Crab processing sideboard limits.**

(a) *What is the purpose of crab processing limits*? The purpose of crab processing sideboard limits is to protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the AFA and the formation of fishery cooperatives in the directed pollock fishery.

(b) *To whom do the crab processing sideboard limits apply*? The crab processing sideboard limits in this section apply to any AFA inshore or mothership entity that receives pollock harvested in the BSAI directed pollock fishery by a fishery cooperative established under § 679.61 or § 679.62.

(c) *How are crab processing sideboard percentages calculated*? Upon receipt of an application for a cooperative processing endorsement from the owners of an AFA mothership or AFA inshore processor, the Regional Administrator will calculate a crab processing cap percentage for the associated AFA inshore or mothership entity. The crab processing cap percentage for each BSAI king or Tanner crab species will be equal to the percentage of the total catch of each BSAI king or Tanner crab species that the AFA crab facilities associated with the AFA inshore or mothership entity processed in the aggregate, on average, in 1995, 1996, 1997, and 1998 with 1998 given double-weight (counted twice).

(d) *How will AFA entities be notified of their crab processing sideboard percentages*? An AFA inshore or mothership entity's crab processing cap percentage for each BSAI king or Tanner crab species will be listed on each AFA mothership or AFA inshore processor permit that contains a cooperative pollock processing endorsement.

(e) *How are crab processing sideboard percentages converted to poundage caps*? Prior to the start of each BSAI king or Tanner crab fishery, NMFS will convert each AFA inshore or mothership entity's crab processing sideboard percentage to a poundage cap by multiplying the crab processing sideboard percentage by the pre-season guideline harvest level established for that crab fishery by ADF&G.

(f) *How will crab processing sideboard poundage caps be announced*? The Regional Administrator will notify each AFA inshore or mothership entity of its crab processing sideboard poundage cap through a letter to the owner of the AFA mothership or AFA inshore processor. The public will be notified of each entity's crab processing sideboard poundage cap through information bulletins published on the NMFS-Alaska Region world wide web home page (http:www.fakr.noaa.gov).

13. In § 679.5, 679.30, 679.32 and 679.50, at each of the paragraphs shown in the first column, remove the phrase indicated, respectively, second column, CHANGE FROM and replace it with the phrase indicated, respectively, in the third column, CHANGE TO, to read as follows:

| In Paragraph: | CHANGE FROM | CHANGE TO | FREQUENCY |
|---|---|---|---|
| § 679.5(n)(2)(v)(A)(*1*) | CDQ observer's | observer's | 1 |
| § 679.5(n)(2)(v)(A)(*1*) | CDQ observer | observer | 1 |
| § 679.5(n)(2)(v)(A)(*2*) | CDQ observer's | observer's | 1 |
| § 679.5(n)(2)(v)(A)(*2*) | CDQ observer | observer | 1 |
| § 679.7(d)(15) | CDQ observer | level 2 observer | 1 |
| § 679.30(a)(5)(i)(A)(*2*)(*i*) | CDQ observers | level 2 observers | 2 |
| § 679.30(a)(5)(i)(A)(*2*)(*i*) | CDQ observer | level 2 observer | 2 |
| § 679.30(a)(5)(ii)(D) | CDQ observer | level 2 observer | 2 |
| § 679.32(c)(2)(i)(B) | CDQ observer | level 2 observer | 1 |
| § 679.32(c)(2)(i)(C) | CDQ observer | level 2 observer | 1 |
| § 679.32(c)(2)(ii)(A) | CDQ observer | level 2 observer | 1 |
| § 679.32(c)(2)(ii)(B)(*1*) | CDQ observer | level 2 observer | 1 |
| § 679.32(c)(2)(ii)(B)(*2*) | CDQ observer | level 2 observer | 1 |
| § 679.32(c)(3)(i) | CDQ observer | level 2 observer | 2 |
| § 679.32(c)(3)(iv) | CDQ observer | level 2 observer | 1 |
| § 679.32(c)(4)(i) | CDQ observer(s) | level 2 observer(s) | 2 |
| § 679.32(c)(4)(iv) | CDQ observer | level 2 observer | 1 |
| § 679.32(c)(4)(v) | CDQ observer | level 2 observer | 1 |
| § 679.32(d)(2)(ii) | CDQ observer | level 2 observer | 1 |
| § 679.32(d)(2)(iii) | CDQ observer's | level 2 observer's | 1 |
| § 679.32(d)(2)(iv)(A) | CDQ observer's | level 2 observer's | 1 |
| § 679.32(d)(2)(iv)(B) | CDQ observer's | level 2 observer's | 1 |
| § 679.32(d)(2)(v) | CDQ observer's | level 2 observer's | 1 |
| § 679.32(d)(2)(vi) | CDQ observer's | level 2 observer's | 1 |
| § 679.50(c)(4) introductory | CDQ observer | level 2 observer | 2 |
| § 679.50(c)(4)(i) | CDQ observers | level 2 observers | 1 |
| § 679.50(c)(4)(i) | CDQ observer | level 2 observer | 1 |
| § 679.50(c)(4)(ii) | CDQ observer | level 2 observer | 4 |
| § 679.50(c)(4)(ii) | CDQ observers | level 2 observers | 2 |
| § 679.50(c)(4)(iii) | CDQ observer | level 2 observer | 1 |
| § 679.50(c)(4)(iv) | CDQ observer | level 2 observer | 1 |
| § 679.50(d)(4) | CDQ observer | level 2 observer | 3 |
| § 679.50(h)(1)(i)(D) | CDQ observer | level 2 observer | 1 |
| § 679.50(h)(1)(i)(D)(*3*) | CDQ observer | level 2 observer | 1 |
| § 679.50(h)(1)(i)(E) introductory | CDQ observer | level 2 observer | 1 |
| § 679.50(h)(1)(i)(E)(*1*) | CDQ observer | level 2 observer | 1 |
| § 679.50(h)(1)(i)(E)(*2*) | CDQ observer | level 2 observer | 1 |
| § 679.50(h)(1)(i)(E)(*3*) | CDQ observer | level 2 observer | 1 |

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# Part III

# Environmental Protection Agency

## 40 CFR Part 63

## National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants; Final Rule and Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[FRL–7118–7]**

**RIN 2060–AE44**

## National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants

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

**ACTION:** Direct final rule; amendments.

**SUMMARY:** The EPA is taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for phosphoric acid manufacturing plants and the NESHAP for phosphate fertilizers production plants which were promulgated on June 10, 1999 under authority of section 112 of the Clean Air Act (CAA). The NESHAP apply to owners and operators of phosphoric acid and phosphate fertilizers production facilities that are major sources of hazardous air pollutants (HAP). The EPA is amending specific provisions in the NESHAP to resolve issues and questions raised after promulgation of the final rules. The amendments do not significantly change EPA's original projections for the environmental benefits, compliance costs, and burden on industry, and do not affect the number of affected facilities.

**DATES:** The direct final rule will be effective on February 15, 2002 without further notice, unless significant adverse comments are received by January 16, 2002.

If significant material adverse comments are received by January 16, 2002, this direct final rule will be withdrawn and the comments addressed in a subsequent final rule based on the proposed rule. If no significant material adverse comments are received, no further action will be taken on the proposal and this direct final rule will become effective on February 15, 2002.

**ADDRESSES:** *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–94–02, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–94–02, Room M–1500, U.S. EPA, 401 M Street, SW., Washington DC 20460. The EPA requests a separate copy of the comments also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Ms. Tanya Medley, Minerals and Inorganic Chemicals Group, Emission Standards Division (MC–C504–05), U.S. EPA, Research Triangle Park, North Carolina 27709, telephone number (919) 541–5422, facsimile number (919) 541–5600, electronic mail (e-mail) address: medley.tanya@epa.gov.

**SUPPLEMENTARY INFORMATION:** *Comments.* We are publishing this direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

### Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this direct final rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. The docket number for this rulemaking is A–94–02.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

*Regulated Entities.* Today's action applies to process components at new and existing phosphoric acid manufacturing plants and phosphate fertilizers production plants. Regulated categories and entities include:

| Source category | SIC | NAICS | Examples of regulated entities |
|---|---|---|---|
| Industrial | 2874 | 325314 | Phosphoric acid manufacturing facilities (wet process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer, phosphate rock calciner, purified phosphoric acid process line). |
| Industrial | 2874 | 325314 | Phosphate fertilizers production (diammonium and/or monoammonium phosphate process line, granular triple superphosphate process line, granular triple superphosphate storage building). |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria of the rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 15, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this direct

final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

## Outline

The information presented in this preamble is organized as follows:

I. Background
II. Amendments Specific to Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
A. Standards for Existing Sources
B. Standards for New Sources
C. Monitoring Requirements
III. Amendments to Both Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
A. Applicability
B. Monitoring Requirements
C. Applicability of General Provisions
IV. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

## I. Background

The EPA, under 40 CFR part 63, subparts AA and BB, promulgated NESHAP for Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants. The NESHAP established standards to control HAP emissions from facilities producing phosphoric acid and phosphate fertilizers. The standards were promulgated on June 10, 1999 (64 FR 31358).

On August 4, 1999, The Fertilizer Institute filed for judicial review of the NESHAP, as provided for in CAA section 307(b), with respect to certain provisions regarding emissions standards for phosphate rock calciners, monitoring requirements in general, and applicability of the general provisions.

## II. Amendments Specific to Subpart AA—National Emissions Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

The EPA is amending 40 CFR part 63, subpart AA, to correct errors, to revise the emissions limit for phosphate rock calciners, to clarify certain monitoring requirements, and to clarify applicability of certain parts of the general provisions.

### *A. Standards for Existing Sources*

The EPA promulgated standards for phosphate rock calciners based on performance of the floor technology which was identical wet scrubbing technology installed on six identical calciners at one facility, plus data from a calciner with wet scrubbers at a second facility. The promulgated standard under 40 CFR 63.602 for existing calciners of 0.1380 grams per dry standard cubic meter (g/dscm)(0.060 grains per dry standard cubic foot (gr/dscf)) was based on emissions data for the floor technology which was available to EPA at that time. Subsequent to the petition, additional emissions and operating data from compliance tests of those same scrubbers over a 7-year period were submitted to EPA. The data covered a range that exceeded the promulgated standards. Therefore, upon review of the operating and emission data from the same scrubbers upon which the promulgated standards were based, the EPA is changing the emission standard under 40 CFR 63.602 for existing calciners to 0.1810 g/dscm (0.080 gr/dscf).

### *B. Standards for New Sources*

The standards for new phosphate rock dryers in 40 CFR 63.603(c) are being revised to correct an error in the units of the standards. The promulgated rule included units of kilogram/metric ton per megagram of phosphate rock feed. The standards are being corrected to units of kilogram/megagram of phosphate rock feed.

### *C. Monitoring Requirements*

The promulgated monitoring requirements under 40 CFR 63.605 require the owner or operator of each new or existing phosphate rock dryer or phosphate rock calciner to install a system to permanently record the mass flow of feed material to the process. Due to process variations and available measurement techniques, it is easier to accurately measure the rock dryer and calciner outputs than to measure the input. Therefore, the EPA is revising 40 CFR 63.605 to specify that the phosphate rock dryer and phosphate rock calciner output rates be monitored and recorded. That change does not affect the stringency of the standards for those sources. Since the standards for rock dryers under 40 CFR 63.602 and 63.603 are in the format of kilogram/megagram or metric ton (pounds/ton) of rock feed, the owner/operator of the source will either need to measure the feed rate and production rate during compliance tests, or measure the product rate and the moisture contents of the feed and output product to then calculate the feed rate and show compliance.

## III. Amendments to Both Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

The EPA is amending 40 CFR part 63, subparts AA and BB, for applicability, monitoring requirements, and applicability of the general provisions.

### *A. Applicability*

The applicability criteria in 40 CFR 63.600 and 63.620 are being clarified to state that excursions from applicable emissions limits and operating parameter ranges during periods of startup, shutdown or malfunction are not violations of the standards, provided the source is operated in accordance with the Startup, Shutdown, and Malfunction Plan submitted pursuant to 40 CFR 63.6(e)(3) and complies with the duty pursuant to 40 CFR 63.6(e)(i) to operate in a manner consistent with good air pollution control practices for minimizing emissions.

### *B. Monitoring Requirements*

The monitoring requirements in 40 CFR 63.605(d) and 63.625(f) are being clarified to specifically identify the averaging period as a daily average. The monitoring requirements in 40 CFR 63.605(d) and 63.625(f) are being clarified to allow a source to retain a previously established parameter range if the last compliance test shows compliance with the emissions limits and the operating parameters fall within the established range.

The monitoring requirements in 40 CFR 63.605(d) and 63.625(f) are being changed to correct an error. Those sections as promulgated require compliance with new operating parameter ranges the day after a new compliance emissions test. That cannot be done as test samples need to be analyzed, and any new parameter ranges need to be established. Therefore, those

sections are being changed to allow 30 days after submittal of test results to the permitting Agency before compliance with any new operating limits is required.

*C. Applicability of General Provisions*

The applicability of the general provisions requirements in 40 CFR 63.608 and 63.628 both refer to an appendix A in each rule. Both appendices list 40 CFR part 63, subpart A citations to § 63.6(e)(1) and (2), (e)(3), and (f) in the first column of each table and show a comment column with comments regarding additional requirements. The comments portion for the citations was erroneously included in the promulgated rules and are deleted under this action.

**IV. Administrative Requirements**

*A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or 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 the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the amendments do not constitute a ''significant regulatory action'' because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

*B. Executive Order 13132, Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, the EPA must include a certification from the EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

The rule amendments 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. The rule amendments would not impose directly enforceable requirements on States, nor would they preempt them from adopting their own more stringent programs to control emissions. Thus, the requirements of section 6 of the Executive Order do not apply to these rule amendments.

*C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

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

The rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments are known to own or operate phosphoric acid manufacturing facilities or phosphate fertilizers production facilities. Thus, Executive Order 13175 does not apply to the rule amendments.

*D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the rule amendments have been determined

not to be ''economically significant'' as defined under Executive Order 12866.

*E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use*

The direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not significant regulatory actions under Executive Order 12866.

*F. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Because today's amendments do not add new requirements or costs, the EPA has determined that the rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, today's rule amendments are not subject to the requirements of section 203 of the UMRA.

*G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this direct final rule on small entities, the EPA found that 2 of the 21 firms that potentially could be subject to the standards are small firms. Of the two, data indicate that one is an area source which would not be covered by the standards. The second source could be major and subject to the requirements of the standards. Information available to EPA shows, however, that the second source is able to achieve the control levels associated with the promulgated rules using existing equipment. The second source would not be significantly impacted by this proposed action because it clarifies and makes corrections to the promulgated rules but imposes no additional regulatory requirements.

Because today's rule amendments impose no additional regulatory requirements on owners or operators of phosphoric acid manufacturing plants or phosphate fertilizers production plants, the EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

*H. Paperwork Reduction Act*

The OMB has approved the information collection requirements contained in the phosphoric acid manufacturing and phosphate fertilizers production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB Control No. 2060–0361. An Information Collection Request (ICR) document has been prepared by EPA, and a copy may be obtained from Sandy Farmer by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by e-mail at *farmer.sandy@epa.gov,* or by calling (202) 260–2740.

The amendments contained in this direct final rule will have no net impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

*I. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113 (March 7, 1996), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable voluntary consensus standards.

This action does not involve the use of any new technical standards. Accordingly, the NTTAA requirement to use applicable voluntary consensus standards does not apply to this direct final rule.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as NESHAP for Phosphoric Acid Manufacturing Phosphate Fertilizers Production 22 added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing this direct final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of this direct final rule in the **Federal Register**. A major rule

cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 63**

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 10, 2001

**Christine Todd Whitman,**

*Administrator.*

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

## PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

## Subpart AA—[Amended]

2. Section 63.600 is amended by revising paragraph (a) and by adding new paragraph (e) to read as follows:

### § 63.600 Applicability.

(a) Except as provided in paragraphs (c), (d), and (e) of this section, the requirements of this subpart apply to the owner or operator of each phosphoric acid manufacturing plant.

* * * * *

(e) The emission limitations and operating parameter requirements of this subpart do not apply during periods of startup, shutdown, or malfunction, as those terms are defined in § 63.2, provided that the source is operated in accordance with § 63.6(e)(1)(i) and the Startup, Shutdown, and Malfunction Plan submitted pursuant to § 63.6(e)(3).

3. Section 63.602 is amended by revising paragraph (d) to read as follows:

### § 63.602 Standards for existing sources.

* * * * *

(d) *Phosphate rock calciner.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.1810 gram per dry standard cubic meter (g/dscm) (0.080 grains per dry standard cubic foot (gr/dscf)).

* * * * *

4. Section 63.603 is amended by revising paragraph (c) to read as follows:

### § 63.603 Standards for new sources.

* * * * *

(c) *Phosphate rock dryer.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.030 kilogram/megagram of phosphate rock feed (0.060 lb/ton).

* * * * *

5. Section 63.605 is amended by:

a. Redesignating paragraph (a) as paragraph (a)(1) and revising newly designated paragraph (a)(1);

b. Adding new paragraph (a)(2);

c. Revising paragraph (b)(2); and

d. Revising paragraphs(d)(1) and (2).

The revisions and additions read as follows:

### § 63.605 Monitoring requirements.

(a)(1) Each owner or operator of a new or existing wet-process phosphoric acid process line or superphosphoric acid process line subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring system which can be used to determine and permanently record the mass flow of phosphorus-bearing feed material to the process. The monitoring system shall have an accuracy of ±5 percent over its operating range.

(2) Each owner or operator of a new or existing phosphate rock dryer or phosphate rock calciner subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring system which can be used to determine and permanently record either the mass flow of phosphorus-bearing feed material to the dryer or calciner, or the mass flow of product from the dryer or calciner. The monitoring system shall have an accuracy of ±5 percent over its operating range. Since the emissions limits under §§ 63.602(c) and 63.603(c) for the phosphate rock dryer are in the format of kilogram/megagram (lb/ton) of phosphate rock feed, during performance testing required in § 63.606, the owner or operator that chooses to operate a monitoring system to determine and permanently record the mass flow of product from the dryer must either simultaneously monitor the dryer feed rate and dryer output rate, or monitor the dryer output rate and the dryer input and output moisture contents and calculate the corresponding dryer input rate.

(b)(1) * * *

(2) Each owner or operator of a new or existing phosphate rock calciner or phosphate rock dryer subject to the provisions of this subpart shall maintain a daily record of the following:

(i) For owners and operators that monitor the mass flow of phosphorus-bearing feed material to the dryer or calciner, a daily record of phosphate rock feed by determining the total mass rate in metric ton/hour of phosphorus-bearing feed using a monitoring system for measuring mass flowrate which meets the requirements of paragraph (a)(2) of this section.

(ii) For owners and operators that monitor the mass flow of product from the dryer or calciner, a daily record of product by determining the total mass rate in metric ton/hour of product using a monitoring system for measuring mass flowrate which meets the requirements of paragraph (a)(2) of this section.

* * * * *

(d) * * *

(1) The allowable range for the daily averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system is ±20 percent of the baseline average value determined as a requirement of § 63.606(c)(4), (d)(4), or (e)(2). The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard, but, in no instance shall the adjustment be reduced to less than ±10 percent. The owner or operator must notify the Administrator of the baseline average value and must notify the Administrator each time that the baseline value is changed as a result of the most recent performance test. When a source using the methodology of this paragraph is retested, the owner or operator shall determine whether new allowable ranges of baseline average values will be based upon the new performance test or (if the new performance test results are within the previously established range) whether there will be no change in the operating parameters derived from previous tests. When a source using the methodology of this paragraph is retested and the performance test results are submitted to the Administrator pursuant to §§ 63.607(c)(1), 63.7(g)(1), and/or 63.10(d)(2), the owner or operator will indicate whether the operating range will be based on the new performance test or the previously established range. If the Administrator has not denied approval of the new operating ranges within 30 days of submission of the

performance test results, the new ranges shall be deemed approved and the new baseline value shall then be effective on the 31st day following submission.

(2) The owner or operator of any new or existing affected source shall establish, and provide to the Administrator for approval, allowable ranges for the daily averages of the pressure drop across and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system for the purpose of assuring compliance with this subpart. Allowable ranges may be based upon baseline average values recorded during previous performance tests using the test methods required in § 63.606(c)(4), (d)(4), or (e)(2). As an alternative, the owner or operator can establish the allowable ranges using the results of performance tests conducted specifically for the purposes of this paragraph using the test methods required in this subpart and established in the manner required in § 63.606(c)(4), (d)(4), or (e)(2). The source shall certify that the control devices and processes have not been modified subsequent to the testing upon which the data used to establish the allowable ranges were obtained. The allowable ranges developed pursuant to the provisions of this paragraph must be submitted to the Administrator for approval. The owner or operator must request and obtain approval of the Administrator for changes to the allowable ranges. When a source using the methodology of this paragraph is retested, the owner or operator shall determine new allowable ranges of baseline average values unless the retest indicates no change in the operating parameters outside the previously established ranges. If the Administrator has not denied approval of the new operating ranges within 30 days of submission of the performance test results, the new ranges shall be deemed approved and the new baseline value shall then be effective on the 31st day following submission.

* * * * *

6. Appendix A to subpart AA is amended by revising the entries ''63.6(e)(1) and (2),'' ''63.6(e)(3),'' and ''63.6(f)'' to read as follows:

APPENDIX A TO SUBPART AA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART AA

| 40 CFR citation | Requirement | Applies to subpart AA | Comment |
|---|---|---|---|
| * * | * * * | * | * |
| 63.6(e)(1) and (2) | Operation & Maintenance Requirements | Yes. | |
| 63.6(e)(3) | Startup, Shutdown, and Malfunction Plan | Yes. | |
| 63.6(f) | Compliance with Emission Standards | Yes. | |
| * * | * * * | * | * |

## Subpart BB—[Amended]

7. Section 63.620 is amended by revising paragraph (a) and by adding new paragraph (e) to read as follows:

### § 63.620 Applicability.

(a) Except as provided in paragraphs (c), (d), and (e) of this section, the requirements of this subpart apply to the owner or operator of each phosphate fertilizers production plant.

* * * * *

(e) The emission limitations and operating parameter requirements of this subpart do not apply during periods of startup, shutdown, or malfunction, as those terms are defined in § 63.2, provided that the source is operated in accordance with § 63.6(e)(1)(i) and the Startup, Shutdown, and Malfunction Plan submitted pursuant to § 63.6(e)(3).

8. Section 63.625 is amended by revising paragraphs (f)(1) and (2) to read as follows:

### § 63.625 Monitoring requirements.

* * * * *

(f) * * *

(1) The allowable range for the daily averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system is ±20 percent of the baseline average value determined as a requirement of § 63.626(c)(4) or (d)(4). The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard, but in no instance shall the adjustment be reduced to less than ±10 percent. The owner or operator must notify the Administrator of the baseline average value and must notify the Administrator each time that the baseline value is changed as a result of the most recent performance test. When a source using the methodology of this paragraph is retested, the owner or operator shall determine whether new allowable ranges of baseline average values will be based upon the new performance test or (if the new performance test results are within the previously established range) whether there will be no change in the operating parameters derived from previous tests. When a source using the methodology of this paragraph is retested and the performance test results are submitted to the Administrator pursuant to §§ 63.627(c)(1), 63.7(g)(1), and/or 63.10(d)(2), the owner or operator will indicate whether the operating range will be based on the new performance test or the previously established range. If the Administrator has not denied approval of the new operating ranges within 30 days of submission of the performance test results, the new ranges shall be deemed approved and the new baseline value shall then be effective on the 31st day following submission.

(2) The owner or operator of any new or existing affected source shall establish, and provide to the Administrator for approval, allowable ranges for the daily averages of the pressure drop across and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system for the purpose of assuring compliance with this subpart. Allowable ranges may be based upon baseline average values recorded during previous performance tests using the test methods required in § 63.626(c)(4) or (d)(4). As an alternative, the owner or operator can establish the allowable ranges using the results of performance tests conducted specifically for the purposes of this paragraph using the test methods required in this subpart and established in the manner required in § 63.626(c)(4) or (d)(4). The source shall certify that the control devices and processes have not been modified subsequent to the testing upon which the data used to

establish the allowable ranges were obtained. The allowable ranges developed pursuant to the provisions of this paragraph must be submitted to the Administrator for approval. The owner or operator must request and obtain approval of the Administrator for changes to the allowable ranges. When a source using the methodology of this paragraph is retested, the owner or operator shall determine new allowable ranges of baseline average values unless the retest indicates no change in the operating parameters outside the previously established ranges. If the Administrator has not denied approval of the new operating ranges within 30 days of submission of the performance test results, the new ranges shall be deemed approved and the new baseline value shall then be effective on the 31st day following submission.

9. Appendix A to subpart BB is amended by revising the entries ''63.6(e)(1) and (2),'' ''63.6(e)(3),'' and ''63.6(f)'' to read as follows:

APPENDIX A TO SUBPART BB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART BB

| 40 CFR citation | Requirement | Applies to subpart BB | Comment |
|---|---|---|---|
| * * | * * * | * | * |
| 63.6(e)(1) and (2) | Operation & Maintenance Requirements | Yes. | |
| 63.6(e)(3) | Startup, Shutdown, and Malfunction Plan | Yes. | |
| 63.6(f) | Compliance with Emission Standards | Yes. | |
| * * | * * * | * | * |

[FR Doc. 01–31009 Filed 12–14–01; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[FRL–7118–6]**

**RIN 2060–AE44**

## National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants

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

**ACTION:** Proposed rule; amendments.

**SUMMARY:** The EPA is proposing to amend the national emission standards for hazardous air pollutants (NESHAP) for phosphoric acid manufacturing plants and the NESHAP for phosphate fertilizers production plants which were promulgated on June 10, 1999 under authority of section 112 of the Clean Air Act (CAA). This action proposes to amend specific provisions in the NESHAP to resolve issues and questions raised after promulgation of the NESHAP. The proposed amendments would revise the emissions limit for phosphate rock calciners and clarify several provisions regarding parameter monitoring and the applicability of the general provisions.

In the Rules and Regulations section of this **Federal Register**, we are making the corrections in a direct final rule, without prior proposal, because we view the revisions as noncontroversial, and we anticipate no adverse comments. We have explained our reasons for the corrections in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on this proposed rule. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register**. All public comments will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on that subsequent final rule. Any parties interested in commenting must do so at this time.

**DATES:** *Comments.* Written comments must be received by January 16, 2002, unless a hearing is requested by December 27, 2001. If a hearing is requested, written comments must be received by January 31, 2002.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by December 27, 2001, a public hearing will be held on January 2, 2002.

**ADDRESSES:** *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–94–02, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–94–02, Room M–1500, U.S. EPA, 401 M Street, SW., Washington DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

*Public Hearing.* If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina at 10:30 a.m.

*Docket.* Docket No. A–94–02 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tanya Medley, Minerals and Inorganic Chemicals Group, Emission Standards Division (MC–C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5422, facsimile number (919) 541–5600, electronic mail (e-mail) address: medley.tanya@epa.gov.

**SUPPLEMENTARY INFORMATION:** A direct final rule identical to this proposal is published in the Rules and Regulations section of this **Federal Register**. If relevant adverse comments are received on this proposal, the direct final rule will be withdrawn and the comments will be addressed in a subsequent final rule. If relevant adverse comments are received only on a discrete portion of the rule, we will consider withdrawing only that portion of the rule. If no relevant adverse comments are received, no further action will be taken on this proposal and the direct final will become effective as provided in that notice.

The regulatory text for this proposal is identical to that for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further supplementary information, see the direct final rule.

*Comments.* Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect format. All comments and data submitted in electronic form must note the docket number A–94–02. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, MC–C404–02, Attn: Ms. Tanya Medley, U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

### Public Hearing

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Tanya Medley, U.S. EPA, MC–C504–05, Research Triangle Park, NC 27709, telephone (919) 541–5422, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Tanya Medley to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

### Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section

307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of this proposed rule will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

**Regulated Entities**

The regulated category and entities affected by this action include:

| Source category | SIC | NAICS | Examples of regulated entities |
|---|---|---|---|
| Industrial | 2874 | 325314 | Phosphoric acid manufacturing facilities (wet process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer, phosphate rock calciner, purified phosphoric acid process line). |
| Industrial | 2874 | 325314 | Phosphate fertilizers production (diammonium and/or monoammonium phosphate process line, granular triple superphosphate process line, granular triple superphosphate storage building). |

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, is regulated by this action, you should examine the applicability criteria of the rules. If you have questions regarding the applicability of these proposed amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**What Are the Administrative Requirements for This Action?**

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of this **Federal Register**.

*Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, the EPA found that 2 of the 21 firms that potentially could be subject to the standards are small firms. Of the two, data indicate that one is an area source which would not be covered by the standards. The second source could be major and subject to the requirements of the standards. Information available to EPA shows, however, that the second source is able to achieve the control levels associated with the promulgated rules using existing equipment. The second source would not be significantly impacted by this proposed action because it clarifies and makes corrections to the promulgated rules but imposes no additional regulatory requirements.

Because the proposed rule amendments impose no additional regulatory requirements on owners or operators of phosphoric acid manufacturing plants or phosphate fertilizers production plants, I certify that this action will not have a significant economic impact on a substantial number of small entities.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the Rules and Regulations section of this **Federal Register** publication.

**List of Subjects in 40 CFR Part 63**

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 10, 2001.

**Christine Todd Whitman,**

*Administrator.*

[FR Doc. 01–31010 Filed 12–14–01; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
December 17, 2001

# Part IV

# Department of Education

## Office of Educational Research and Improvement (OERI): Preschool Curriculum Evaluation Research Grant Program Inviting Applications for New Awards for Fiscal Year (FY) 2002; Notice

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.305J]**

## Office of Educational Research and Improvement (OERI): Preschool Curriculum Evaluation Research Grant Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

*Purpose of Program:* The purpose of this program is to implement rigorous evaluations of preschool curricula that will provide information to support informed choices of classroom curricula for early childhood programs. This competition will focus support on a new program of research that will determine, through randomized clinical trials, whether one or more curricula produce educationally meaningful effects on children.

*Eligible Applicants:* Public and private agencies, institutions, and organizations, including for-profit and non-profit organizations; institutions of higher education; State and local education agencies; and regional educational laboratories.

*Deadline for Receipt of Letter of Intent:* January 15, 2002.

A Letter of Intent is *optional,* but encouraged, for each application. The Letter of Intent is for OERI planning purposes and will not be used in the evaluation of the application.

*Applications Available:* December 17, 2001.

*Deadline for Transmittal of Applications:* March 15, 2002.

*Estimated Available Funds:* Up to $4,000,000 for the first year of this program.

The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2002. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

*Estimated Size of Awards:* Funds available per award will depend on the sample size, the nature of the supplemental research proposed, and any non-federal resources to be devoted to the project. We expect to be able to make about 10 awards and that a typical first year award, with the minimal sample size, described subsequently, will be approximately $350,000.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

*Page Limits:* The application must include the following sections: title page form (ED 424), one-page abstract, research narrative, literature cited, curriculum vitae for principal investigator(s) and other key personnel, budget summary form (ED 524) with budget narrative, appendix, and statement of equitable access (GEPA 427). The research narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the research narrative (text plus all figures, charts, tables, and diagrams) to the equivalent of 25 pages and the appendix to 20 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the research narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the title page form, the one-page abstract, the budget summary form and narrative budget justification, the curriculum vitae, literature cited, or the assurances and certifications.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

We have found that reviewers are able to conduct the highest quality review when applications are concise and easy to read, with pages consecutively numbered.

*Applicable Statute and Regulations:* (a) 20 U.S.C. 6031; (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as limited in 34 CFR 700.5), 77, 80, 81, 82, 85, 86 (part 86 applies only to Institutions of Higher Education), 97, 98, and 99; and (c) The regulations in 34 CFR part 700.

*Selection Criteria:* The Secretary selects the following selection criteria in 34 CFR 700.30(e) to evaluate applications for new grants under this competition. The criteria below will receive the following percentage weights.

(a) National Significance (.2)
(b) Quality of the Project Design (.5)
(c) Quality and Potential Contributions of Personnel (.2)
(d) Adequacy of Resources (.1)

Strong applications for Preschool Curriculum Evaluation Research (PCER) grants clearly address each of the applicable selection criteria. They make a well-reasoned and compelling case for the national significance of the problems or issues that will be the subject of the proposed research, and present a research design that is complete, clearly delineated, and incorporates sound research methods. In addition, the personnel descriptions included in strong applications make it apparent that the project director, principal investigator, and other key personnel possess training and experience commensurate with their duties.

*Pre-Application Meeting:* We will hold a pre-application meeting on January 24, 2002, to discuss the funding priority. You are invited to participate. You will receive technical assistance and information about the funding priority. The meeting will be held at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., room 101, Washington, DC, between 1 p.m. and 4 p.m. A summary of the meeting will be posted on the Internet at: *http://www.ed.gov/offices/OERI*

*Assistance to Individuals With Disabilities at the Meeting*

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT** at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

**SUPPLEMENTARY INFORMATION:**

### Background

Research has long established the importance of early experiences in supporting successful child development. More recently, the focus has turned to the role of early child-care and preschool experiences in supporting cognitive development and other skills that are essential for successful transition into school. Policy makers have begun to respond to the mounting evidence of the importance of early experience with calls to provide better quality preschool programs. For example, The National Research Council's 2000 report, Eager to Learn, concluded that: ''Many children,

especially those in low-income households, are served in child care programs of such low quality that learning and development are not enhanced and may even be jeopardized.'' Furthermore, the First Lady's White House Summit on Early Childhood Cognitive Development, held in 2001, called attention to the need for preschool programs to enhance their instructional content in the area of early cognition and pre-reading skills. One result of the Early Childhood Cognitive Development Summit was the formation of an Interagency Task Force in Early Childhood Development involving representatives from the U.S. Department of Education, Health and Human Services, and the National Institute of Child Health and Human Development. This funding announcement is one product of that Task Force.

The evidence that would allow informed choices of classroom curricula for early childhood programs is weak. When rigorous preschool program evaluations exist, they are for programs designed and delivered decades ago. Most currently available curricula have no link to those historical programs, and those that do have changed in content and method of delivery as they have evolved over the years. While the results from historical evaluations of preschool curricula and current research on the learning and development of young children provide some insights into general features of successful preschool programs, they give little guidance for selecting from among the ever-expanding list of available preschool curricula. For example, the State of Georgia, which has a universal pre-K program, allows providers to choose among seven different nationally available curricula. There is little evidence that would allow providers to make an informed choice among these curricula. New York, another state providing universal pre-K, does not provide a list of approved curricula. Instead it requires that approved providers deliver a curriculum that conforms to general guidelines such as meeting ''the social, cognitive, linguistic, emotional, cultural and physical needs of all eligible children.'' However, there is little evidence for choosing among curriculum options based on such guidelines. The Preschool Curriculum Evaluation Research (PCER) grants are intended to address the lack of rigorous, systematic evaluation of preschool curricula that are currently in use for children in the pre-K years.

PCER is intended to build on recent initiatives aimed at evaluating the preschool experiences of children. In 1997, Head Start undertook The Family and Child Experiences Survey (FACES), a large-scale national study of Head Start programs. FACES is a national longitudinal study of the cognitive, social, emotional, and physical development of children; the characteristics, well-being, and accomplishments of their families; the observed characteristics of their classrooms; and the characteristics, needs, and opinions of their teachers and other program staff. In addition, the Early Childhood Longitudinal Survey-Kindergarten (ECLS–K) and the Early Childhood Longitudinal Survey-Birth Cohort (ECLS–B), both ongoing projects of the National Center for Education Statistics within OERI, offer additional insight into how to measure family, school, and individual variables using a set of measures that overlap substantially with the FACES measures. The FACES measures will form the core set of indicators used in PCER funded projects.

The outcomes of greatest interest to PCER are those skills that are most highly predictive of academic success in the early years of elementary school and that are most amenable to influence by factors within the realm of classroom curricula and practice. These outcomes include language development, pre-reading and pre-math abilities, cognition, general knowledge, and social competence.

The curricula of primary interest to PCER are those with sufficient standardized training procedures and published curriculum materials to support implementation of the curriculum by entities other than and at a distance from the curriculum developers. In addition, the curricula of interest to PCER are those that focus on the child outcomes described above, and those with instructional approaches that find support in the scientific literature on learning and instruction. These will be existing curricula that are already in use in a number of sites. PCER is not intended to support the development of new curricula; that will be the focus of other programs of research to be sponsored by the Interagency Task Force.

**Program Description**

Grantees will coordinate with a national evaluation contractor (to be funded separately by OERI) to ensure that evaluations carried out in different locations follow consistent protocols and use a core set of comparable measures. The national contractor will be responsible for collecting pre- and post-intervention data and kindergarten and first grade follow-up data on children and classrooms, and for analysis and reporting of these data across program sites. This type of centralized data coordination mechanism has been found to be important in maximizing the systematic collection of cross-site knowledge obtained from multiple research projects. The cross-site data will be returned to applicants in a timely manner to serve as a basis for local analyses (as part of any complementary research), as well as eventually made available in public use datasets. Additional local measures and data analysis of implementation and outcomes may be carried out by the applicants as part of complementary research projects (described subsequently) using program funds. This arrangement allows applicants to consider more intensive data collection approaches to augment the available core measures. Cooperative agreement budgets should include costs of data collection for local measures, assuming a common core of data to be provided by the external data collection center without cost to the grantee.

The core set of evaluation data collected by the national contractor will utilize FACES instruments to measure both classroom and family characteristics and practices, and child outcomes. Children, parents and preschool staff participate in data collection. In addition, the preschool classrooms are assessed by outside observers. The FACES instruments cover a range of areas. The primary focus is on child outcomes, including cognitive outcomes assessed using standard instruments such as the Woodcock-Johnson Letter Word Identification, and socio-emotional outcomes such as social skills ratings completed by the teacher. For purposes of calculating participant burden, the current FACES child direct assessment is completed in approximately 30 minutes per child. For a full listing of the measures used in the 1997–2000 FACES study, please see *http://www2.acf.dhhs.gov/programs/hsb/hsreac/faces/instruments.html.*

Applicants must consider methods for assessing the characteristics of the preschool program(s), including those programs that serve as controls. Such methods could examine such factors as allocation of time during the preschool day, nature of interactions between children and teacher, and fidelity of the curriculum implementation.

Applicants may also propose complementary research studies to further our knowledge of the mechanisms by which curricula support children's learning, including the

development of new instruments to measure processes related to the effects of curriculum and instruction on learning and development in young children. The complementary research may address a range of issues related broadly to curriculum effectiveness such as the impact of curriculum implementation on preschool staff, the influence of individual differences in children on program impact, the development of instrumentation, or other related topics.

The complementary research studies are intended to supplement, complement and enrich the core evaluation. Investigators will have an opportunity to explore mediating events or the theoretical pathways that explain the results that are obtained in the evaluation. In addition, complementary research provides an opportunity to identify outcomes that, because of data constraints, are not explored in the core evaluation or are specific to an individual site. It also expands the possibilities for multiple measures of the same construct, and for the development of new measures.

Two areas of complementary research are of particular interest:

(1) Studies that address how individual or background differences in children interact with the curriculum to influence developmental outcomes. Such studies would address the question, for which children under which conditions is the curriculum most successful?

(2) Studies that compare different versions of the curriculum or different approaches to implementation in order to identify key features of the curriculum and approaches that might improve effectiveness and ease of implementation. Such studies would address the question, under what circumstances does the curriculum achieve the greatest impact?

Specific complementary research questions might include:

Individual differences: How are age, gender, language, disability, and other key child characteristics, as well as cultural issues, addressed? How do family characteristics interact with the child's preschool experience to influence school readiness? To what populations are evaluation results likely to be generalizable? For which children is the curriculum most effective/least effective and why?

*Replication/dissemination:* What variations in context, target populations, and program delivery might affect implementation in other sites, and how might they affect the outcomes of the curriculum? To what extent does the curriculum have to be modified to adapt to local conditions? What are the key elements that have to be sustained to maintain effectiveness of the curriculum?

*Classroom, program, and community context:* What are the structures and supports necessary to implement the curriculum? What are the key activities that are conducted to include or gain support from community stakeholders and collaborators, with program administrators and policy councils, with classroom teachers and other staff, with parents of children in the classrooms? What are the contextual variables that might influence how the curriculum is implemented: *e.g.,* culture, neighborhood characteristics, organizational climate, level of poverty in the community, teacher backgrounds, education, motivation, skills and attitudes, levels of support (financial and otherwise), competing priorities within a program or classroom, management and organizational structures? What are the relationships among the individuals who are stakeholders and/or participants in the curriculum?

Grantees will be required to propose a research and evaluation work plan that will be negotiated between the applicant and OERI and updated on a yearly basis. The work plan proposed by the applicant will include details of how the evaluation will be implemented, *e.g.,* the number of classrooms, their characteristics, their existing approach, how training will be provided, how randomization will occur, how informed consent will be obtained. A work plan is also necessary for the complementary research, if such research is proposed by the applicant. The evaluation portion of each PCER's proposed work plan will be reviewed by OERI and the national evaluation contractor before the final evaluation plan is approved.

**Time Frame**

PCER projects will be funded for up to a four-year period. Evaluation designs should include both short term and long term outcomes. Initial results are expected at the end of the first year of curriculum implementation. Long term outcomes should include follow-up into kindergarten and first grade. Applicants should plan for an implementation in pre-K classrooms in year 1, follow-up into kindergarten in year 2, follow-up into first grade in year 3, and completion of data analysis and reports in year four. Complementary research designs could involve continued pre-K implementations and ongoing research in the pre-K setting for some or all years of the grant, while children in the first cohort are being followed up into first grade.

In the event that a PCER project does not generate meaningful differences between intervention and control classrooms in terms of children's outcomes at the end of year 1, and when this lack of effect appears to be attributable to unforeseen and remediable problems in implementation, grantees will be given a second year of funding to repeat a pre-K implementation of their selected curriculum. When curriculum effects on children's outcomes are not obtained at the end of the pre-K year, and this lack of effect appears to be a valid indicator of program ineffectiveness, grantees will be encouraged to implement and evaluate curricula that have proven effective as deployed by other grantees.

**Type of Awards**

OERI will use a cooperative agreement mechanism that allows substantial Federal involvement in the activities undertaken with Federal financial support. Details of the responsibilities, relationships and governance of the cooperative agreement will be elaborated in the terms and conditions of the award. The specific responsibilities of the Federal staff and project staff will be identified and agreed upon prior to the award of each cooperative agreement.

**Priority**

This competition focuses on projects designed to meet the following absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

*Absolute Priority*

The preschool curriculum evaluation research grants are designed to determine through a randomized clinical trial whether one or more curricula produce educationally meaningful effects on children's outcomes. Each grantee must implement one or more identified pre-K curricula, including attention to fidelity of the curriculum implementation; and coordinate with a national contractor the assessment of children and classrooms in the fall and spring of the pre-K year, and in the spring of the kindergarten and first grade year.

Specifically, successful applicants must:

(1) Obtain agreement of a sufficient number of preschool sites to participate in the study;

(2) Obtain agreement of the cooperating sites to random assignment of children or classrooms to the

curriculum being evaluated versus one or more comparison approaches;

(3) Obtain informed consent of parents of children participating in the study, and all teachers and other administrators from whom data will be collected;

(4) Provide all necessary materials and professional development to teachers and staff to implement the curriculum to be evaluated in the intervention classrooms;

(5) Make all on-site arrangements necessary for the national contractor to conduct assessments of participating children and classrooms;

(6) Obtain parent and teacher interview data; and

(7) Provide an on-site coordinator to manage all aspects of data collection, curriculum implementation, and interaction with the national contractor.

Complementary research projects may be embedded within the evaluation design or include additional data collection activities. However, activities related to the complementary research must not compromise the core evaluation responsibilities and are not required in order to receive funding.

Applicants who are research organizations are free to involve curriculum developers or distributors in the project as they think best, from having the curriculum developers as full partners in their proposals to utilizing off-the-shelf curriculum materials without involvement of the developer or publisher. Involvement of the curriculum developer or distributor must not jeopardize the objectivity of the evaluation and must not involve a level of professional training or support for the curriculum that rises above that available to ordinary adopters of the curriculum. Applicants who are not research organizations will need to obtain the services of at least one consultant who is an established researcher and who has committed enough time to the project to assure the integrity of the local evaluation and to participate in all required meetings. Applicants who are commercial curriculum developers should indicate in the budget summary the value of any nonfederal resources that will be devoted to the research project, such as their curriculum products.

Applicants must employ random assignment in the evaluation design. Preschool program(s) that are to be the sites for curriculum implementation must agree to cooperate fully with the random assignment as a condition for the applicant to receive an award under this announcement. In order to facilitate random assignment, applicants are encouraged to consider the use of incentives for schools and families. These may include: Compensation for additional preschool staff time required to cooperate with the research effort; funding for a new classroom; provision of additional resources to enable a program to conduct new activities; securing vehicles for transportation; stipends to families, etc.

In proposing a curriculum for evaluation and in the evaluation design, applicants should consider the following questions:

(1) What scientific research supports the use of this particular curriculum to improve school readiness or other identified outcomes?

(2) What levels of staff qualifications are required?

(3) What training and materials are needed?

(4) What are the costs of the curriculum in terms of materials and professional training and support?

(5) How is classroom or program practice to be affected?

(6) How will fidelity of the curriculum be maintained over the program year?

(7) What are possible program staff or family barriers to acceptance?

Applicants need to pay special attention to the nature of the curriculum or approach that will be used in control classrooms. Successful applicants for this initial round of PCER awards are not expected to compare different well-articulated well-implemented preschool curricula, though such applications are not discouraged. Rather, we expect the typical applicant to propose to implement a well articulated, well-implemented curriculum in preschools in which the prevailing approach is a home grown, garden variety, unlabeled preschool experience that is short on specific instructional goals and that lacks a detailed curriculum. That existing practice would continue in the classrooms randomized into the control condition. Applicants who propose a control condition in which the curriculum is one that might well be proposed as the intervention condition by another applicant should provide a convincing rationale for their intervention being likely to improve children's outcomes compared with the known effects of the curriculum used in the control condition. In this regard and for all the projects, the ethics of random assignment require a reasonable assumption that children in the intervention classrooms will experience neutral to positive outcomes compared with children in the control classrooms, rather than negative outcomes.

Because children who are most unprepared for entry into school are found disproportionately among low-income households, and because variations in the quality of preschool programs appear to have their greatest effects among such children, applicants must either focus on preschools that serve children from low-income backgrounds or assure that such children are present in significant numbers within the preschool classrooms that are sampled.

Applicants will follow children who participate in studies of PCER curricula that generate educationally meaningful effects at the end of the pre-K year into kindergarten and first grade. Assessment of children at follow-up in both the intervention and control conditions will be the responsibility of the national contractor. However, all arrangements to allow such assessments to occur, including obtaining parent permission and negotiating access to children for testing in their schools, will be the responsibility of the successful applicant. Applicants must address how they will provide access to children for follow-up testing.

Applicants must be able to guarantee access to a minimum of 10 classrooms with a total of 150 children. Children included must be in the age range such that they would be eligible for entrance into public kindergarten in the following year. In addition, the evaluation design must include attention to the following:

(1) Description of the control condition and the intervention condition(s).

(2) Explanation of procedures for random assignment and discussion of procedures for tracking fidelity to the assignment and potential sources of contamination.

(3) Logic of sampling so as to capture, to the degree possible, diversity in the preschool population studied. Core variables to consider for capturing diversity include: race, ethnicity/language status; household income; parental education.

(4) Discussion of possible variations in the structure of the participating preschool program(s) (part-day or full day, public or private, profit or non-profit, etc.) and how these variations will be taken into consideration in the evaluation design.

Applicants must provide a letter of cooperation from participating preschool programs for the purposes of conducting the research, with the responsibilities of the preschool program clearly indicated and accepted in the letter of cooperation. The applicant must be willing to work with the national evaluation contractor for the collection of cross-site data, in

coordination with any local data collection activities. The principal investigator must agree to attend up to four meetings each year of the grantees, contractor, and Federal staff. The budget should reflect travel funds for such purposes.

*Waiver of Proposed Rulemaking*

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, in order to make timely grant awards in FY 2002, the Secretary has decided to issue this application notice without first publishing a proposed priority for public comment. These regulations will apply to the FY 2002 grant competition only. The Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

OERI is conducting its first grant competition under the national research institutes authority for the purpose of funding projects that will implement rigorous evaluations of classroom curricula currently in use for the pre-K years (20 U.S.C. 6031). This new program of research is intended to address the critical question of which curricula produce or contribute to educationally meaningful outcomes for children of this age. As noted earlier, the evidence that would allow informed choices of classroom curricula for early childhood programs is weak or non-existent. Thus, for the first time, OERI is soliciting applications that will address the lack of rigorous, systematic study and evaluation of existing curricula.

In a separate **Federal Register** notice to be published in the near future, the Assistant Secretary will ask for public comment on the priority for the purpose of designing and conducting future grant competitions for this research.

**FOR APPLICATIONS AND FURTHER INFORMATION CONTACT:** Heidi Schweingruber, U.S. Department of Education, 555 New Jersey Avenue, room 602–O, Washington, DC 20208–5501. Telephone: (202) 219–2040 or via Internet: *Heidi.Schweingruber@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting Heidi Schweingruber. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

*Pilot Project for Electronic Submission of Applications*

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Preschool Curriculum Evaluation Research Grant Program (CFDA 84.305J) is one of the programs included in the pilot project. If you are an applicant under the PCER program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the PCER Program at: *http://e-grants.ed.gov.*

Due to software upgrades, it is anticipated that the e-Application software will be unavailable for several days in mid-January. The tentative dates for this system down time are January 11–21, 2002. Please check this site for future updates on system availability.

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

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**Program Authority:** 20 U.S.C. 6031.

Dated: December 13, 2001.

**Grover J. Whitehurst,**

*Assistant Secretary for Educational, Research and Improvement.*

[FR Doc. 01–31127 Filed 12–14–01; 8:45 am]

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Federal Register

Monday,
December 17, 2001

# Part V

# The President

## Proclamation 7514—Wright Brothers Day, 2001

Federal Register
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Monday, December 17, 2001

# Presidential Documents

**Title 3—**

## The President

**Proclamation 7514 of December 13, 2001**

## Wright Brothers Day, 2001

**By the President of the United States of America**

**A Proclamation**

On December 17, 1903, from the dunes near Kitty Hawk, North Carolina, Orville Wright made the first manned flight in an engine-powered aircraft. Though the flight only covered 120 feet and lasted just 12 seconds, Orville and his brother Wilbur Wright changed history on that cold and gusty winter day.

Success had not come easily to the Wright brothers. Many thought powered flight impossible; and skeptics called the Wrights dreamers for even entertaining the idea. Undeterred, the Wrights spent years in study, analyzing the flight of birds and experimenting with model airplanes in their bicycle shop in Dayton, Ohio. After many trials and errors, the Wright brothers finally achieved a controlled flight and opened the door to a new world.

On December 17 of each year, we honor the Wright brothers for their contributions to our Nation. Their invention of powered flight made the world community more connected. We have since traveled to the Moon and back, and space shuttles orbit our planet. All of these amazing advances can be traced back to that windy day at Kitty Hawk when the indomitable will of the Wrights persevered to triumph over the supposed impossible.

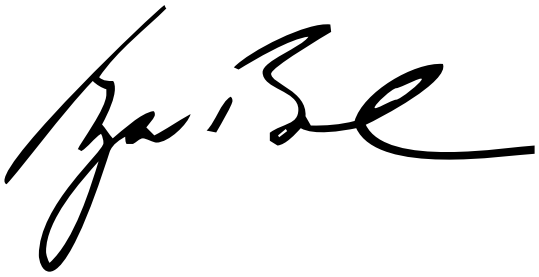
Air travel now is an essential part of this Nation's everyday life. This proud industry will endure through the new challenges presented by the tragedies of September 11. Joining together as a Nation, we will continue to strengthen security while maintaining the economic and social benefits of an efficient air transportation system.

This Wright Brothers Day we salute all the scientific pioneers and visionaries who, despite the critics, have over come seemingly insurmountable odds and made great advances for man. The Wright brothers' perseverance and creativity can serve as an inspiration for those inventors who will take us to new heights in the 21st century.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 143), has designated December 17 of each year as ''Wright Brothers Day,'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 17, 2001, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of December, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–31208
Filed 12–14–01; 10:38 am]
Billing code 3195–01–P

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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**S. 1459/P.L. 107–80**

To designate the Federal building and United States courthouse located at 550 West Fort Street in Boise, Idaho, as the ''James A. McClure Federal Building and United States Courthouse''. (Dec. 12, 2001; 115 Stat. 810)

**S. 1573/P.L. 107–81**

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**Last List December 11, 2001**

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| **1, 2 (2** Reserved) | (869–044–00001–6) | 6.50 | [4] Jan. 1, 2001 |
| **3** (1997 Compilation and Parts 100 and 101) | (869–044–00002–4) | 36.00 | [1] Jan. 1, 2001 |
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| 1200–1599 | (869–044–00016–4) | 55.00 | Jan. 1, 2001 |
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| 1950–1999 | (869–044–00020–2) | 45.00 | Jan. 1, 2001 |
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| **8** | (869–044–00022–9) | 54.00 | Jan. 1, 2001 |
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| 200–End | (869–044–00024–5) | 53.00 | Jan. 1, 2001 |
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| 500–End | (869–044–00028–8) | 55.00 | Jan. 1, 2001 |
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| 200–1199 | (869–044–00040–7) | 44.00 | Jan. 1, 2001 |
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| 1000–End | (869–044–00046–6) | 53.00 | Jan. 1, 2001 |
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| 200–239 | (869–044–00049–1) | 51.00 | Apr. 1, 2001 |
| 240–End | (869–044–00050–4) | 55.00 | Apr. 1, 2001 |
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| 400–End | (869–044–00052–1) | 23.00 | Apr. 1, 2001 |
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| 141–199 | (869–044–00054–7) | 53.00 | Apr. 1, 2001 |
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| 400–499 | (869–044–00057–1) | 57.00 | Apr. 1, 2001 |
| 500–End | (869–044–00058–0) | 57.00 | Apr. 1, 2001 |
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| 500–599 | (869–044–00064–4) | 44.00 | Apr. 1, 2001 |
| 600–799 | (869–044–00065–2) | 15.00 | Apr. 1, 2001 |
| 800–1299 | (869–044–00066–1) | 52.00 | Apr. 1, 2001 |
| 1300–End | (869–044–00067–9) | 20.00 | Apr. 1, 2001 |
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| **23** | (869–044–00070–9) | 40.00 | Apr. 1, 2001 |
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| 700–1699 | (869–044–00074–1) | 55.00 | Apr. 1, 2001 |
| 1700–End | (869–044–00075–0) | 28.00 | Apr. 1, 2001 |
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| 0–99 | (869–044–00100–4) | 45.00 | July 1, 2001 |
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| 1900–1910 (§§ 1900 to 1910.999) | (869–044–00104–7) | 55.00 | July 1, 2001 |
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| 1926 | (869–044–00107–1) | 45.00 | July 1, 2001 |
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| **30 Parts:** | | | |
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| 191–399 | (869–044–00115–2) | 57.00 | July 1, 2001 |
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| 700–799 | (869–044–00118–7) | 42.00 | July 1, 2001 |
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| 125–199 | (869–044–00121–7) | 55.00 | July 1, 2001 |
| 200–End | (869–044–00122–5) | 45.00 | July 1, 2001 |
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| 300–End | (869–044–00129–2) | 55.00 | July 1, 2001 |
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| 1000–end | (869–042–00166–4) | 55.00 | Oct. 1, 2000 |
| **44** | (869–044–00171–3) | 45.00 | Oct. 1, 2001 |
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| 200–499 | (869–044–00173–0) | 31.00 | Oct. 1, 2001 |
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| 200–499 | (869–044–00183–7) | 36.00 | Oct. 1, 2001 |
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| 2 (Parts 201–299) | (869–044–00192–6) | 53.00 | Oct. 1, 2001 |
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| *400–999 | (869–044–00201–9) | 58.00 | Oct. 1, 2001 |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained..