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Reader Aids
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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

Rules and Regulations

Federal Register

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–081–1]

Imported Fire Ant; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations by designating as quarantined areas all or portions of five counties in Arkansas, three counties in Georgia, eight counties in North Carolina, and four counties in Tennessee. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

DATES: This interim rule was effective January 2, 2002. We invite you to comment on this docket. We will consider all comments we receive that are postmarked, delivered, or e-mailed by March 11, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–081–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–081–1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–081–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4838.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant, which is not native to the United States, feeds on crops and builds large, hard mounds that damage farm and field machinery. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In § 301.81–3, paragraph (e) lists quarantined areas. We are amending § 301.81–3(e) by:

- Adding portions of Faulkner and Polk Counties, AR, to the list of quarantined areas and changing the status of Grant, Hempstead, and Nevada Counties, AR, from partially to completely infested;
- Adding Rabun, Towns, and Union Counties, GA, to the list of quarantined areas (these three counties were the last remaining uninfested counties in Georgia, thus the entire State is now designated as a quarantined area);
- Adding portions of Harnett, Hertford, Johnston and Nash Counties, NC, and all of Lee County, NC, to the list of quarantined areas, changing the status of Moore and Sampson Counties, NC, from partially to completely infested, and revising the quarantine boundaries in Wake County, NC, to incorporate additional infested areas; and
- Changing the status of Henderson County, TN, from partially to completely infested and revising the quarantine boundaries in Franklin, Maury, and Moore Counties, TN, to incorporate additional infested areas.

We are taking these actions because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new and revised quarantined areas.

In addition to the changes to the quarantined areas described above, we are correcting the listing for Hot Spring County, AR, in § 301.81–3(e). That county is currently listed incorrectly as Hot Springs County.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of imported fire ant into noninfested areas of the United States. Under these circumstances, the Administrator has

determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

This interim rule is necessary because infestations of imported fire ant have been discovered in additional areas of Arkansas, Georgia, North Carolina, and Tennessee. This action will establish quarantined areas in 10 new counties and revise the boundaries of the quarantined areas in 10 other counties in those States. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the imported fire ant into noninfested areas of the United States.

The following analysis addresses the economic effects of this rule and the impact on small entities as required by the Regulatory Flexibility Act.

According to the 1997 Census of Agriculture, the market value of agricultural products sold in the 20 counties that are subject of this rule was more than $2.171 billion. During 1997, the value of sales from nursery and greenhouse crops in these 20 counties was at least $36.5 million. The five counties in Arkansas had $300.35 million in agricultural product sales, the three counties in Georgia had $30.96 million in agricultural product sales, the eight counties in North Carolina had $1.44 billion in agricultural product sales, and the four counties in Tennessee had $117.45 million in agricultural product sales. In 1997, the eight counties in North Carolina had 51 percent of the value of their agricultural sales attributed to crops (including nursery and greenhouse crops), with the remaining 49 percent attributed to livestock. The four counties in Tennessee had 28 percent of the value of their agricultural sales attributed to crops (including nursery and greenhouse crops), with the remaining 72 percent attributed to livestock. In two of the three Georgia counties, 17 percent of the value of agricultural sales was attributed to crops (including nursery and greenhouse crops), with the remaining 83 percent of that value attributed to livestock. (The relative contributions of crops and livestock to the value of agricultural sales in the third Georgia county could not be determined, as those figures were withheld from the 1997 Census of Agriculture to avoid disclosing data for individual farms.) The five counties in Arkansas had only 5 percent of the value of their agricultural sales attributed to crops, with the remaining 95 percent of the value attributed to livestock. These data indicate that there is a large agricultural economy at risk due to the potential for the imported fire ant to damage crops and injure or kill livestock.

Small entities potentially affected by this rule include nurseries, greenhouses, farm equipment dealers, construction companies, and companies that sell, process, or move regulated articles interstate from and through the quarantined areas. According to the Small Business Administration (SBA), Office of Advocacy, regulations create economic disparities when they have a significant economic impact on a substantial number of small entities. The SBA defines a small agricultural producer as one that generates less than $750,000 of annual sales; to be considered small by the SBA definition, an equipment dealer or agricultural service company must generate less than $5 million of annual sales.

In the four Tennessee counties, there were at least 94 entities that could be potentially affected by the changes in regulations. In 1997, these four counties received $32.5 million from crop sales, including greenhouse and nursery sales. In the three Georgia counties, there were at least 27 entities that could be potentially affected by the changes in regulations. In 1997, these three counties received at least $2.5 million from crop sales, including greenhouse and nursery sales. In the five Arkansas counties, there were at least 22 entities that could be potentially affected by the changes in regulations. In 1997, these five counties received $8.2 million from crop sales, including greenhouse and nursery sales. In the eight North Carolina counties, there were at least 265 entities that could be potentially affected by the changes in regulations. In 1997, these eight counties received $446.5 million from crop sales, including greenhouse and nursery sales. In summary, there are at least 408 small entities potentially affected by the imported fire ant quarantine in the 20 counties. However, the number of these small entities that will be affected by this rule and the extent to which they are affected depend on the proportion of their sales outside the imported fire ant quarantined areas.

The adverse economic effects on these entities can be substantially minimized by the availability of various treatments that will permit the movement of regulated articles with only a small additional cost. The estimated annual cost of imposing a quarantine on these counties is very small in comparison to the benefit gained through agricultural sales. For example, the value of a ''standard'' sized tractor-trailer load of nursery plants ranges from $10,000 to $250,000. The treatment cost for this ''standard'' shipment of plants is only around $200. An average treatment cost, then, is between 2 percent and 0.8 percent per standard plant shipment. In contrast to the potential losses associated with an imported fire ant infestation, these treatment costs are not significant.

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

Executive Order 12372

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

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform.

This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this program. The assessment provides a basis for the conclusion that the methods employed to prevent the spread of the imported fire ant will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of

the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

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

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

2. In § 301.81–3, paragraph (e) is amended as follows:

a. Under the heading Arkansas, by adding, in alphabetical order, new entries for Faulkner and Polk Counties; by revising the entries for Grant, Hempstead, and Nevada Counties; and, in the entry for Hot Springs County, by removing the word ''Springs'' and adding the word ''Spring'' in its place.

b. Under the heading Georgia, by removing the individual county entries and adding a single entry for the entire State.

c. Under the heading North Carolina, by adding, in alphabetical order, new entries for Harnett, Hertford, Johnston, Lee, and Nash Counties and by revising the entries for Moore, Sampson, and Wake Counties.

d. Under the heading Tennessee, by revising the entries for Franklin, Henderson, Maury, and Moore Counties.

§ 301.81–3 Quarantined areas.

* * * * *

(e) * * *

Arkansas

* * * * *

Faulkner County. That portion of the county lying south of a line beginning at the intersection of Interstate 40 and the Faulkner/Conway County line; then southeast on Interstate 40 to U.S. Highway 64; then east on U.S. Highway 64 to the Faulkner/White County line.

* * * * *

Grant County. The entire county.

Hempstead County. The entire county.

* * * * *

Nevada County. The entire county.

* * * * *

Polk County. That portion of the county lying south of a line beginning at the intersection of State Highway 4 and the Oklahoma/Arkansas border; then east on State Highway 4 to U.S. Highway 71; then south on U.S. Highway 71 to State Highway 246; then east on State Highway 246 to the Polk/Howard County line.

* * * * *

Georgia

The entire State.

* * * * *

North Carolina

* * * * *

Harnett County. That portion of the county lying south of a line beginning at the intersection of U.S. Highway 421 and the Harnett/Lee County line; then east and southeast on U.S. Highway 421 to Interstate 95; then northeast on Interstate 95 to the Harnett/Johnston County line.

Hertford County. That portion of the county lying east of a line beginning at the intersection of U.S. Highway 13 and the Hertford/Bertie County line; then north on U.S. Highway 13 to County Route 1419 (Newsome Grove Road); then north on County Route 1419 to County Route 1415 (Catherine Creek Road); then northeast on County Route 1415 to County Route 1409 (Hall Siding Road); then northwest on County Route 1409 to County Route 1403 (Ahoskie-Cofield Road); then northeast on County Route 1403 to County Route 1400 (River Road); then northwest on County Route 1400 to County Route 1402 (Tunis Road); then northeast on County Route 1402 to the Chowan River and the Hertford/Gates County line.

* * * * *

Johnston County. That portion of the county lying south and east of Interstate 95.

* * * * *

Lee County. The entire county.

* * * * *

Moore County. The entire county.

Nash County. That portion of the county bounded by Interstate 95 on the west, the old Seaboard Railroad tracks on the south, the Nash/Edgecombe County line on the east, and on the north by State Highway 4 to its junction with U.S. Highway 301, then following a straight line east to the Nash/Edgecombe County line.

* * * * *

Sampson County. The entire county.

* * * * *

Wake County. That portion of the county lying south of a line beginning at the intersection of U.S. Highway 70 and the Wake/Durham County line; then south and east on U.S. Highway 70 to Interstate Highway 440; then east on Interstate 440 to Wake Forest Road; then north on Wake Forest Road to Spring Forest Road; then east on Spring Forest Road to State Highway 401; then north on State Highway 401 to the Neuse River; and then south along the Neuse River to the Wake/Johnston County line.

* * * * *

Tennessee

* * * * *

Franklin County. That portion of the county lying south a line beginning at the intersection of State Highway 50 and the Moore/Franklin County line; then east on State Highway 50 to U.S. Highway 64; then east on U.S. Highway 64 to U.S. Highway Alt 41; then east on U.S. Highway Alt 41 to the Grundy/Marion County line; also the entire city limits of Winchester, Decherd, and Estill Springs.

* * * * *

Henderson County. The entire county.

* * * * *

Maury County. That portion of the county lying south and west of a line beginning at the intersection of U.S. Highway 412 and the Maury/Lewis

County line; then east on U.S. Highway 412 to State Highway 166; then southeast on State Highway 166 to Dry Creek Road; then south on Dry Creek Road to the Maury/Lawrence County line.

* * * * *

Moore County. That portion of the county lying south of a line beginning at the intersection of State Highway 82 and the Moore/Bedford County line; then southeast on State Highway 82 to State Highway 55; then northeast on State Highway 55 to Cobb Hollow Road; then east on Cobb Hollow Road to the Moore/Coffee County line.

* * * * *

Done in Washington, DC, this 2nd day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–455 Filed 1–8–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 01–111–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by revising commuted traveltime allowances for travel between various locations in the State of Washington. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

EFFECTIVE DATE: January 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Roger F. West, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8891.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into or exportation from the United States.

When an employee of the Animal and Plant Health Inspection Service's Plant Protection and Quarantine (PPQ) program must provide these services on a Sunday, holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services according to 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duties.

We are amending § 354.2 of the regulations by revising the commuted traveltime allowances for travel between various locations in the State of Washington. The revised allowances are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry and the features of the reimbursement plan for recovering the cost of furnishing port of entry services depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedures with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

The number of requests for overtime services of a PPQ employee at the locations affected by this rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform.

This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, we are amending 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.3.

2. In § 354.2, the table is amended by revising the entry for the State of Washington to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
* * *	* *	*	*
Washington:			
Aberdeen	Seattle, maritime port		4
Anacortes	Blaine		3
Ault Field	Blaine		4
Bangor NSO	Seattle, maritime port		4
Bellingham	Blaine		2
Blaine		1	
Brewster	Ellensberg		6
Brewster	Spokane		6
Brewster	Wenatchee		4
Cherry Point	Blaine		1
Edmonds	Seattle, maritime port		2
Ellensburg		1	
Everett	Seattle, maritime port		3
Ferndale	Blaine		2
Fort Lewis	Tacoma		2
Grays Harbor	Seattle, maritime port		6
Grays Harbor	Tacoma		4
Hood River	Ellensburg		6
Lynden	Blaine		2
McChord AFB	Seattle, maritime port		3
McChord AFB	Tacoma		2
Moses Lake	Ellensburg		3
Moses Lake	Wenatchee		3
Olympia	Seattle, maritime port		3
Olympia	Tacoma		2
Oroville		1	
Paine Field	Seattle, maritime port		3
Pasco	Ellensburg		5
Pasco	Spokane		6
Pasco	Wenatchee		6
Point Wells	Seattle, maritime port		2
Port Angeles	Seattle, maritime port		6
Port Angeles	Tacoma		6
Port Townsend	Seattle, maritime port		4
Sawyer	Ellensburg		3
Sawyer	Wenatchee		5
SEA TAC Airport		2	
Seattle, maritime port		2	
Sumas	Blaine		2
Tacoma		2	
Wenatchee		1	
Wenatchee	Ellensburg		4
Wenatchee	Spokane		6
Yakima		1	
Yakima	Ellensburg		3
Yakima	Wenatchee		6
* * *	* *	*	*

Done in Washington, DC, this 2nd day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–00453 Filed 1–8–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–031–3]

Change in Disease Status of The Netherlands and Northern Ireland With Regard to Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding The Netherlands and Northern Ireland to the list of regions considered free of rinderpest and foot-and-mouth disease (FMD) and to the list of regions subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This final rule follows interim rules that removed France, Great Britain, Ireland, The Netherlands, and Northern Ireland from those lists due to detection of FMD in those regions. Based on the results of an evaluation of the current FMD situation in The Netherlands and Northern Ireland, we have determined that The Netherlands and Northern Ireland meet the standards of the Office International des Epizooties for being considered free of FMD. This rule relieves certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from The Netherlands and Northern Ireland.

EFFECTIVE DATE: January 9, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Goodman, Senior Staff Microbiologist, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera (also known as classical swine fever), and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all parts of the world not listed. Section 94.11 of the regulations lists regions of the world that the Animal and Plant Health Inspection Service (APHIS) has determined to be free of rinderpest and FMD, but from which importation of meat and animal products into the United States is restricted because of the regions' proximity to or trading relationships with rinderpest-or FMD-affected regions.

In an interim rule effective January 15, 2001, and published in the **Federal Register** on March 14, 2001 (66 FR 14825–14826, Docket No. 01–018–1), we amended the regulations by removing Great Britain and Northern Ireland from the list of regions considered to be free of rinderpest and FMD. (The **Federal Register** published a correction (66 FR 18357) to the interim rule on April 6, 2001.) In an interim rule effective February 19, 2001, and published in the **Federal Register** on June 1, 2001 (66 FR 29686–29689, Docket No. 01–031–1), we amended the regulations by removing France, Ireland, and The Netherlands from the list of regions considered to be free of rinderpest and FMD. These actions were necessary because FMD had been confirmed in each of those regions. The effect of the interim rules was to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Great Britain, Northern Ireland, France, Ireland, and The Netherlands.

In those interim rules, we recognized that the appropriate authorities had responded to the detection of FMD by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from FMD-affected areas; by conducting heightened surveillance activities; and by initiating measures to eradicate the disease. We stated that we intended to reassess the situations at a future date in accordance with Office International des Epizooties (OIE) standards, and that as part of that reassessment process, we would consider all comments received regarding the interim rules. Additionally, we stated that the future reassessments would enable us to determine whether it was necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Great Britain, Northern Ireland, France, Ireland, and The Netherlands, or whether we could restore some or all of those regions to the list of regions in which FMD is not known to exist or, alternatively, regionalize portions of those regions as FMD-free.

We solicited comments concerning Docket No. 01–018–1 for 60 days ending May 14, 2001, and received one comment by that date, submitted by a medical product manufacturer, requesting permission to import a specific medical product for human use that would otherwise be prohibited importation from regions not listed as free of FMD. As a result of this request, we determined that the product could be imported with negligible risk of FMD, and allowed the product to be imported in accordance with § 94.3, which allows certain types of products to be imported from FMD-affected regions for pharmaceutical or biological purposes.

We solicited comments concerning Docket No. 01–031–1 for 60 days ending July 31, 2001, and received four comments by that date. They were from businesses, a livestock association, and a Member State of the European Union. We addressed those comments in a final rule (66 FR 55872–55876, Docket No. 01–031–2), published in the **Federal Register** and effective November 5, 2001, in which we restored France and Ireland to both the list of regions considered to be free of rinderpest and FMD and the list of regions subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest-or FMD-affected regions.

One of the four comments we received suggested that The Netherlands be recognized as FMD free, claiming that the Netherlands would be free of the disease by August 25, 2001. We made no changes to the FMD status of the Netherlands in the November 5 final rule, but responded that we were continuing to monitor that country's progress with respect to the disease and were reevaluating its FMD status. We stated that we would publish a separate document in the **Federal Register** with respect to the FMD status of The Netherlands when our evaluation was complete.

Status of The Netherlands and Northern Ireland

In this final rule, we are restoring The Netherlands and Northern Ireland to the list in § 94.1(a) of regions that are considered to be free of rinderpest and FMD. Our reasons follow.

According to the OIE, when FMD occurs in an FMD-free country or zone where vaccination is not practiced before the outbreak, the following waiting periods are required to regain FMD-free status:

- In cases where stamping-out and serological surveillance are applied, 3 months after the last case; or
- In cases where emergency vaccination, stamping out, and serological surveillance are applied, 3 months after the slaughter of the last vaccinated animal.

Neither Northern Ireland nor The Netherlands vaccinated animals against FMD before the initial outbreaks that were confirmed in Northern Ireland on February 28, 2001, and in The Netherlands on March 21, 2001. Both countries initiated immediate destruction of affected animals and conducted clinical and serological surveillance. Additionally, The Netherlands adopted a policy of emergency vaccination.

The last case of FMD in Northern Ireland occurred on April 20, 2001, and the last case of FMD in The Netherlands occurred on April 22, 2001. The last vaccinated animal in The Netherlands was slaughtered on May 25, 2001. We find that Northern Ireland as well as The Netherlands meet the OIE standards for regaining FMD-free status.

We have evaluated the FMD eradication efforts in The Netherlands and Northern Ireland based on information provided to us by those regions and our own site visits. Our findings and site visit reports may be viewed on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html.* You may also request paper copies of these documents by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. 01–031–3 when requesting copies. These documents are also available in our reading room. (The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.)

Based on our findings and after reviewing comments submitted to us on the interim rules, we are amending the regulations by restoring The Netherlands and Northern Ireland to the list in § 94.1(a)(2) of regions that are declared free of both rinderpest and FMD. We are also restoring The Netherlands and Northern Ireland to the list in § 94.11(a) of regions that are declared free of rinderpest and FMD but that are subject to special restrictions on the importation of their meat and other animal products into the United States. The regions listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh (chilled or frozen) meat of ruminants or swine from regions that are designated in § 94.1(a) as regions where rinderpest or FMD exists; (2) have a common land border with regions where rinderpest or FMD exists; or (3) import ruminants or swine from regions where rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

This action relieves certain restrictions due to FMD and rinderpest on the importation into the United States of certain live animals and animal products from The Netherlands and Northern Ireland. However, because The Netherlands and Northern Ireland have certain trade practices regarding animals and animal products that are less restrictive than are acceptable for importation into the United States, the importation of meat and other products from ruminants and swine into the United States from The Netherlands and Northern Ireland continues to be subject to certain restrictions.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule restores The Netherlands and Northern Ireland to the list of regions considered free of FMD. Immediate action is necessary to remove restrictions on the importation of animals, meat, and other animal products that are no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding The Netherlands and Northern Ireland to the list of regions considered to be free of rinderpest and FMD and to the list of regions that are subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This final rule follows interim rules that removed Great Britain, Northern Ireland, France, Ireland, and The Netherlands from those lists due to detection of FMD in those regions. Based on the results of an evaluation of the current FMD situation in The Netherlands and Northern Ireland, we have determined that The Netherlands and Northern Ireland meet the standards of OIE for being considered free of FMD. This rule relieves certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from The Netherlands and Northern Ireland.

The Netherlands and Northern Ireland have not generally been major sources of U.S. imports of the products covered by the interim rule and this final rule, which include live ruminants, live swine, fresh (chilled or frozen) meat of ruminants and swine, processed ruminant and swine meat, some dairy products, animal feeds, and other ruminant and swine products such as semen, embryos, untanned hides and skins, unwashed wool, hair, bones, blood, and some other byproducts. Also, past imports of these products from The Netherlands and Northern Ireland represent a small fraction of the total U.S. imports or total U.S. production of these products. This final rule is not expected to alter these past trade patterns.

The majority of entities potentially affected by this final rule are considered small. For example, in 1997, approximately 97 percent (2,919 of 2,992) of meat and meat product wholesalers, 99 percent (1,490 of 1,503) of livestock wholesalers,[1] 92 percent (79,155 of 86,022) of dairy farms, 99.3 percent (651,542 of 656,181) of cattle farms, 87 percent (40,185 of 46,353) of hog and pig farms, 99.5 percent (29,790 of 29,938) of sheep and goat farms,[2] 98 percent (1,272 of 1,297) of slaughtering establishments, and 95 percent (1,324 of

[1] 1997 Economic Census, Department of Commerce, Bureau of the Census.

[2] 1997 Census of Agriculture, USDA, National Agricultural Statistics Service.

1,393) of meat processing establishments[3] would be considered small entities under the criteria set by the Small Business Administration. However, these entities should be little affected by this rulemaking because of the negligible effect on imports.

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713,7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding, in alphabetical order, the words ''The Netherlands,'' and ''Northern Ireland,''.

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) is amended by adding, in alphabetical order, the words ''The Netherlands,'' and ''Northern Ireland,''.

Done in Washington, DC, this 2nd day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–454 Filed 1–8–02; 8:45 am]

BILLING CODE 3410–34–U

[3] 1997 Economic Census, Department of Commerce, Bureau of the Census.

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 3864]

Amendment to the List of Proscribed Destinations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by removing Tajikistan and the Federal Republic of Yugoslavia (Serbia and Montenegro) from the list of proscribed destinations and makes additional clarifications to the ITAR.

EFFECTIVE DATE: January 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Tajikistan was added to the list of proscribed destinations at section 126.1(a) of the ITAR in the **Federal Register** publication of July 22, 1993 (58 FR 39312). The Department of State is amending the ITAR to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Tajikistan. This action is being taken in the interests of foreign policy and national security pursuant to section 38 of the Arms Export Control Act. Requests for licenses or other approvals for Tajikistan involving items covered by the U.S. Munitions List (22 CFR part 121) will be reviewed on a case-by-case basis.

Licenses and other approvals for Yugoslavia were suspended by the **Federal Register** notice of July 19, 1991 (58 FR 33322) and a denial policy was instituted for any new license applications and other requests for approval. The Federal Republic of Yugoslavia (Serbia and Montenegro) was added to the list of proscribed destinations at section 126.1 of the ITAR in the **Federal Register** publication of July 12, 1996 (61 FR 36625). The United Nations Security Council instituted a comprehensive arms embargo on the Federal Republic of Yugoslavia on March 31, 1998 pursuant to U.N. Security Council Resolution No. 1160. The U.N. Security Council terminated that embargo in Resolution No. 1367 (September 10, 2001).

The Department of State is amending the ITAR to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in the Federal Republic of Yugoslavia (Serbia and Montenegro). This action is being taken in the interests of foreign policy and national security pursuant to section 38 of the Arms Export Control Act. Requests for licenses or other approvals for the Federal Republic of Yugoslavia involving items covered by the U.S. Munitions List (22 CFR part 121) will be reviewed on a case-by-case basis.

The Department of State is also taking this opportunity to clarify two outdated references contained in section 126.1(a) of the ITAR. ''Zaire'' is currently listed as a proscribed country and is amended to ''the Democratic Republic of the Congo (formerly Zaire).'' Also, the Department is deleting the last sentence of 126.1(a) which refers to a license exemption that was formerly contained in section 123.27. That exemption was removed from 123.27 effective July 1, 2000, and the last sentence of 126.1(a) should have been deleted at that time.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, 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 application of Executive Order Nos. 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory

Change, removal of Tajikistan, 2401 E. Street, NW., 13th Floor, H1304, 2401 E Street, NW., Washington, DC 20037. Such persons must be so registered with the Department's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 126, is being amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

1. The authority citation for Part 126 reads as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

2. Section 126.1(a) is revised to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Afghanistan, Armenia, Azerbaijan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g. Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan and Democratic Republic of the Congo (formerly Zaire)) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register**. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries or areas.

* * * * *

Dated: December 3, 2001.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 02–115 Filed 1–8–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8976]

RIN 1545–AX20

Dollar-Value LIFO Regulations; Inventory Price Index Computation Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 472 of the Internal Revenue Code that relate to accounting for inventories under the last-in, first-out (LIFO) method. The final regulations provide guidance regarding methods of valuing dollar-value LIFO pools and affect persons who elect to use the dollar-value LIFO and inventory price index computation (IPIC) methods or who receive dollar-value LIFO inventories in certain nonrecognition transactions.

DATES: *Effective Date:* These regulations are effective on December 31, 2001.

Applicability Date: For dates of applicability, see §§ 1.472–8(e)(3)(v) and 1.472–8(h)(4).

FOR FURTHER INFORMATION CONTACT: Leo F. Nolan II at (202) 622–4970 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information in this final rule have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1767. The collections of information in this regulation are in § 1.472–8(e)(3)(iii)(B)(*3*) and (e)(3)(iv). To elect the IPIC method, a taxpayer must file Form 970, ''Application to Use LIFO Inventory Method.'' This information is required to inform the Commissioner regarding the taxpayer's elections under the IPIC method. This information will be used to determine whether the taxpayer is properly accounting for its dollar-value pools under the IPIC method. The collections of information are required if the taxpayer wants to obtain the tax benefits of the LIFO method. The likely respondents are business or other for-profit institutions, and/or small businesses or organizations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The reporting burden contained in § 1.472–8(e)(3)(iii)(B)(*3*) and (e)(3)(iv) is reflected in the burden of Form 970.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224.

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.

Background

Section 472 of the Internal Revenue Code (Code) permits a taxpayer to account for inventories using a last-in, first-out (LIFO) method of accounting. Section 472(f) directs the Secretary to prescribe regulations that permit the use of suitable published governmental price indexes for purposes of the LIFO method. The IRS and Treasury Department prescribed the inventory price index computation (IPIC) method in § 1.472–8(e)(3) (TD 7814, 47 FR 11271, 1982–1 C.B. 84) (the current regulations), under the authority contained in sections 472 and 7805. A taxpayer using the IPIC method must base its inventory price indexes on the consumer price indexes or producer price indexes published by the United States Bureau of Labor Statistics (BLS). The IPIC method was intended to simplify the use of the dollar-value LIFO method, so that the LIFO method could be used by more taxpayers and so that taxpayers already using the dollar-value LIFO method would have a simpler alternative method of computing an index for their dollar-value pool.

On May 19, 2000, the IRS and Treasury Department published a notice of proposed rulemaking (REG–107644–98, 65 FR 31841, 2000–23 I.R.B. 1229) (the proposed regulations) intended to simplify and clarify certain aspects of the IPIC method. In addition, the proposed regulations provided rules for computing the LIFO value of a dollar-value pool when a taxpayer receives LIFO inventories in certain nonrecognition transactions. Comments responding to the notice were received,

and a public hearing was held on September 15, 2000.

The IRS and Treasury Department received 16 comment letters concerning the proposed regulations. After considering the comments contained in these letters, the IRS and Treasury Department adopt the proposed regulations as revised by this Treasury decision. The comments and revisions are discussed below.

Explanation of Provisions and Summary of Comments

1. Overview

Under the last-in, first-out (LIFO) method, inventory on hand at the end of the year is treated as consisting of ''layers,'' first of inventory on hand at the beginning of the year (in the order of acquisition), and then of any inventory acquired during the current year. Section 1.472–8 permits a taxpayer to use the dollar-value LIFO method, which accounts for all items in an inventory ''pool'' (dollar-value pool) in terms of dollars of cost rather than in terms of quantities and prices of specific goods. Specifically, the taxpayer annually determines the existence of an increase (increment) or decrease (liquidation) in a dollar-value pool by comparing inventory quantities measured in terms of equivalent-value dollars (base-year cost). The current-year cost of beginning and ending inventory is converted into base-year cost using an inflation index, which is the ratio of the dollar-value pool's total current-year cost to its total base-year cost. By subtracting the base-year cost of the dollar-value pool at the beginning of the taxable year from the base-year cost of the dollar-value pool at the end of the taxable year, the taxpayer determines the amount of any resulting increment or liquidation. Finally, the taxpayer computes the LIFO value of an increment (layer) by multiplying that increment's base-year cost by an inflation index.

The current regulations provide an alternative method for a taxpayer to determine an inflation index. Under the inventory price index computation (IPIC) method, the taxpayer computes an inventory price index (IPI) based on the consumer price indexes (CPI) or producer price indexes (PPI) published monthly by the United States Bureau of Labor Statistics (BLS) in the ''CPI Detailed Report'' and ''PPI Detailed Report,'' respectively. See also *http://www.bls.gov.*

To facilitate a taxpayer's use of the IPIC method, the final regulations use new, more-descriptive terms for some IPIC method concepts. For example, *pool index* has been replaced with *IPI, appropriate index* has been replaced with *category inflation index,* and *index category* has been replaced with *BLS index category.* Within this preamble, the discussion of the current and proposed regulations uses both old and new terms, and the discussion of the final regulations generally uses the new terms.

2. Inventory Price Index—20 Percent Reduction

The current regulations state that ''[a]n inventory price index computed [under the IPIC method] shall be a stated percentage of the percent change in the selected consumer or producer price index or indexes for a specific category or categories of goods.'' For this purpose, ''stated percentage'' means ''100 percent'' in the case of an eligible small business, as defined in section 474 (i.e., average annual gross receipts for the three preceding taxable years do not exceed $5,000,000), and ''80 percent'' in all other cases. The proposed regulations retained this 20 percent reduction for large taxpayers.

Several commentators objected to the continuing requirement that large taxpayers reduce the IPI by 20 percent. Some of these commentators opined that the IPIC method is effectively a safe harbor method that significantly simplifies the LIFO computation and reduces IRS and taxpayer controversy; however, the 20 percent reduction is a major deterrent to its use by large taxpayers. Others argued that the CPI and PPI are representative of true inflation and, therefore, the 20 percent reduction decreases the accuracy of the IPIC method. Other commentators recommended that the stated percentage not be decreased by 20 percent until the taxpayer's gross receipts exceed $10,000,000. In their view, a taxpayer's gross receipts are likely to exceed $5,000,000 by the time the taxpayer's business is profitable enough to benefit by changing to the LIFO method.

The 20 percent reduction contained in the current regulations represents a balance between two competing tax policies—simplification and prevention of adverse selection. The IPIC method was developed originally to simplify the LIFO rules so that small businesses that could not compute an internal inflation index could use the LIFO method. Nonetheless, availability of the method was provided to all taxpayers because it was believed to be too difficult to define the class of taxpayers for which the LIFO rules were unduly burdensome and inappropriate to prevent large taxpayers from using the simplified method. Allowing all taxpayers to use the CPI or PPI regardless of the rate of inflation they actually experienced, however, provided an opportunity for adverse selection whereby a sophisticated taxpayer would adopt the IPIC method only when the inflation reflected in the CPI or PPI exceeded the taxpayer's internal rate of inflation. The 20 percent reduction of the IPI was incorporated into the current regulations to reduce this potential for adverse selection.

The IRS and Treasury Department now believe that the benefits of simplification (and reduced controversy) obtained from the IPIC method outweigh the need to prevent adverse selection. Consequently, the final regulations eliminate the requirement to reduce the IPI by 20 percent. All taxpayers electing to use the IPIC method may use 100 percent of the IPI to compute the LIFO value of a dollar-value pool.

3. Use of 10 Percent Categories and BLS Weights

The current regulations provide rules for assigning the items in a dollar-value pool to the applicable categories listed in the ''CPI Detailed Report'' or the ''PPI Detailed Report'' for which the BLS publishes corresponding cumulative price indexes (BLS categories and BLS price indexes, respectively) for purposes of computing the IPI for a dollar-value pool. In very simple terms, taxpayers use a process of elimination to assign all the items in a dollar-value pool to BLS categories that include at least 10 percent of the total inventory value (10 percent BLS categories) and then use the corresponding BLS weights to compute a weighted-average appropriate index for the items assigned to those 10 percent BLS categories.

The proposed regulations eliminate the requirements to use the 10 percent BLS categories and BLS weights to compute an appropriate index because it was believed that these requirements did not provide the intended simplicity but rather added unnecessary complexity to the IPIC method. Instead, the proposed regulations require the taxpayer to assign items in a dollar-value pool to the most-detailed BLS categories listed in the ''CPI Detailed Report'' or the ''PPI Detailed Report,'' whichever is applicable, and to weight the BLS price indexes based on the relative current-year cost of the items assigned to those BLS categories.

Several commentators objected to the elimination of the requirement to use the 10 percent BLS categories and BLS weights to compute an appropriate index. They suggested that this regime does in fact provide simplification for

some taxpayers and consequently should be retained as an option, particularly for retail grocers that would have to incur substantial administrative costs to have the items contained in their dollar-value pools assigned to numerous, most-detailed BLS categories. Other commentators supported the elimination of the requirement to use BLS weights, arguing that this will reduce both the complexity of the IPIC method and the potential for distortion caused by the use of the BLS weights. However, these commentators generally recommended retention of the 10 percent categories or, alternatively, modification of the proposed rule to permit a taxpayer to assign items in a dollar-value pool to less-detailed BLS categories (e.g., using 6-digit or 4-digit commodity codes in the PPI). Another commentator suggested lowering the testing threshold from 10 percent to 8 percent.

The IRS and Treasury Department now understand that the requirement to use 10 percent BLS categories and BLS weights provides simplicity for some taxpayers but complexity for others. Accordingly, the final regulations retain the 10 percent BLS categories and BLS weights as an elective method (10 percent method) of determining the category inflation index of a 10 percent BLS category. The final regulations clarify, however, that to determine whether a BLS category may be selected under the 10 percent method, a taxpayer must compare the current-year cost of the items in that category to the total current-year cost of the items in the dollar-value pool, not to the total current-year cost of the items in the taxpayer's entire inventory.

4. Weighted Harmonic Mean for Computing Inventory Price Index

A pool index computed using the dollar-value LIFO method should reflect a weighted average of the inflation rates of the items contained in the ending inventory of the dollar-value pool. The current regulations state that the appropriate indexes are weighted according to the relative current-year costs of the items in each selected BLS category. However, the regulations do not state how a taxpayer computes a weighted average of the appropriate indexes using the amount of relative current-year costs in each selected BLS category. An example of IPIC weighting methodology is found in Rev. Proc. 84–57 (1984–2 C.B. 496), which shows the computation of an IPI based on a weighted arithmetic mean of the appropriate indexes. (Weighted Arithmetic Mean = [Sum of (Weight x Appropriate Index)] / Sum of Weights). In addition, an example found in Rev. Proc. 98–49 (1998–2 C.B. 321) uses a weighted arithmetic mean to compute a weighted-average percent change for a selected BLS category.

The proposed regulations provide that the pool index must be computed using a weighted harmonic mean, instead of a weighted arithmetic mean, based on the relative current-year costs in the dollar-value pool. (Weighted Harmonic Mean = Sum of Weights / Sum of (Weight / Appropriate Index)).

Using a weighted arithmetic mean of the category inflation indexes of the BLS categories represented in a dollar-value pool is not a mathematically correct method of computing the IPI for the pool when the corresponding weights are the relative current-year costs at the end of the taxable year. If a taxpayer's dollar-value pool has the same quantity of two items with identical base-year costs, the IPI should reflect the inflation rates of the two items equally. However, a weighted arithmetic mean of the category inflation indexes will assign more weight to the inflation rate of the item that has the higher current-year cost. Thus, the mean will be skewed in favor of BLS categories that experience higher rates of inflation, and the IPI will be overstated. This result also will occur when the items in the dollar-value pool experience deflation because too much weight will be assigned to the BLS categories that experience less deflation.

Several commentators objected to the mandatory use of the weighted harmonic mean when computing an IPI. Acknowledging that an IPI based on a weighted harmonic mean is mathematically correct, these commentators stated that the inaccuracy built into a weighted arithmetic mean is offset (in the case of larger taxpayers) by the 20 percent reduction of the ''stated percentage.'' Thus, they recommended that taxpayers be permitted to continue computing IPIs based on a weighted arithmetic mean rather than be required to incur additional administrative costs to begin computing IPIs based on a weighted harmonic mean.

The IRS and Treasury Department did not adopt these suggestions because a weighted arithmetic mean based on relative current-year costs at the end of the period is not mathematically correct and the conversion from a weighted arithmetic mean to a weighted harmonic mean is not unduly burdensome. To assist taxpayers that need to change to a weighted harmonic mean, the final regulations include the formula for, and examples of, computing a weighted harmonic mean.

On the other hand, the use of a weighted arithmetic mean is mathematically correct when computing a weighted-average category inflation index based on relative costs at the beginning of the taxable year. The published BLS weights applicable for a taxable year are essentially based on relative costs at the beginning of the period. Therefore, whenever it is necessary to compute the category inflation index of a 10 percent BLS category using BLS weights, taxpayers must compute a weighted arithmetic mean. When computing the IPI for a dollar-value pool, however, even taxpayers electing to use the 10 percent method must use the weighted harmonic mean based on the current-year cost of the items assigned to each 10 percent BLS category.

5. Selecting an Appropriate Month

The current regulations state that a taxpayer not using the retail method must select price indexes ''as of the month or months'' most appropriate to its method of determining current-year cost (appropriate month), or make a one-time binding election of an appropriate representative month (representative month). In the case of a retailer using the retail method, the appropriate month is the last month of the retailer's taxable year. The IRS has ruled that a month is a representative month if a nexus exists between the selected month, the taxpayer's method of determining current-year cost, and the taxpayer's historic experience of inventory purchases. Rev. Rul. 89–29 (1989–1 C.B. 168). In practice, many taxpayers have been confused about the meaning of ''month or months most appropriate to the taxpayer's method of determining current-year cost.''

The proposed regulations clarify that for each dollar-value pool, a taxpayer not using the retail method either must annually select an appropriate month or must make an election to use a representative month. The principles of Rev. Rul. 89–29, which have been incorporated into the final regulations, continue to apply for the purpose of determining whether a particular month is appropriate or representative.

Several commentators stated that taxpayers should be permitted to use two IPIs for each taxable year (dual indexes), so that they will not be denied the right to use the earliest acquisitions method of determining current-year costs. These commentators suggest that a taxpayer whose accounting system determines the current-year cost of ending inventory using a first-in, first-out (FIFO) method (i.e., most recent purchases) could compute an IPI based on indexes selected from the CPI or PPI applicable to a month late in the taxable

year to deflate the current-year cost of items in ending inventory for the purpose of determining whether an increment or liquidation has occurred during the taxable year. If there is an increment, the taxpayer would compute a second IPI based on indexes selected from the CPI or PPI applicable to a month early in the taxable year to inflate the base-year cost of the increment to its LIFO value based on its ''pricing election'' (i.e., earliest acquisitions).

The IRS and Treasury Department did not adopt this suggestion for several reasons. First, the IPIC method and the earliest acquisitions method are not mutually exclusive. In fact, the current and proposed IPIC regulations clearly permit an electing taxpayer to use any method of determining current-year cost permitted under § 1.472–8(e)(2)(ii), including the earliest acquisitions method. A dual index IPIC method is not needed to ensure that an electing taxpayer will be able to use the earliest acquisitions method. However, the earliest acquisitions method is available under the IPIC method only to a taxpayer that actually computes the current-year cost of its ending inventory using the earliest acquisitions method because use of a dual index is inconsistent with the IPIC method's concept of an appropriate month. The appropriate month concept requires a taxpayer to select a month that correlates with its actual method of computing current-year cost and its experience with inventory purchases. As explained in Rev. Rul. 89–29, ''[t]he timing of the index (and the month selected) must relate to the timing of the determination of current-year cost, otherwise distortion would occur.'' The determination of an appropriate month is not a choice between equally acceptable methods of determining current-year cost, but depends on the taxpayer's actual method of determining current-year cost and actual purchases. Thus, a taxpayer using a calendar tax year may select January as the appropriate month only if items represented in the ending inventory were purchased in January and the taxpayer determines the current-year cost of the ending inventory based on the cost of those January purchases.

Moreover, though a dual index IPIC method would eliminate the requirement to determine the actual earliest acquisitions cost of the items in a dollar-value pool, the method would not simplify a taxpayer's use of the dollar-value LIFO method. A dual index IPIC method will require an electing taxpayer to compute (and the IRS to examine) twice as many category inflation indexes because the taxpayer would need BLS price indexes that reflect its inflation experience under the most recent purchases method as well as under the earliest acquisitions method. Similarly, a dual index IPIC method would require a taxpayer to select twice as many appropriate or representative months for each taxable year. Not only does the requirement to select two appropriate months increase the complexity of the IPIC method, it also decreases the accuracy of the method as some accuracy is lost as a result of determining the appropriate month for the entire pool rather than for each inventory item or each BLS category.

In summary, the IPIC method was intended to simplify the dollar-value LIFO method, primarily so it could be used by taxpayers that were otherwise unable to use the method. The IPIC method was neither intended nor designed to serve as a surrogate for determining the earliest acquisitions cost of the items in a dollar-value pool. The prohibition on the use of dual indexes in connection with the IPIC method, however, does not necessarily mean that the use of dual indexes will be prohibited in the context of other LIFO methods.

Several commentators objected to the rule that requires a taxpayer using both the retail method and LIFO method to use the last month of the taxable year as its appropriate month. In their view, a month in the middle of the year would be more representative because the retail method produces an average cost for a group of goods based on purchases for an entire year.

The IRS and Treasury Department did not adopt this suggestion because they believe that the appropriate month for a taxpayer using the retail method is the last month of the taxable year. Section 1.471–8 generally requires that a taxpayer adjust retail selling prices of the goods on hand at the end of the year to cost based on the ratio of goods available for sale at cost to goods available for sale at retail (the cost complement percentage). While this ratio may reflect an average cost complement percentage for the year, it is applied to retail selling prices of the goods on hand at the end of the taxable year rather than the average retail selling price of these goods during the year. Consequently, the approximate cost determined under the retail method is not necessarily equal to the average cost of the inventory.

One commentator suggested that the final regulations should include factors for determining an appropriate month. Other commentators requested an example showing how to determine an appropriate month when a short taxable year follows the first taxable year that a taxpayer uses the IPIC method. In response to these comments, the final regulations incorporate the guidance on an appropriate representative month (including three of the examples) found in Rev. Rul. 89–29.

6. Calculation of a Category Inflation Index

The proposed regulations generally provide that in the case of a taxpayer using the double-extension IPIC method, the inflation index for a selected BLS category is equal to the quotient of the BLS price index for the appropriate or representative month of the current taxable year and the month preceding the first day of the base year. In the case of a taxpayer using the link-chain IPIC method, the inflation index for a selected BLS category is equal to the BLS price index for the appropriate or representative month of the current taxable year divided by the appropriate or representative month used for the immediately preceding taxable year. However, if the first taxable year the taxpayer uses the IPIC method also is the first taxable year the taxpayer uses the dollar-value LIFO method, the inflation index is equal to the quotient of the published cumulative index for the appropriate or representative month for the current taxable year divided by the published cumulative index for the month immediately preceding the first day of the taxable year.

Several commentators argued that the prescribed calculation for the first taxable year a taxpayer uses both the dollar-value LIFO and IPIC methods is likely to overstate or understate inflation if the taxpayer has opening inventories, unless the opening inventories were purchased during the last month of the preceding taxable year. To address this concern, the commentators suggested that a taxpayer be permitted to compare the BLS price index for the appropriate month of the first LIFO taxable year with the BLS price index for the appropriate month of the taxpayer's last non-LIFO taxable year. Another commentator suggested that the denominator in this formula should be the BLS price index that reflects prices during the last inventory turn of the immediately preceding taxable year.

The IRS and Treasury Department agree with the commentators' concerns. In addition, the IRS and Treasury Department recognize that the same problem exists under the proposed regulations as a result of the requirement to use the month preceding the first day of the base year to compute

an appropriate index under the double-extension IPIC method. Accordingly, the final regulations generally provide that a category inflation index should be computed with reference to the BLS price indexes for an appropriate month of the year preceding its LIFO election (in the case of the double-extension IPIC method) or of the preceding year (in the case of the link-chain IPIC method). In addition, the final regulations incorporate the general guidance of Rev. Proc. 98–49 concerning the computation of a category inflation index when a selected BLS category is revised for the taxable year.

7. Scope of an IPIC Method Election

The current regulations generally require a taxpayer using the IPIC method to use that method to account for all items accounted for using the LIFO method (LIFO inventory items). The current regulations also prohibit the use of the IPIC method by a taxpayer that is eligible to use BLS price indexes prepared for the purpose of valuing the LIFO inventory items of a specific industry. For example, a taxpayer eligible to use the BLS retail price indexes published in ''Department Store Inventory Price Indexes'' (DSIP indexes) may not use the IPIC method.

The proposed regulations liberalize the eligibility restrictions applicable to the IPIC method in two respects. First, a taxpayer must use the IPIC method for all items accounted for under the dollar-value LIFO method, but not for all items accounted for under the LIFO method. Second, a taxpayer eligible to use DSIP indexes may elect to use the IPIC method for all its LIFO inventory items or for those LIFO inventory items that do not fall within any of the 23 major groups listed in ''Department Store Inventory Price Indexes.''

Several commentators objected to the proposed general requirement that an electing taxpayer use the IPIC method for all its LIFO inventory items. In their view, section 446(d) permits a taxpayer to elect the IPIC method for each trade or business. The requirement to use the IPIC method for all LIFO inventory items, as originally promulgated, was designed to prevent adverse selection. The IRS and Treasury Department understand, however, that taxpayers often have valid business reasons for using the IPIC method in some businesses but not in others. For example, a taxpayer may have difficulty using the double-extension method in one of its trades or businesses but not in another. Accordingly, the final regulations permit a taxpayer to limit its IPIC election to one or more specific trades or businesses.

8. Selection of ''CPI Detailed Report'' or ''PPI Detailed Report''

The current regulations state that a retailer may select price indexes from the ''CPI Detailed Report'' or the ''PPI Detailed Report,'' but if equally appropriate price indexes may be selected from either, a retailer using the retail method must select from the ''CPI Detailed Report,'' and a retailer not using the retail method must select from the ''PPI Detailed Report.''

The proposed regulations eliminate the requirement that retailers determine whether the ''CPI Detailed Report'' and ''PPI Detailed Report'' contain equally appropriate price indexes. Instead, the proposed regulations require retailers using the retail method to select price indexes from the ''CPI Detailed Report'' and require all other taxpayers using the IPIC method to select price indexes from the ''PPI Detailed Report.''

Several commentators suggested that the IRS and Treasury Department permit all retailers using the IPIC method to select price indexes from either the ''CPI Detailed Report'' or the ''PPI Detailed Report.'' These commentators argue that many retailers selecting price indexes from the CPI do not use the retail method and would be forced to change. This change would be particularly burdensome because the categories listed in the ''PPI Detailed Report'' are far more detailed (and less correlated) than those listed in the ''CPI Detailed Report.'' In addition, these commentators argue that the proposed rule fails to recognize that the PPI does not necessarily reflect cost for retailers not using the retail method because the majority of retailers purchase their goods from wholesalers not producers. Finally, the commentators expressed concern that the proposed rule would preclude retailers that use the retail method at their stores and a cost method at their warehouses from using the price indexes listed in the ''CPI Detailed Report'' when retail price information is not ascertained or readily available for goods in warehouses.

The IRS and Treasury Department generally agree with the commentators' concerns. Accordingly, the final regulations permit all retailers using the IPIC method to assign items in dollar-value pools to the BLS categories listed in either the ''CPI Detailed Report'' or the ''PPI Detailed Report,'' whichever is selected.

9. BLS Category for Work-in-Process

The proposed regulations provide that manufacturers and processors must assign all work-in-process (WIP) items in a dollar-value pool to the most-detailed index categories that include the finished goods into which the WIP item will be manufactured or processed. For this purpose, *finished good* means any good that is in a salable state.

Several commentators objected to the proposed requirement that a taxpayer compute a separate inflation index for a WIP item that is in a salable state but not regularly sold by the taxpayer.

The IRS and Treasury Department agree with the commentators' objection to the extent that the taxpayer's WIP items are merely salable. Accordingly, the final regulations provide that a taxpayer is not required to compute a separate category inflation index for a salable WIP item, unless the taxpayer regularly sells that WIP item.

10. Relocation and Clarification of Special Pooling Rules

The current regulations provide special, elective pooling rules for retailers, wholesalers, jobbers, and distributors that use the IPIC method. These taxpayers are permitted to establish a dollar-value pool for any group of goods included in one of the 11 general categories of consumer goods described in the ''CPI Detailed Report.'' In addition, Rev. Proc. 84–57 provides that inventory pools may be established for any group of goods included within one of the 15 general categories of producer goods described in Table 6 of the ''PPI Detailed Report.'' Finally, the regulations provide that dollar-value pools that comprise less than 5 percent of inventory value may be combined to form a single miscellaneous dollar-value pool. If the resulting miscellaneous dollar-value pool itself comprises less than 5 percent of inventory value, that pool may be combined with the largest dollar-value pool.

The proposed regulations retain the special, elective pooling rules for inventory items accounted for under the IPIC method contained in the current regulations and incorporate the special, elective pooling rules contained in Rev. Proc. 84–57.

Several commentators asked whether taxpayers must apply the 5 percent rules to a dollar-value pool annually and, if so, how they are to account for dollar-value pools that no longer satisfy the 5 percent threshold. One commentator suggested that the IRS and Treasury Department make these 5 percent rules optional, state whether these rules are methods of accounting, and require taxpayers to apply the principles of § 1.472–8(g)(2) when changing dollar-value pools because of these 5 percent rules. Another commentator recommended that taxpayers be permitted to include inventories not

accounted for under the LIFO method in ''inventory value'' when determining whether the 5 percent rules apply.

The IRS and Treasury Department believe that both of the 5 percent rules for dollar-value pools have been, and remain, optional. Under the current and proposed regulations, a taxpayer may, but is not required to, combine two or more specific dollar-value pools into a single miscellaneous dollar-value pool when the cost of each specific dollar-value pool does not exceed 5 percent of the total cost of the taxpayer's LIFO inventory. In addition, a taxpayer may, but is not required to, combine the single miscellaneous dollar-value pool and the largest specific dollar-value pool when cost of the miscellaneous dollar-value pool does not exceed 5 percent of the total cost of the taxpayer's LIFO inventory. Furthermore, the IRS and Treasury Department believe that both of the 5 percent rules are methods of accounting within the broader IPIC pooling method, so a taxpayer may not change to, or cease using, either of the 5 percent rules without obtaining the Commissioner's prior consent. In addition, any change in pooling required by the taxpayer's proper use of the 5 percent rule(s) is a change in method of accounting. Thus, the final regulations require a taxpayer in these circumstances to combine and separate its dollar-value pools in accordance with § 1.472–8(g). Moreover, the final regulations require a taxpayer to determine whether to separate or combine the 5 percent pools every third taxable year based on current-year data rather than on average data.

11. New Base Year for IPIC Method Changes

The current regulations require a taxpayer that changes to the IPIC method from another dollar-value LIFO method to treat the year of change as the base year in determining the LIFO value of the dollar-value pool(s) for the year of change and later taxable years. The taxpayer is required to restate the base-year cost of the existing increments in terms of new base-year cost, which also requires the restatement of the IPI of each of the layers. This procedure is referred to alternatively as updating the base year or establishing a new base year.

One commentator suggested eliminating the reference to § 1.472–8(f)(2) in the case of a voluntary change from the specific goods LIFO method to the dollar-value LIFO method because taxpayers and tax practitioners have long questioned how to implement this change without updating the base year. The final regulations adopt this suggestion and require a taxpayer changing from the specific goods LIFO method to the IPIC method to establish a new base year. Although guidance addressing taxpayers changing from the specific goods LIFO method to a dollar-value LIFO method other than the IPIC method is outside the scope of these regulations, the IRS and Treasury Department are considering whether to issue additional guidance to address the commentator's concerns regarding changes from the specific goods method to a dollar-value LIFO method.

The proposed regulations clarify that the base-year-updating procedure is mandatory for voluntary changes to the IPIC method. However, the proposed regulations authorized examining agents to require a change to the IPIC method in circumstances where the taxpayer's prior method does not clearly reflect income and to implement the change using a cutoff method in circumstances where the taxpayer's books and records lacked the information necessary to compute a section 481(a) adjustment. The latter provision was intended to provide examining agents with an alternative to LIFO termination in appropriate circumstances.

One commentator objected to giving examining agents the authority to require a taxpayer using a LIFO method to change to the double-extension IPIC method even when the taxpayer produces records that will allow the agent to calculate the effect of changing to a correct method other than the IPIC method. This commentator requested ''clear-cut'' published guidance on the types of records that taxpayers using a LIFO method must retain and the length of time that they must retain them. In addition, because of the administrative burden associated with record retention (particularly those records needed for LIFO methods not used by the taxpayer), this commentator requested that the IRS and Treasury Department create a shortcut procedure, similar to the three-year transition rule under § 1.263A–7(c)(2)(iv), to calculate the effect of changing the taxpayer's LIFO method. Finally, this commentator suggested that the IRS and Treasury Department, as a matter of fairness, permit a taxpayer to recompute each year's layer using the IPI for that year.

Several commentators urged the IRS and Treasury Department to withdraw the involuntary change provisions entirely or, alternatively, to modify them to give examining agents discretion to impose a change to the double-extension IPIC method with or without establishing a new base year. One of these commentators also urged the IRS and Treasury Department to give these examining agents discretion to impose a change to either the double-extension IPIC method or the link-chain IPIC method.

In response to these comments, the final regulations provide that an examining agent may change a taxpayer from a LIFO method that does not clearly reflect income to the IPIC method. If the agent decides to change the taxpayer to the IPIC method, and the taxpayer does not provide sufficient information from its books and records to compute an adjustment under section 481, the agent may implement the change using the simplified transition method. Under the simplified transition method, the agent makes certain assumptions regarding the composition of ending inventory in prior taxable years and recomputes the LIFO value of each dollar-value pool as of the beginning of the year of change using the IPIC method. The section 481(a) adjustment arising from the accounting method change is equal to the difference between that recomputed LIFO value and the LIFO value of the dollar-value pool determined under the taxpayer's former method. The IRS and Treasury Department are considering other simplified methods of computing a section 481(a) adjustment arising from a change from one LIFO method to another and may publish additional guidance in the future. The suggestion regarding the issuance of guidance on a taxpayer's record keeping requirement is beyond the scope of this project, but will be considered for possible future guidance.

12. Inventories Received in Certain Nonrecognition Transactions

An election to use the dollar-value LIFO method for LIFO inventories received in a nonrecognition transaction to which section 381 does not apply (non-section 381 transfer) may not continue the LIFO reserve of the transferor. If the mix of goods in the inventory changes significantly after the transfer, the mechanics of the dollar-value LIFO method may produce an artificial increment in the year the inventories are received that effectively eliminates the LIFO reserve established by the transferor. This artificial increment occurs because the base-year cost of new items are reconstructed to the transferee's base year (i.e., the year it elects LIFO) and not to the transferor's base year. When a transferee elects the LIFO and IPIC methods for LIFO inventories received in a non-section 381 transfer, the transferee will have an artificial increment in the year the inventories are received even without a significant change in the mix of goods

in its ending inventory. The IPIC method invariably produces an increment because the difference between the current-year cost and the carryover basis of the transferred inventories (i.e., the base-year cost) reflects more than one year's inflation and the IPI used to convert the current-year cost of the dollar-value pool at the end of the taxable year to base-year cost will reflect only one year's inflation.

To prevent the recapture of a transferor's LIFO reserve in a non-section 381 transfer, the proposed regulations require the transferee to update its base-year cost if a transferee uses the dollar-value LIFO method for inventories received in a non-section 381 transfer and the transferor accounted for those inventories using the dollar-value LIFO method as follows. First, the transferee's base year for the inventories received from the transferor is the year of transfer. Second, the transferee's base-year cost for the inventories received from the transferor is equal to the transferor's current-year cost for those inventories. Finally, if the transferee owned inventories prior to the transfer, the new base-year cost of those inventories will be equal to their current-year cost. The proposed regulations do not affect either the ability of a newly formed transferee to elect new accounting methods or the holdings of Rev. Rul. 70–564 (1970–2 C.B. 109) and Rev. Rul. 70–565 (1970–2 C.B. 110). However, the proposed regulations do not apply to a non-section 381 transfer if its principal purpose is to avail the transferee of a method of accounting that is unavailable to the transferor (or is unavailable to the transferor without the Commissioner's consent).

One commentator asserted that when a taxpayer described in Rev. Rul. 70–564 (i.e., no beginning LIFO inventories) applies the proposed rule to transferred inventories, the resulting IPI of the collapsed base-year layer will not equal 1. Because this result may cause some confusion, the commentator suggested including an example in the final regulations. The final regulations include an example demonstrating the computation of increments and liquidations after a new base year is established.

Several commentators asserted that the proposed rule may result in the creation of an artificial increment or liquidation when a transferee and transferor use different methods of determining current-year costs. Thus, the regulations should be changed to permit a transferee to establish (or reconstruct) the new base-year cost of the transferred inventories equal to the transferor's first-in, first-out cost for the year immediately preceding the year of transfer, or alternatively, if the final regulations continue to require the use of the transferor's current-year cost and current-year cost method, the regulations should be changed to provide that the period for measuring inflation for the base year is between the appropriate month for determining base-year cost and the appropriate month for determining current-year cost. In addition, one commentator suggested that the final regulations be changed to clarify that ''beginning inventory, if any'' refers only to inventory that the transferee actually owned before the nonrecognition transaction.

The IRS and Treasury Department agree with these commentator's concerns. Accordingly, the final regulations permit the transferee to compute the base-year cost of transferred inventories using its current-year cost and its method of determining current-year cost. The final regulations also clarify the meaning of beginning inventory.

Another commentator contended that the holding of Rev. Rul. 70–564 is incorrect and, thus, the average cost rule of section 472(b)(3) should not be applied to inventories received by a transferee without an existing LIFO election in a non-section 381 transfer. In addition, this commentator noted that the holding of Rev. Rul. 70–564 is inconsistent with § 1.1502–13 (concerning intercompany transactions), which generally provides that an intercompany transaction may not change the timing of the recognition of income or deductions. This commentator suggested that the holding of Rev. Rul. 70–565, which provides for a carryover of a transferor's LIFO layer history in a section 351 transfer to a transferee with an existing LIFO election, should be applied in all non-section 381 transfers.

The IRS and Treasury Department believe this comment is outside the scope of these final regulations. However, in response to this comment, the IRS and Treasury Department are reconsidering whether to continue to require different results upon the transfer of LIFO inventories in a non-section 381 transfer (as currently required by Rev. Rul. 70–564 and Rev. Rul. 70–565) depending upon whether the transferee has an existing LIFO election.

13. Effective Date of Final Regulations

The proposed regulations provide that proposed §§ 1.472–8(b)(4), (c)(2), and (e)(3) will apply to taxable years beginning on or after the date they are published in the **Federal Register** as final regulations. In addition, the proposed regulations provide that proposed § 1.472–8(h) will apply to transfers occurring on or after the date it is published in the **Federal Register** as a final regulation.

One commentator suggested that taxpayers be permitted, but not required, to apply §§ 1.472–8(b)(4), (c)(2), and (e)(3) for taxable years *ending* on or after the date the regulations are published in the **Federal Register** as final regulations. This commentator also suggested that taxpayers be permitted to apply § 1.472–8(h) to transfers occurring during the taxable year *ending* on or after the date the regulations are published in the **Federal Register** as final regulations. In addition, several commentators suggested that the transition period for an automatic change in method of accounting to comply with §§ 1.472–8(b)(4), (c)(2), and (e)(3) be extended to include the *second* taxable year ending on or after the date the regulations are published in the **Federal Register** as final regulations.

The IRS and Treasury Department agree with these suggestions. However, in order to ensure that taxpayers may implement these changes for taxable years ending December 31, 2001, as requested by the commentators, the final regulations are effective for taxable years ending on or after December 31, 2001.

Effect on Other Documents

Rev. Proc. 84–57, Rev. Rul. 89–29, and Rev. Proc. 98–49 are obsolete on January 9, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Code, the proposed regulations preceding this Treasury decision was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. It is hereby certified that the collections of information in this Treasury decision will not have a significant economic impact on a substantial number of small entities. First, only taxpayers that adopt, or change to, the IPIC method will be affected by the collections of information. Second, relatively few small entities are expected to adopt, or change to, the IPIC method. Third, the

burden of the collections of information is not significant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Drafting Information

The principal author of these regulations is Leo F. Nolan II of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
§ 1.472–8 also issued under 26 U.S.C. 472. * * *

Par. 2. Section 1.472–8 is amended as follows:

1. Paragraph (b)(4) is added.
2. The text of paragraph (c) following the paragraph heading is redesignated as paragraph (c)(1) and a paragraph heading for newly designated (c)(1) is added.
3. Paragraph (c)(2) is added.
4. Paragraph (e)(3) and (h) are revised.
5. The undesignated paragraph following paragraph (h) is removed.

The revisions and additions read as follows:

§ 1.472–8 Dollar-value method of pricing LIFO inventories.

* * * * *

(b) * * *

(4) *IPIC method pools.* A manufacturer or processor that elects to use the inventory price index computation method described in paragraph (e)(3) of this section (IPIC method) for a trade or business may elect to establish dollar-value pools for those items accounted for using the IPIC method based on the 2-digit commodity codes (i.e., major commodity groups) in Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the ''PPI Detailed Report'' published monthly by the United States Bureau of Labor Statistics (available from New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954). A taxpayer electing to establish dollar-value pools under this paragraph (b)(4) may combine IPIC pools that comprise less than 5 percent of the total current-year cost of all dollar-value pools to form a single miscellaneous IPIC pool. A taxpayer electing to establish dollar-value pools under this paragraph (b)(4) may combine a miscellaneous IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools with the largest IPIC pool. Each of these 5 percent rules is a method of accounting. A taxpayer may not change to, or cease using, either 5 percent rule without obtaining the Commissioner's prior consent. Whether a specific IPIC pool or the miscellaneous IPIC pool satisfies the applicable 5 percent rule must be determined in the year of adoption or year of change (whichever is applicable) and redetermined every third taxable year. Any change in pooling required or permitted as a result of a 5 percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to § 1.446–1(e) before combining or separating pools and must combine or separate its IPIC pools in accordance with paragraph (g)(2) of this section.

(c) * * * (1) *In general.* * * *

(2) *IPIC method pools.* A retailer that elects to use the inventory price index computation method described in paragraph (e)(3) of this section (IPIC method) for a trade or business may elect to establish dollar-value pools for those items accounted for using the IPIC method based on either the general expenditure categories (i.e., major groups) in Table 3 (Consumer Price Index for all Urban Consumers (CPI–U): U.S. city average, detailed expenditure categories) of the ''CPI Detailed Report'' or the 2-digit commodity codes (i.e., major commodity groups) in Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the ''PPI Detailed Report.'' A wholesaler, jobber, or distributor that elects to use the IPIC method for a trade or business may elect to establish dollar-value pools for any group of goods accounted for using the IPIC method and included within one of the 2-digit commodity codes (i.e., major commodity groups) in Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the ''PPI Detailed Report.'' The ''CPI Detailed Report'' and the ''PPI Detailed Report'' are published monthly by the United States Bureau of Labor Statistics (BLS) (available from New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954). A taxpayer electing to establish dollar-value pools under this paragraph (c)(2) may combine IPIC pools that comprise less than 5 percent of the total current-year cost of all dollar-value pools to form a single miscellaneous IPIC pool. A taxpayer electing to establish pools under this paragraph (c)(2) may combine a miscellaneous IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools with the largest IPIC pool. Each of these 5 percent rules is a method of accounting. Thus, a taxpayer may not change to, or cease using, either 5 percent rule without obtaining the Commissioner's prior consent. Whether a specific IPIC pool or the miscellaneous IPIC pool satisfies the applicable 5 percent rule must be determined in the year of adoption or year of change (whichever is applicable) and redetermined every third taxable year. Any change in pooling required or permitted under a 5 percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to section 1.446–1(e) before combining or separating pools and must combine or separate its IPIC pools in accordance with paragraph (g)(2) of this section.

* * * * *

(e) * * *

(3) *Inventory price index computation (IPIC) method*—(i) *In general.* The inventory price index computation method provided by this paragraph (e)(3) (IPIC method) is an elective method of determining the LIFO value of a dollar-value pool using consumer or producer price indexes published by the United States Bureau of Labor Statistics (BLS). A taxpayer using the IPIC method must compute a separate inventory price index (IPI) for each dollar-value pool. This IPI is used to convert the total current-year cost of the items in a dollar-value pool to base-year cost in order to determine whether there is an increment or liquidation in terms of base-year cost and, if there is an increment, to determine the LIFO inventory value of the current year's layer of increment (layer). Using one IPI to compute the base-year cost of a dollar-value pool for the current taxable year and using a different IPI to compute the LIFO inventory value of

the current taxable year's layer is not permitted under the IPIC method. The IPIC method will be accepted by the Commissioner as an appropriate method of computing an index, and the use of that index to compute the LIFO value of a dollar-value pool will be accepted as accurate, reliable, and suitable. The appropriateness of a taxpayer's computation of an IPI, which includes all the steps described in paragraph (e)(3)(iii) of this section, will be determined in connection with an examination of the taxpayer's federal income tax return. A taxpayer using the IPIC method may elect to establish dollar-value pools according to the special rules in paragraphs (b)(4) and (c)(2) of this section or the general rules in paragraphs (b) and (c) of this section. Taxpayers eligible to use the IPIC method are described in paragraph (e)(3)(ii) of this section. The manner in which an IPI is computed is described in paragraph (e)(3)(iii) of this section. Rules relating to the adoption of, or change to, the IPIC method are in paragraph (e)(3)(iv) of this section.

(ii) *Eligibility.* Any taxpayer electing to use the dollar-value LIFO method may elect to use the IPIC method. Except as provided in this paragraph (e)(3)(ii) or in other published guidance, a taxpayer that elects to use the IPIC method for a specific trade or business must use that method to account for all items of dollar-value LIFO inventory. A taxpayer that uses the retail price indexes computed by the BLS and published in ''Department Store Inventory Price Indexes'' (available from the BLS by calling (202) 606–6325 and entering document code 2415) may elect to use the IPIC method for items that do not fall within any of the major groups listed in ''Department Store Inventory Price Indexes.''

(iii) *Computation of an inventory price index*—(A) *In general.* The computation of an IPI for a dollar-value pool requires the following four steps, which are described in more detail in this paragraph (e)(3)(iii): First, selection of a BLS table and an appropriate month; second, assignment of items in a dollar-value pool to BLS categories (selected BLS categories); third, computation of category inflation indexes for selected BLS categories; and fourth, computation of the IPI. A taxpayer may compute the IPI for each dollar-value pool using either the double-extension method (double-extension IPIC method) or the link-chain method (link-chain IPIC method), without regard to whether the use of a double-extension method is impractical or unsuitable. The use of either the double-extension IPIC method or the link-chain IPIC method is a method of accounting, and the adopted method must be applied consistently to all dollar-value pools within a trade or business accounted for under the IPIC method. A taxpayer that wants to change from the double-extension IPIC method to the link-chain IPIC method, or vice versa, must secure the consent of the Commissioner under § 1.446–1(e). This change must be made with a new base year as described in paragraph (e)(3)(iv)(B)(1).

(B) *Selection of BLS table and appropriate month—(1) In general.* Under the IPIC method, an IPI is computed using the consumer or producer price indexes for certain categories (BLS price indexes and BLS categories, respectively) listed in the selected BLS table of the ''CPI Detailed Report'' or the ''PPI Detailed Report'' for the appropriate month.

(2) BLS table selection. Manufacturers, processors, wholesalers, jobbers, and distributors must select BLS price indexes from Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the ''PPI Detailed Report'', unless the taxpayer can demonstrate that selecting BLS price indexes from another table of the ''PPI Detailed Report'' is more appropriate. Retailers may select BLS price indexes from either Table 3 (Consumer Price Index for all Urban Consumers (CPI–U): U.S. city average, detailed expenditure categories) of the ''CPI Detailed Report'' or from Table 6 (or another more appropriate table) of the ''PPI Detailed Report.'' The selection of a BLS table is a method of accounting and must be used for the taxable year of adoption and all subsequent years, unless the taxpayer obtains the Commissioner's consent under § 1.446–1(e) to change its table selection. A taxpayer that changes its BLS table must establish a new base year in the year of change as described in paragraph (e)(3)(iv)(B) of this section.

(3) Appropriate month. In the case of a retailer using the retail method, the appropriate month is the last month of the retailer's taxable year. In the case of all other taxpayers, the appropriate month is the month most consistent with the method used to determine the current-year cost of the dollar-value pool under paragraph (e)(2)(ii) of this section and the taxpayer's history of inventory production or purchases during the taxable year. A taxpayer not using the retail method may annually select an appropriate month for each dollar-value pool or make an election on Form 970, ''Application to Use LIFO Inventory Method,'' to use a representative appropriate month (representative month). An election to use a representative month is a method of accounting and the month elected must be used for the taxable year of the election and all subsequent taxable years, unless the taxpayer obtains the Commissioner's consent under § 1.446–1(e) to change or revoke its election.

(4) Examples. The following examples illustrate the rules of this paragraph (e)(3)(iii)(B)(*3*):

Example 1. Determining an appropriate month. A wholesaler of seasonal goods timely files a Form 970, ''Application to Use LIFO Inventory Method,'' for the taxable year ending December 31, 2001. The taxpayer indicates elections to use the dollar-value LIFO method, to determine the current-year cost using the earliest acquisitions method in accordance with paragraph (e)(2)(ii)(*b*) of this section, and to use the IPIC method under paragraph (e)(3) of this section. Although the taxpayer purchases inventory items regularly throughout the year, the items purchased vary according to the seasons. The seasonal items on hand at December 31, 2001, are purchased between October and December. Thus, based on the taxpayer's use of the earliest acquisitions method of determining current-year cost and its experience with inventory purchases, the appropriate month for the items represented in the ending inventory at December 31, 2001, is October.

Example 2. Electing a representative month. A retailer not using the retail method timely files a Form 970, ''Application to Use LIFO Inventory Method,'' for the taxable year ending December 31, 2001. The taxpayer indicates elections to use the dollar-value LIFO method, the most recent purchases method of determining current-year cost under paragraph (e)(2)(ii)(*a*) of this section, the IPIC method under paragraph (e)(3) of this section, and December as its representative month under paragraph (e)(3)(iii)(B)(*3*) of this section. The items in the taxpayer's ending inventory are purchased fairly uniformly throughout the year, with the first purchases normally occurring in January and the last purchases normally occurring in December. The taxpayer's election to use December as its representative month is permissible because the taxpayer elected to use the most recent purchases method and the taxpayer's last purchases of the taxable year normally occur during December, the last month of the taxpayer's taxable year.

Example 3. Changing representative month. The facts are the same as in *Example 2,* except the taxpayer files a Form 3115, ''Application for Change in Accounting Method,'' requesting permission to change to the earliest acquisitions method of determining current-year cost in accordance with paragraph (e)(2)(ii)(b) of this section and to change its representative month from December to January beginning with the taxable year ending December 31, 2003. If the Commissioner consents to the taxpayer's request to change to the earliest acquisitions method, December will no longer be a permissible representative month for this

taxpayer because of the absence of a nexus between the earliest acquisitions method, the month of December (the last month of the taxpayer's taxable year), and the taxpayer's experience with inventory purchases during the year. Thus, the Commissioner will permit the taxpayer to change its representative month to January, the first month of the taxpayer's taxable year.

Example 4. Changing representative month. The facts are the same as in *Example 2.* In 2002, the taxpayer changes its annual accounting period to a taxable year ending June 30, which requires the taxpayer to file a return for the short taxable year beginning January 1, 2002, and ending June 30, 2002. As a result, December is no longer a permissible representative month because of the absence of a nexus between the most recent purchases method, the month of December, and the taxpayer's experience with inventory purchases during the year. The taxpayer should file a Form 3115 requesting permission to change its representative month from December to June beginning with the short taxable year ending June 30, 2002. Because the taxpayer's last purchases of the taxable year now will occur in June, the Commissioner will consent to the taxpayer's request to change its representative month to June.

Example 5. Changing representative month. The facts are the same as *in Example 2,* except that the taxpayer elects to use January as its representative month. The taxpayer timely files a Form 3115 requesting permission to change its representative month from January to December beginning with the taxable year ending December 31, 2003. January is not a permissible representative month because of the absence of a nexus between the most recent purchases method, the taxpayer's history of inventory purchases, and the month of January, the first month in the taxpayer's taxable year. Because December is a permissible representative month, the Commissioner will permit the taxpayer to change its representative month to December.

(C) *Assignment of inventory items to BLS categories—(1) In general.* Except as provided in paragraph (e)(3)(iii)(C)(*2*) of this section, a taxpayer must assign each item in a dollar-value pool to the most-detailed BLS category of the selected BLS table that contains that item. For example, in Table 6 of the ''PPI Detailed Report'' for a given month, the commodity codes for the various BLS categories run from 2 to 8 digits, with the least-detailed BLS categories having a 2-digit code and the most-detailed BLS categories usually (but not always) having an 8-digit code. For purposes of assigning items to the most-detailed BLS category, manufacturers and processors must assign each raw material item to the most-detailed PPI category that includes that raw material and must assign each finished good item to the most-detailed PPI category that includes that finished good. In addition, manufacturers and processors must assign each work-in-process (WIP) item to the most-detailed PPI category that includes the finished good into which the item will be manufactured or processed. For this purpose, *finished good* means a salable item that the taxpayer regularly sells. For example, a gasoline-engine manufacturer that also manufactures the pistons used in those engines and regularly sells some of the pistons (e.g., to retailers of replacement parts) must assign both finished pistons that have not been affixed to an engine block and piston WIP items to the most-detailed PPI category that includes pistons. Finished pistons that have been affixed to an engine block must be assigned to the most-detailed PPI category that includes gasoline engines. In contrast, if sales of these pistons occur infrequently, the taxpayer must assign both finished pistons and piston WIP items to the most-detailed PPI category that includes gasoline engines.

(2) 10 percent method. Instead of assigning each item in a dollar-value pool to the most-detailed BLS categories, as described in paragraph (e)(3)(iii)(C)(*1*) of this section, a taxpayer may elect to use the 10 percent method described in this paragraph (e)(3)(iii)(C)(*2*). Under the 10 percent method, items are assigned to BLS categories using a three-step procedure. First, when the current-year cost of a specific item is 10 percent or more of the total current-year cost of the dollar-value pool, the taxpayer must assign that item to the most-detailed BLS category that includes that item (10 percent BLS category). Any other item that is includible in that 10 percent BLS category (other than an item that qualifies for its own 10 percent BLS category under the preceding sentence) must be assigned to that 10 percent BLS category. Second, if one or more items have not been assigned to BLS categories in the first step, the taxpayer must investigate successively less-detailed BLS categories and assign the unassigned item(s) to the first BLS category that contains unassigned items whose current-year cost, in the aggregate, is 10 percent or more of the total current-year cost of the dollar-value pool (also, 10 percent BLS categories). This step must be repeated until all the items in the dollar-value pool have been included in an appropriate 10 percent BLS category, the current-year cost of the unassigned items, in the aggregate, is less than 10 percent of the total current-year cost of the dollar-value pool, or the taxpayer determines that a single BLS category is not appropriate for the aggregate of the unassigned items. Third, if items in a dollar-value pool have not been assigned to a 10 percent BLS category because the current-year cost of those items, in the aggregate, is less than 10 percent of the total current-year cost of the dollar-value pool, the taxpayer must assign those items to the most-detailed BLS category that includes all those items (also, a 10 percent category). On the other hand, if items in a dollar-value pool have not been assigned to a 10 percent BLS category because the taxpayer determines that a single BLS category is not appropriate for the aggregate of those items, the taxpayer must assign each of those items to a single miscellaneous BLS category created by the taxpayer (also, a 10 percent category). In no event may a taxpayer assign items in a dollar-value pool to a BLS category that is less detailed than either the major groups of consumer goods described in Table 3 of the monthly ''CPI Detailed Report'' or the major commodity groups of producer goods described in Table 6 of the monthly ''PPI Detailed Report.'' Principles similar to those described in paragraph (e)(3)(iii)(C)(*1*) apply for purposes of assigning raw material, work-in-process, and finished good items to the most-detailed BLS category under the 10 percent method.

(3) Change in method of accounting. The 10 percent method of assigning items in a dollar-value pool to BLS categories is a method of accounting. In addition, a taxpayer's selection of a BLS category for a specific item is a method of accounting. However, the assignment of items to different BLS categories solely as a result of the application of the 10 percent method is a change in underlying facts and not a change in method of accounting. Likewise, the selection of a new BLS category for a specific item as a result of a revision to a BLS table is a change in underlying facts and not a change in method of accounting. A taxpayer that wants to change its method of selecting BLS categories (i.e., to or from the 10-percent method) or of selecting a BLS category for a specific item must secure the Commissioner's consent in accordance with § 1.446–1(e). A taxpayer that voluntarily changes its method of selecting BLS categories or of selecting a BLS category for a specific item must establish a new base year in the year of change as described in paragraph (e)(3)(iv)(B) of this section.

(D) Computation of a category inflation index—(1) In general. As described in more detail in this paragraph (e)(3)(iii)(D), a category inflation index reflects the inflation that occurs in the BLS price indexes for a selected BLS category (or, if applicable,

10 percent BLS category) during the relevant measurement period.

(2) BLS price indexes. The BLS price indexes are the cumulative indexes published in the selected BLS table for the appropriate month. A taxpayer may elect to use either preliminary or final BLS price indexes for the appropriate month, provided that the selected BLS price indexes are used consistently. However, a taxpayer that elects to use final BLS price indexes for the appropriate month must use preliminary BLS price indexes for any taxable year for which the taxpayer files its original federal income tax return before the BLS publishes final BLS price indexes for the appropriate month. If a BLS price index for a most-detailed or 10 percent BLS category is not otherwise available for the appropriate or representative month (but not because the BLS categories in the BLS table have been revised), the taxpayer must use the BLS price index for the next most-detailed BLS category that includes the specific item(s) in the most-detailed or 10 percent BLS category. If a BLS price index is not otherwise available for the appropriate or representative month because the BLS categories in the BLS table have been revised, the rules of paragraph (e)(3)(iii)(D)(*4*) of this section apply.

(3) Category inflation index. (i) In general. Except as provided in paragraph (e)(3)(iii)(D)(*4*) of this section (concerning compound category inflation indexes) or (e)(3)(iii)(D)(*5*) of this section (concerning category inflation indexes for certain 10 percent BLS categories), a category inflation index for a selected BLS category (or, if applicable, 10 percent BLS category) is computed under the rules of this paragraph (e)(3)(iii)(D)(*3*).

(ii) Double-extension IPIC method. In the case of a taxpayer using the double-extension IPIC method, the category inflation index for a BLS category is the quotient of the BLS price index for the appropriate or representative month of the current year divided by the BLS price index for the appropriate month of the taxable year preceding the base year (base month). However, if the taxpayer did not have an opening inventory in the year that its election to use the dollar-value LIFO method and double-extension IPIC method became effective, the category inflation index for a BLS category is the quotient of the BLS price index for the appropriate or representative month of the current year divided by the BLS price index for the month immediately preceding the month of the taxpayer's first inventory production or purchase.

(iii) Link-chain IPIC method. In the case of a taxpayer using the link-chain IPIC method, the category inflation index for a BLS category is the quotient of the BLS price index for the appropriate or representative month of the current year divided by the BLS price index for the appropriate month used for the immediately preceding taxable year. However, if the taxpayer did not have an opening inventory in the year that its election to use the dollar-value LIFO method and link-chain IPIC method became effective, the category inflation index for a BLS category for the year of election is the quotient of the BLS price index for the appropriate or representative month of the current year divided by the BLS price index for the month immediately preceding the month of the taxpayer's first inventory production or purchase.

(iv) Special rules concerning representative months. A taxpayer electing to use a representative month under paragraph (e)(3)(iii)(B)(*3*) of this section must use an appropriate month, rather than the representative month, to determine category inflation indexes in the circumstances described in this paragraph (e)(3)(iii)(D)(*3*)(*iv*) and in other similar circumstances. For example, in the case of a short taxable year, the category inflation index should reflect the inflation that occurs from the base month (in the case of the double-extension IPIC method), or the appropriate or representative month used for the preceding taxable year (in the case of the link-chain IPIC method), and the appropriate month for the short taxable year. Similarly, if a taxpayer using the link-chain IPIC method is granted consent to change both its method of determining the current-year cost of a dollar-value pool and its representative month, the category inflation index for the year of change should reflect the inflation that occurs between the old representative month used for the preceding taxable year and the new representative month used for the year of change.

(4) Compound category inflation index for revised BLS categories or price indexes—(i) In general. Periodically, the BLS revises a BLS table to add one or more new BLS categories, eliminate one or more previously reported BLS categories, or reset the base-year BLS price index of one or more BLS categories. If the BLS has revised the applicable BLS table for a taxable year, a taxpayer must compute the category inflation index for each BLS category for which the taxpayer cannot compute a category inflation index in accordance with paragraph (e)(3)(iii)(D)(*3*) of this section (affected BLS category) using a reasonable method, provided the method is used consistently for all affected BLS categories within a particular taxable year. For example, if the BLS revised the CPI by adding new BLS categories as of January 2001 and eliminating some previously reported BLS categories as of December 2000, January 2002 would be the first month for which it would be possible to compute a category inflation index for a 12-month period using the BLS price indexes for any affected category. The compound category inflation index described in paragraph (e)(3)(iii)(D)(*4*)(*ii*) of this section is a reasonable method of computing the category inflation index for an affected BLS category.

(ii) Computation of compound category inflation index. When the applicable BLS table is revised as described in paragraph (e)(3)(iii)(D)(*4*)(*i*) of this section, a taxpayer may use the procedure described in this paragraph (e)(3)(iii)(D)(*4*)(*ii*) to compute a compound category inflation index for each affected BLS category represented in the taxpayer's ending inventory. For this purpose, a compound category inflation index is the product of the category inflation index for the ''first portion'' multiplied by the corresponding category inflation index for the ''second portion.'' The category inflation index for the first portion must reflect the inflation that occurs between the end of the base month (in the case of the double-extension IPIC method), or the preceding year's appropriate or representative month (in the case of the link-chain IPIC method), and the end of the last month covered by the unrevised BLS table based on the old BLS category. The corresponding category inflation index for the second portion must reflect the inflation that occurs between the beginning of the first month covered by the revised BLS table based on the new BLS category and the end of the current year's appropriate or representative month. First, using the revised BLS table for the current-year's appropriate or representative month, the taxpayer assigns items in the dollar-value pool using its method of assigning items to BLS categories as described in paragraph (e)(3)(iii)(C) of this section. Second, for each affected BLS category represented in the ending inventory, the taxpayer computes the category inflation index for the second portion using this formula: [A/B], where A equals the BLS price index for the current year's appropriate or representative month and B equals the BLS price index for the last month covered by the unrevised BLS table (as

published for the first month of the revised BLS table). Third, using the unrevised BLS table for the base month (in the case of the double extension IPIC method) or the preceding year's appropriate or representative month (in the case of the link-chain IPIC method), the taxpayer assigns each of the items in the dollar-value pool using its method of assigning items to BLS categories. Fourth, for each affected BLS category represented in the ending inventory, the taxpayer computes the category inflation index for the first portion using this formula: [C/D], where C equals the BLS price index for the last month covered by the unrevised BLS table (as published for the last month of the unrevised BLS table) and D equals the BLS price index for the base month (in the case of the double-extension IPIC method) or the preceding year's appropriate or representative month (in the case of the link-chain IPIC method). Fifth, for each affected BLS category represented in the ending inventory, the taxpayer computes the compound category inflation index using this formula: [X*Y], where X equals the category inflation index for the second portion, and Y equals the corresponding category inflation index for the first portion. For the purpose of computing the compound category inflation index for each affected BLS category, the corresponding category inflation index for the first portion is the category inflation index for the unrevised BLS category that includes the specific inventory item(s) included in the revised BLS category. If items included in a single revised BLS category had been included in separate BLS categories before the revision of the BLS table, the corresponding category inflation index for the first portion is the weighted harmonic mean of the category inflation indexes for these unrevised BLS categories. See paragraph (e)(3)(iii)(E)(*1*) of this section for a formula of the weighted harmonic mean. When computing this weighted-average category inflation index, a taxpayer must use the current-year costs (or in the case of a retailer using the retail method, the retail selling prices) in ending inventory as the weights.

(*iii) New base year.* A taxpayer may establish a new base year in the year following the taxable year for which the taxpayer computed a compound category inflation index under this paragraph (e)(3)(iii)(D)(*4*) for one or more affected BLS categories in a dollar-value pool. See paragraph (e)(3)(iv)(B) of this section for the procedures and computations incident to establishing a new base year.

(*iv) Examples.* The following examples illustrate the rules of this paragraph (e)(3)(iii)(D)(*4*):

Example 1. BLS categories eliminated. (i) A retailer, whose taxable year ends January 31, elected to account for its inventories using the dollar-value LIFO method and double-extension IPIC method (based on the CPI), beginning with the taxable year ending January 31, 1997. The taxpayer does not use the retail method, but elected to use January as its representative month. On January 31, 1999, the taxpayer's only dollar-value pool contains only two items—lemons and peaches. The total current-year cost of these items is as follows: lemons, $40, and peaches, $30.

(ii) The CPI was revised in October of 1998 to eliminate the ''Citrus fruits'' subcategory of ''Other fresh fruits.'' In addition, the base-year BLS price index for ''Other fresh fruits'' was reset to 100.00 as of October 1, 1998. In relevant part, the January 1999 CPI permits the assignment of both lemons and peaches to ''Other fresh fruits.'' The January 1999 BLS price indexes for ''Citrus fruits'' and ''Other fresh fruits'' are 96.6 and 105.6, respectively. In relevant part, the September 1998 CPI permits the assignment of lemons to ''Citrus fruits'' and peaches to ''Other fresh fruits.'' The September 1998 BLS price indexes for ''Citrus fruits'' and ''Other fresh fruits'' are 194.9 and 294.9, respectively, and the January 1997 BLS price indexes for ''Citrus fruits'' and ''Other fresh fruits'' are 190.2 and 290.2, respectively.

(iii) Because the BLS eliminated the category, ''Citrus fruits,'' as of October 1998, it did not publish a BLS price index for that category in the January 1999 CPI. Thus, the taxpayer cannot compute a category inflation index for ''Citrus fruits'' under the normal procedures, but may compute a compound category inflation index for that affected BLS category using the procedures described in paragraph (e)(3)(iii)(D)(*4*)(*ii*) of this section.

(iv) The taxpayer computes a compound category inflation index for the two BLS categories that formerly included lemons and peaches. The taxpayer first assigns lemons and peaches to ''Other fresh fruits,'' the most-detailed index in the January 1999 CPI, and then computes the category inflation index for the second portion as follows:

Item	1999 category	Jan. 1999 index/Sept. 1998 index (as published in Oct. 1998)	Category inflation index
Lemons and Peaches	Other fresh fruits	105.6/100.0	1.0560

(v) The taxpayer assigns the lemons and peaches to the most-detailed BLS categories in the January 1998 CPI as follows: lemons to ''Citrus fruits'' and peaches to ''Other fresh fruits.'' Then, the taxpayer computes the category inflation index for the first portion as follows:

Item	1998 category	Sept. 1998 index (as published in Sept. 1998)/Jan. 1997	Category inflation index
Lemons	Citrus fruits	194.9/190.2	1.0247
Peaches	Other fresh Fruits	294.9/290.2	1.0162

(vi) Because lemons and peaches, which are included together in the revised ''Other fresh fruits'' category, had been included in separate BLS categories before the BLS table was revised, the taxpayer must compute a single corresponding category inflation index for the affected BLS categories for the first portion. This corresponding category inflation index is the weighted harmonic mean of the separate corresponding category inflation indexes for the first portion using the cost of the items in ending inventory as the weights. The taxpayer computes the corresponding category inflation index for ''Other fresh fruits'' for the first portion as follows:

Item	(I) Weight (cost of item)	(II) Category inflation index	(III) Quotient: (I)/(II)
Lemons	$40.00	1.0247	$39.04
Peaches	30.00	1.0162	29.52
Total	70.00		68.56

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Weighted harmonic mean of other fresh fruits: (IV)/(V)
$70.00	$68.56	1.0210

(vii) Finally, the taxpayer computes the compound category inflation index for Other fresh fruits as follows:

Item	(I) Category inflation index (second portion)	(II) Category inflation index (first portion)	(III) Compound category inflation index: (I)*(II)
Other fresh fruits	1.0560	1.0210	1.0782

(viii) The taxpayer may establish a new base year for the taxable year ending January 31, 2000.

Example 2. BLS categories separated. (i) The facts are the same as in *Example 1,* except prior to October 1998, both lemons and peaches were assigned to ''Other fresh fruits'' and in the October 1998 CPI, the BLS created a new category, ''Citrus fruits,'' for citrus fruits, such as lemons. Moreover, the BLS reset the base-year BLS price index for ''Other fresh fruits'' to 100.0 as of October 1, 1998. As a result of these changes, the taxpayer may no longer assign lemons to ''Other fresh fruits.''

(ii) Because ''Citrus fruits'' is new as of October 1998, the BLS did not publish a BLS price index for this BLS category in the January 1999 CPI. Thus, because the taxpayer cannot compute a category inflation index for ''Citrus fruits'' under the normal procedures, the taxpayer may compute a compound category inflation index for the affected BLS category using the procedures described in paragraph (e)(3)(iii)(D)(*4*)(*ii*) of this section.

(iii) Based on the January 1999 CPI, the taxpayer assigns lemons to ''Citrus fruits'' and peaches to ''Other fresh fruits.'' Then, the taxpayer computes a compound category inflation index for each of the two BLS categories. The computation of the category inflation index for the second portion is as follows:

Item	1999 category	Jan. 1999 index/Sept. 1998 index (as published in Oct. 1998)	Category inflation index
Lemons	Citrus fruits	96.6/100	0.9660
Peaches	Other fresh fruits	105.6/100	1.0560

(iv) Then, the taxpayer computes the category inflation index for the first portion as follows:

Item	1998 category	Sept. 1998 index (as published in Sept. 1998)/Jan. 1997	Category inflation index
Lemons & Peaches	Other fresh fruits	294.9/290.2	1.0162

(v) Finally, the taxpayer computes the compound category inflation index for ''Citrus fruits'' and ''Other fresh fruits'':

Item	(I) Category inflation index (second portion)	(II) Category inflation index (first portion)	(III) Compound category inflation index: (I)*(II)
Citrus fruits	0.9660	1.0162	0.9816
Other fresh fruits	1.0560	1.0162	1.0731

(vi) The taxpayer may establish a new base year for the taxable year ending January 31, 2000.

(5) *10 percent method. (i) Applicability.* A taxpayer that elects to use the 10 percent method described in paragraph (e)(3)(iii)(C)(*2*) of this section must compute a category inflation index for a less-detailed 10 percent BLS category as provided in this paragraph (e)(3)(iii)(D)(*5*). A less-detailed 10 percent category is a BLS category that—

(*A*) subsumes two or more BLS categories;

(*B*) Does not have a single assigned item whose current-year cost is 10 percent or more of the current-year cost of all the items in the dollar-value pool;

(*C*) Has at least one item in at least one of the subsumed BLS categories; and

(*D*) Has at least one subsumed BLS category that either does not have any assigned items or is a separate 10 percent BLS category.

(*ii) Determination of category inflation index.* If the rules of this paragraph (e)(3)(iii)(D)(*5*) apply, the category inflation index for the less-detailed 10 percent BLS category is equal to the weighted arithmetic mean of the category inflation index (or, compound category inflation index, if applicable) for each of the subsumed BLS categories that have been assigned at least one item from the taxpayer's dollar-value pool (excluding any item that is properly assigned to a separate 10 percent BLS category). [Weighted Arithmetic Mean = Sum of (Weight x Category Inflation Index)]/Sum of Weights]. The appropriate weight for each of the most-detailed BLS categories referenced in the preceding sentence is the corresponding BLS weight. Currently, in January of each year, the BLS publishes the BLS weights determined for December of the preceding year. In the case of a taxpayer using the double-extension IPIC method, the BLS weights for December of the taxable year preceding the base year are to be used for all taxable years. In the case of a taxpayer using the link-chain IPIC method, the BLS weights for December of a given calendar year are to be used for taxable years that end during the 12-month period that begins on July 1 of the following calendar year. However, if the BLS weights are not published for all of the most-detailed BLS categories referenced above, the taxpayer may use the current-year cost (or in the case of a retailer using the retail method, the retail selling prices) of all items assigned to a specific most-detailed BLS category as the appropriate weight for that category, but must compute a weighted harmonic mean. See paragraph (e)(3)(iii)(E)(*1*) of this section for a formula of the weighted harmonic mean.

(E) *Computation of Inventory Price Index (IPI)—(1) Double-extension IPIC method.* Under the double-extension IPIC method, the IPI for a dollar-value pool is the weighted harmonic mean of the category inflation indexes (or, if applicable, compound category inflation indexes) determined under paragraph (e)(3)(iii)(D) of this section for each selected BLS category (or, if applicable 10 percent BLS category) represented in the taxpayer's dollar-value pool at the end of the taxable year. The formula for computing the weighted harmonic mean of the category inflation indexes is: [Sum of Weights/Sum of (Weight/Category Inflation Index)]. The weights to be used when computing this weighted harmonic mean are the current-year costs (or, in the case of a retailer using the retail method, the retail selling prices) in each selected BLS category represented in the dollar-value pool at the end of the taxable year.

(*2) Link-chain IPIC method.* Under the link-chain IPIC method, the IPI for a dollar-value pool is the product of the weighted harmonic mean of the category inflation indexes (or, if applicable, the compound category inflation indexes) determined under paragraph (e)(3)(iii)(D) of this section for each selected BLS category (or, if applicable, 10 percent BLS category) represented in the taxpayer's dollar-value pool at the end of the taxable year multiplied by the IPI for the immediately preceding taxable year. The formula for computing the weighted harmonic mean of the category inflation indexes is: [Sum of Weights/Sum of (Weight/Category Inflation Index)]. The weights to be used when computing this weighted harmonic mean are the current-year costs (or, in the case of a retailer using the retail method, the retail selling prices) in each selected BLS category represented in the dollar-value pool at the end of the taxable year.

(*3) Examples.* The following examples illustrate the rules of this paragraph (e)(3)(iii)(E):

Example 1. Double-extension method. (i) *Introduction.* R is a retail furniture merchant that does not use the retail method. For the taxable year ending December 31, 2000, R used the first-in, first-out method of identifying inventory and valued its inventory at cost. The total cost of R's inventory on December 31, 2000, was $850,000. R elected to use the dollar-value LIFO and double-extension IPIC methods for its taxable year ending December 31, 2001. R does not elect to use the 10 percent method described in paragraph (e)(3)(iii)(C)(*2*) of this section. R determines the current-year cost of the items using the actual cost of the most recently purchased goods. R elected to pool its inventory based on the major groups in Table 6 of the monthly ''PPI Detailed Report'' in accordance with the special IPIC pooling rules of paragraph (b)(4) of this section. All items in R's inventories fall within the 2-digit commodity code in Table 6 of the monthly ''PPI Detailed Report'' for ''furniture and household durables.'' Therefore, R will maintain a single dollar-value pool.

(ii) *Select a BLS table and appropriate month for 2001.* R determines that the appropriate month for 2001 is October. R also determines that the appropriate month for 2000 would have been December if R had used the IPIC method for that year.

(iii) *Assign inventory items to BLS categories for 2001.* For 2001, R assigns all items in the dollar-value pool to the most-detailed BLS categories listed in Table 6 of the October 2001 ''PPI Detailed Report'' that contain those items. The BLS categories and the current-year cost of the items assigned to them are summarized as follows:

Commodity code	Category	Current-year cost
12120101	Living Room Table	$111,924.00
12120211	Dining Room Table	159,578.00
12120216	Dining Room Chairs	98,639.00
12130101	Upholstered Sofas	332,488.00
12130111	Upholstered Chairs	218,751.00
Total		921,380.00

(iv) *Compute category inflation indexes for 2001.* Because R elected to use the double-extension IPIC method and did not elect the 10 percent method, the category inflation indexes are computed in accordance with paragraph (e)(3)(iii)(D)(*3*)(*ii*) of this section (BLS price indexes for October 2001 divided by BLS price indexes for December 2000). R computes the category inflation indexes for 2001 as follows:

Category	(I) Oct. 2001 index	(II) Dec. 2000 index	(III) Category inflation index: (I)/(II)
Living Room Table	172.4	169.2	1.018913
Dining Room Tab1e	171.9	168.1	1.022606
Dining Room Chairs	172.8	169.7	1.018268
Upholstered Sofas	142.2	140.9	1.009226
Upholstered Chairs	134.1	132.5	1.012075

(v) *Compute IPI for 2001.* R must compute the IPI for 2001, which is the weighted harmonic mean of the category inflation indexes for 2001. The formula for the weighted harmonic mean provided in paragraph (e)(3)(iii)(E)(*1*) of this section is [Sum of Weights/Sum of (Weight/Category Inflation Index)]. The IPI for 2001 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
Living Room Table	$111,924.00	1.018913	$109,846.47
Dining Room Table	159,578.00	1.022606	156,050.33
Dining Room Chairs	98,639.00	1.018268	96,869.39
Upholstered Sofas	332,488.00	1.009226	329,448.51
Upholstered Chairs	218,751.00	1.012075	216,141.10
Total	$921,380.00	.....	$908,355.80

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Inventory price index: (IV)/(V)
$921,380.00	$908,355.80	1.01433821

(vi) *Determine the LIFO value of the dollar-value pool for 2001.* For 2001, R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the items in the dollar-value pool by the IPI for 2001. The total base-year cost of R's ending inventory is $908,355.80 ($921,380/1.01433821). Comparing the base-year cost of the ending inventory to the base-year cost of the beginning inventory, R determines that the base-year cost of the 2001 increment is $58,355.80 ($908,355.80—$850,000.00). R multiplies the base-year cost of the 2001 increment by the IPI for 2001 and determines that the LIFO value of the 2001 layer is $59,192.52 ($58,355.80 * 1.01433821). Thus, the LIFO value of R's total inventory at the end of 2001 is $909,192.52 ($850,000.00 (opening inventory) + $59,192.52 (2001 layer)).

(vii) *Select a BLS table and appropriate month for 2002.* For 2002.0, R must compute a new IPI under the double-extension IPIC method to determine the LIFO value of its dollar-value pool. R determines that the appropriate month for 2002 is November.

(viii) *Assign inventory items to BLS categories for 2002.* For 2002, R assigns all items in the dollar-value pool to the most-detailed BLS categories listed in Table 6 of the November 2002 ''PPI Detailed Report'' that contain those items. The BLS categories and the current-year cost of the items assigned to them are summarized as follows:

Commodity code	Category	Current-year cost
12120103	Living Room Desks	$125,008.00
12120211	Dining Room Table	136,216.00
12120216	Dining Room Chairs	113,569.00
12130101	Upholstered Sofas	343,900.00
12130111	Upholstered Chairs	233,050.00
Total	.....	$951,743.00

(ix) *Compute category inflation indexes for 2002.* Because R uses the double-extension IPIC method and did not elect the 10 percent method, the category inflation indexes are computed in accordance with paragraph (e)(3)(iii)(D)(*3*)(*ii*) of this section (BLS price indexes for November 2002 divided by BLS price indexes for December 2000). R computes the category inflation indexes for 2002 as follows:

Category	(I) Nov. 2002 index	(II) Dec. 2000 index	(III) Category inflation index (I)/(II)
Living Room Desks	172.6	160.3	1.076731
Dining Room Table	174.8	168.1	1.039857
Dining Room Chairs	177.0	169.7	1.043017
Upholstered Sofas	144.9	140.9	1.028389
Upholstered Chairs	136.6	132.5	1.030943

(x) *Compute IPI for 2002.* R must compute the IPI for 2002, which is the weighted harmonic mean [Sum of Weights/Sum of (Weight/Category Inflation Index)] of the category inflation indexes for 2002. The IPI for 2002 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
Living Room Desks	$125,008.00	1.076731	$116,099.56
Dining Room Table	136,216.00	1.039857	130,994.93
Dining Room Chairs	113,569.00	1.043017	108,885.09
Upholstered Sofas	343,900.00	1.028389	334,406.53
Upholstered Chairs	233,050.00	1.030943	226,055.17
Total	951,743.00		916,441.28

(IV) Sum of weights	(V) Category inflation index	(VI) Inventory price index: (IV)/(V)
$951,743.00	$916,441.28	1.03852044

(xi) *Determine the LIFO value of the pool for 2002.* For 2002, R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the items in the dollar-value pool by the IPI for 2002. The total base-year cost of the ending inventory is $916,441.28 ($951,743.00/1.03852044). Comparing the base-year cost of the ending inventory to the base-year cost of the beginning inventory, R determines that the base-year cost of the 2002 increment is $8,085.48 ($916,441.28 – $908,355.80). R multiplies the base-year cost of the 2002 increment by the IPI for 2002 and determines that the LIFO value of the 2002 layer is $8,396.94 ($8,085.48 * 1.03852044). Thus, the LIFO value of R's total inventory at the end of 2002 is $917,589.46 ($850,000.00 (opening inventory) + $59,192.52 (2001 layer) + $8,396.94 (2002 layer)).

Example 2. Link-chain method. (i) *Introduction.* The facts are the same as *Example 1*, except that R uses the link-chain IPIC method. The double-extension IPIC method and the link-chain IPIC method yield the same results for the first taxable year in which the dollar-value LIFO and IPIC methods are used. Therefore, this example illustrates only how R will compute the IPI for, and determine the LIFO value of, its dollar-value pool for 2002.

(ii) *Select a BLS table and appropriate month for 2002.* R determines that the appropriate month for 2002 is November.

(iii) *Assign inventory items to BLS categories for 2002.* For 2002, R assigns all items in the dollar-value pool to the most-detailed BLS categories listed in Table 6 of the November 2002 ''PPI Detailed Report'' that contain those items. The BLS categories and the current-year cost of the items assigned to them are summarized as follows:

Commodity code	Category	Current-year cost
12120103	Living Room Desks	$125,008.00
12120211	Dining Room Table	136,216.00
12120216	Dining Room Chairs	113,569.00
12130101	Upholstered Sofas	343,900.00
12130111	Upholstered Chairs	233,050.00
Total		951,743.00

(iv) *Compute category inflation indexes for 2002.* Because R uses the link-chain IPIC method and did not elect the 10 percent method, the category inflation indexes are computed in accordance with paragraph (e)(3)(iii)(D)(*3*)(*iii*) of this section (BLS price indexes for November 2002 divided by BLS price indexes for October 2001). R computes the category inflation indexes for 2002 as follows:

Category	(I) Nov. 2002 index	(II) Oct. 2001 index	(III) Category inflation index: (I)/(II)
Living Room Desks	172.6	162.0	1.065432
Dining Room Table	174.8	171.9	1.016870
Dining Room Chairs	177.0	172.8	1.024306
Upholstered Sofas	144.9	142.2	1.018987
Upholstered Chairs	136.6	134.1	1.018643

(v) *Compute IPI for 2002.* As provided in paragraph (e)(3)(iii)(E)(*2*) of this section, R must compute the IPI for 2002 by multiplying the weighted harmonic mean of the category inflation indexes for 2002 by the IPI for 2001. The IPI for 2002 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
Living Room Desks	$125,008.00	1.065432	$117,330.81
Dining Room Table	136,216.00	1.016870	133,956.16

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
Dining Room Chairs	113,569.00	1.024306	110,874.09
Upholstered Sofas	343,900.00	1.018987	337,492.04
Upholstered Chairs	233,050.00	1.018643	228,784.77
Total	951,743.00		928,437.87

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Weighted harmonic mean of category inflation indexes for 2002: (IV)/(V)	(VII) Inventory price index for 2001	(VIII) Inventory price index for 2002: (VI)*(VII)
$951,743.00	$928,437.87	1.02510144	1.01433821	1.03979956

(vi) *Determine the LIFO value of the pool for 2002.* R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the items in the dollar-value pool by the IPI for 2002. The total base-year cost of the ending inventory is $915,313.91 ($951,743.00 / 1.03979956). Comparing the base-year cost of the ending inventory to the base-year cost of the beginning inventory, R determines that the base-year cost of the 2002 layer is $6,958.11 ($915,313.91–$908,355.80). R multiplies the base-year cost of the 2002 layer by the IPI for 2002 and determines that the LIFO value of the 2002 layer is $7,235.04 ($6,958.11 * 1.03979956). Thus, the LIFO value of R's total inventory at the end of 2002 is $916,427.56 ($850,000.00 (opening inventory) + $59,192.52 (2001 layer) + $7,235.04 (2002 layer)).

(iv) *Adoption or change of method*—(A) *Adoption or change to IPIC method.* The use of an inventory price index computed under the IPIC method is a method of accounting. A taxpayer permitted to adopt the dollar-value LIFO method without first securing the Commissioner's consent also may adopt the IPIC method without first securing the Commissioner's consent. The IPIC method may be adopted and used, however, only if the taxpayer provides the following information on a Form 970, ''Application to Use LIFO Inventory Method,'' or in another manner as may be acceptable to the Commissioner: A complete list of dollar-value pools (including a description of the items in each dollar-value pool); the BLS table (i.e., CPI or PPI) selected for each dollar-value pool; the representative month, if applicable, elected for each dollar-value pool; the BLS categories to which the items in each dollar-value pool will be assigned; the method of assigning items to BLS categories (e.g., the 10 percent method) for each dollar-value pool; and the method of computing the IPI (i.e., double-extension IPIC method or link-chain IPIC method) for each dollar-value pool. In the case of a taxpayer permitted to adopt the IPIC method without requesting the Commissioner's consent, the Form 970 must be attached to the taxpayer's income tax return for the taxable year of adoption. In all other cases, a taxpayer may change to the IPIC method only after securing the Commissioner's consent as provided in § 1.446–1(e). In these latter cases, the Form 970 containing the information described in this paragraph (e)(3)(iv)(A) must be attached to a Form 3115, ''Application for Change in Accounting Method,'' filed as required by § 1.446–1(e). A taxpayer that simultaneously changes to the dollar-value LIFO and IPIC methods from another LIFO method must apply the rules of paragraph (f)(2) of this section before applying the rules of paragraph (e)(3)(iv)(B)(*1*) of this section. To satisfy the requirements of § 1.472–2(h), taxpayers must maintain adequate books and records, including those concerning the use of the IPIC method and necessary computations. Notwithstanding the rules in paragraph (e)(1) of this section, a taxpayer that adopts, or changes to, the link-chain IPIC method is not required to demonstrate that the use of any other method of determining the LIFO value of a dollar-value pool is impractical.

(B) *New base year*—(*1*) *Voluntary change*—(*i*) *In general.* In the case of a taxpayer using a non-IPIC method to determine the LIFO value of inventory, the layers previously determined under that method, if any, and the LIFO values of those layers are retained if the taxpayer voluntarily changes to the IPIC method. Instead of using the earliest taxable year for which the taxpayer adopted the LIFO method for any items in the dollar-value pool, the year of change is used as the new base year for the purpose of determining the amount of increments and liquidations, if any, for the year of change and subsequent taxable years. The base-year cost of the layers in a dollar-value pool at the beginning of the year of change must be restated in terms of new base-year cost using the year of change as the new base year and, if applicable, the indexes for the previously determined layers must be recomputed accordingly. The recomputed indexes will be used to determine the LIFO value of subsequent liquidations. For purposes of computing an IPI under paragraph (e)(3)(iii)(E) of this section, the IPI for the immediately preceding year is 1.00. The new total base-year cost of the items in a dollar-value pool for the purpose of determining future increments and liquidations is equal to the total current-year cost of the items in the dollar-value pool (determined using the taxpayer's method of determining the total current-year cost of the items in the dollar-value pool under paragraph (e)(2)(ii) of this section). A taxpayer must allocate this new total base-year cost to each layer based on the ratio of the old base-year cost of the layer to the old total base-year cost of the dollar-value pool.

(ii) Example. The following example illustrates the rules of this paragraph (e)(3)(iv)(B)(*1*):

Example. (i) In 1990, X elected to use a dollar-value LIFO method (other than the IPIC method) for its single dollar-value pool. X is granted permission to change to the link-chain IPIC method, beginning with the taxable year ending December 31, 2001. X will continue using a single dollar-value pool. X's beginning inventory as of January 1, 2001, computed using its former inventory method, is as follows:

Layer	(I) Base-year cost	(II) Inflation index	(III) LIFO value: (I) * (II)
Base layer	$135,000	1.00	$135,000
1991 layer	20,000	1.43	28,600
1994 layer	60,000	1.55	93,000
1995 layer	13,000	1.59	20,670
1997 layer	2,000	1.61	3,220
Total	230,000		280,490

(ii) Under X's method of determining the current-year cost of items in a dollar-value pool, the current-year cost of the beginning inventory is $391,000. Thus, X's new base-year cost as of January 1, 2001, is $391,000. X allocates this new base-year cost to each layer based on the ratio of old base-year cost of the layer to the total old base-year cost of the dollar-value pool. To recompute the inflation indexes for each of its layers, X divides the LIFO value of each layer by the new base-year cost attributable to the layer. The new base-year cost, recomputed inflation indexes, and LIFO value of X's layers as of January 1, 2001, are as follows:

Layer	(I) Base-year cost	(II) Inflation index	(III) LIFO value: (I) * (II)
Base layer	$229,500	0.588235	$135,000
1991 layer	34,000	0.841176	28,600
1994 layer	102,000	0.911765	93,000
1995 layer	22,100	0.935294	20,670
1997 layer	3,400	0.947059	3,220
Total	391,000		280,490

(iii) In 2001, the current-year cost of X's ending inventory is $430,139. The weighted harmonic mean of the category inflation indexes applicable to X's ending inventory is 1.075347, and in accordance with paragraph (e)(3)(iv)(B)(*1*)(*i*) of this section, the inflation index for the immediately preceding taxable year is 1.00. Thus, X's IPI for 2001 is 1.075347 (1.00 * 1.075347). The total base-year cost of X's ending inventory is $400,000 ($430,139/1.075347). The base-year cost, IPI, and LIFO value of X's layers as of December 31, 2001, are as follows:

Layer	(I) Base-year cost	(II) Inventory price index	(III) LIFO value: (I) * (II)
Base layer	$229,500	0.588235	$135,000
1991 layer	34,000	0.841176	28,600
1994 layer	102,000	0.911765	93,000
1995 layer	22,100	0.935294	20,670
1997 layer	3,400	0.947059	3,220
2001 layer	9,000	1.075347	9,678
Total	400,000		290,168

(iv) In 2002, the current-year cost of X's ending inventory is $418,000. The weighted harmonic mean of the category inflation indexes applicable to X's ending inventory is 1.02292562, and the IPI for the immediately preceding year is 1.075347. Thus, X's IPI for 2001 is 1.10 (1.075347 * 1.02292562). The total base-year cost of X's ending inventory is $380,000 ($418,000/1.10), which results in a liquidation of $20,000 ($400,000 − $380,000) in terms of base-year cost. This liquidation eliminates the 2001 layer ($9,000 base-year cost), the 1997 layer ($3,400 base-year cost), and part of the 1995 layer ($7,600 base-year cost). The base-year cost, indexes, and LIFO value of X's layers as of December 31, 2002, are as follows:

Layer	(I) Base-year cost	(II) Inventory price index	(III) LIFO value: (I) * (II)
Base layer	$229,500	0.588235	$135,000
1991 layer	34,000	0.841176	28,600
1994 layer	102,000	0.911765	93,000
1995 layer	14,500	0.935294	13,562
Total	380,000		270,162

(2) *Involuntary change—(i) In general.* If a taxpayer uses a non-IPIC method to compute the LIFO value of a dollar-value pool, and if the Commissioner determines that the taxpayer's method does not clearly reflect income, the Commissioner may require the taxpayer to change to the IPIC method. If the Commissioner requires a taxpayer to

change to the IPIC method, and the taxpayer does not provide sufficient information from its books and records to compute an adjustment under section 481, the Commissioner may implement the change using the simplified transition method described in paragraph (e)(3)(iv)(B)(*2*)(*ii*) of this section.

(ii) Simplified Transition Method. Under the simplified transition method, the Commissioner will recompute the LIFO value of each dollar-value pool as of the beginning of the year of change using the double-extension IPIC method or the link-chain IPIC method. The adjustment under section 481 is equal to the difference between the recomputed LIFO value and the LIFO value of the pool determined under the taxpayer's former method. The Commissioner will compute an IPI using the double-extension IPIC method or link-chain IPIC method for each taxable year in which the LIFO method was used by the taxpayer based on the assumptions that the ending inventory of the pool in each taxable year was comprised of items that fall into the same BLS categories as the items in the ending inventory of the year of change and that the relative weights of those BLS categories in all prior years were the same as the relative weights of those BLS categories in the ending inventory of the year of change. The base-year cost of the items in a dollar-value pool at the end of a taxable year will be determined by dividing the IPI computed for the taxable year into the current-year cost of the items in that pool determined in accordance with paragraph (e)(2)(ii) of this section. If the comparison of the base-year cost of the beginning and ending inventory produces a current-year increment, the base-year cost of that increment will be multiplied by the IPI computed for that taxable year to determine the LIFO value of that layer.

(iii) Example. The following example illustrates the rules of this paragraph (e)(3)(iv)(B)(*2*)(*ii*).

Example. (i) Z began using a dollar-value LIFO method other than the IPIC method in the taxable year ending December 31, 1998, and maintains a single dollar-value pool. Z's beginning inventory as of January 1, 2000, computed using its method of accounting, was as follows:

Layer	(I) Base-year cost	(II) Inflation index	(III) LIFO value: (I)*(II)
Base layer	$105,000	1.00	$105,000
1998 layer	3,000	1.40	4,200
Total	108,000		109,200

(ii) Upon examining Z's federal income tax return for the taxable year ending December 31, 2000, the examining agent determines that Z's dollar-value LIFO method does not clearly reflect income. The examining agent chooses to change Z to the double-extension IPIC method for 2000 and implements the change using the simplified transition method as follows. First, the inventory in Z's dollar-value pool at the end of 2000 is assigned to the most-detailed categories in the CPI or PPI, whichever is appropriate. Assume that 80 percent of the current-year cost of Z's inventory as of December 31, 2000, is assigned to Category 1, 10 percent is assigned to Category 2, and 10 percent is assigned to Category 3. Assume further that the current-year cost of the inventory in Z's dollar-value pool at the end of 1998 and 1999 was $133,000 and $145,000, respectively.

(iii) The category inflation indexes for 1998 computed under the double-extension IPIC method are 1.17 for Category 1, 1.26 for Category 2, and 1.19 for Category 3. The weights to be used in computing the IPI for 1998 are $106,400 ($133,000 * 80 percent) for Category 1, $13,300 ($133,000 * 10 percent) for Category 2, and $13,300 ($133,000 * 10 percent) for Category 3. The IPI for 1998 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
1	$106,400	1.17	90,940
2	13,300	1.26	10,556
3	13,300	1.19	11,176
Total	133,000		112,672

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Inventory price index: (IV)/(V)
$133,000	$112,672	1.180417

(iv) The base-year cost of the inventory in Z's pool at the end of 1998 is $112,672 ($133,000/1.180417), and the base-year cost of the 1998 increment is $7,672 ($112,672 − $105,000). The LIFO value of the 1998 layer is $9,056 ($7,672 × 1.180417).

(v) The category inflation indexes for 1999 computed under the double-extension IPIC method were 1.21 for Category 1, 1.29 for Category 2 and 1.23 for Category 3. The weights to be used in computing the IPI for 1999 are $116,000 ($145,000 × 80 percent) for Category 1, $14,500 ($145,000 × 10 percent) for Category 2, and $14,500 ($145,000 × 10 percent) for Category 3. The IPI for 1999 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
1	$116,000	1.21	$95,868
2	14,500	1.29	11,240

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
3	14,500	1.23	11,789
Total	145,000		118,897

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Inventory price index: (IV)/(V)
$145,000	$118,897	1.219543

(vi) The base-year cost of the inventory in Z's pool at the end of 1999 is $118,897 ($145,000/1.219543), and the base-year cost of the 1999 layer is $6,225 ($118,897 − $112,672). The LIFO value of the 1999 layer is $7,592 ($6,225 × 1.219543).

(vii) The LIFO value of Z's dollar-value pool at the end of 1999 computed under the double-extension IPIC method is as follows:

Layer	(I) Base-year cost	(II) Inventory price index	(III) LIFO value: (I)*(II)
Base layer	$105,000	1.000000	$105,000
1998 layer	7,672	1.180417	9,056
1999 layer	6,225	1.219542	7,592
Total	118,897		121,648

(viii) The section 481(a) adjustment is equal to the difference between the LIFO value of the inventory at the beginning of 2000 computed under Z's former method of accounting and recomputed by the examining agent under the double-extension IPIC method, or $12,448 ($121,648—$109,200).

(ix) Finally, the examining agent will recompute Z's taxable income for 2000 and succeeding taxable years using the double-extension IPIC method.

(v) *Effective date*—(A) *In general.* The rules of this paragraph (e)(3) and paragraphs (b)(4) and (c)(2) of this section are applicable for taxable years ending on or after December 31, 2001.

(B) *Change in method of accounting.* Any change in a taxpayer's method of accounting necessary to comply with this paragraph (e)(3) or with paragraphs (b)(4) or (c)(2) of this section is a change in method of accounting to which the provisions of section 446 and the regulations thereunder apply. For the first or second taxable year ending on or after December 31, 2001, a taxpayer is granted the consent of the Commissioner to change its method of accounting to a method required or permitted by this paragraph (e)(3) and paragraphs (b)(4) and (c)(2) of this section. A taxpayer that wants to change its method of accounting under this paragraph (e)(3)(v) must follow the automatic consent procedures in Rev. Proc. 2002–9 (2002–3 I.R.B. xxx) (see § 601.601(d)(2) of this chapter). However, the scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply, and the five-year limitation on the readoption of the LIFO method under section 10.01(2) of the Appendix is waived. In addition, if the taxpayer's method of accounting for its LIFO inventories is an issue under consideration at the time the application is filed with the national office, the audit protection of section 7 of Rev. Proc. 2002–9 does not apply. If a taxpayer changing its method of accounting under this paragraph (e)(3)(v)(B) is under examination, before an appeals office, or before a federal court with respect to any income tax issue, the taxpayer must provide a copy of the application to the examining agent(s), appeals officer or counsel for the government, as appropriate, at the same time it files the application with the national office. Any change under this paragraph (e)(3)(v)(B) must be made using a cut-off method and new base year as required by paragraph (e)(3)(iv)(B)(*1*) of this section. Because a change under this paragraph (e)(3)(v)(B) is made using a cut-off method, a section 481(a) adjustment is not permitted. However, a taxpayer changing its method of accounting under this paragraph (e)(3)(v)(B) must comply with the requirements of section 10.06(3) of the APPENDIX of Rev. Proc. 2002–9 (concerning bargain purchases).

* * * * *

(h) *LIFO inventories received in certain nonrecognition transactions*—(1) *In general.* Except as provided in paragraph (h)(3) of this section, if inventory items accounted for under the LIFO method are received in a transaction described in paragraph (h)(2) of this section, then, for the purpose of determining future increments and liquidations, the transferee must use the year of transfer as the base year and must use its current-year cost (computed under the transferee's method of accounting) of those items as their new base-year cost. If the transferee had opening inventories in the year of transfer, then, for the purpose of determining future increments and liquidations, the transferee must use its current-year cost (computed under the transferee's method of accounting) of those inventories as their new base-year cost. For this purpose, ''opening inventory'' refers to all items owned by the transferee before the transfer for which the transferee uses, or elects to use, the LIFO method. The total new base-year cost of the transferee's inventory as of the beginning of the year of transfer is equal to the new base-year cost of the inventory received from the transferor and the new base-year cost of the transferee's opening inventory. The index (or, the cumulative index in the case of the link-chain method) for the year immediately preceding the year of transfer is 1.00. The base-year cost of any layers in the dollar-value pool, as determined after the transfer, must be recomputed accordingly. See paragraph (e)(3)(iv)(B)(*1*) of this section for an example of this computation.

(2) *Transactions to which this paragraph (h) applies.* The rules in this

paragraph (h) apply to a transaction in which—

(i) The transferee determines its basis in the inventories, in whole or in part, by reference to the basis of the inventories in the hands of the transferor;

(ii) The transferor used the dollar-value LIFO method to account for the transferred inventories;

(iii) The transferee uses the dollar-value LIFO method to account for the inventories in the year of the transfer; and

(iv) The transaction is not described in section 381(a).

(3) *Anti-avoidance rule.* The rules in this paragraph (h) do not apply to a transaction entered into with the principal purpose to avail the transferee of a method of accounting that would be unavailable to the transferor (or would be unavailable to the transferor without securing consent from the Commissioner). In determining the principal purpose of a transfer, consideration will be given to all of the facts and circumstances. However, a transfer is deemed made with the principal purpose to avail the transferee of a method of accounting that would be unavailable to the transferor without securing consent from the Commissioner if the transferor acquired inventory in a bargain purchase within the five taxable years preceding the year of the transfer and used a dollar-value LIFO method to account for that inventory that did not treat the bargain purchase inventory and physically identical inventory acquired at market prices as separate items. Inventory is deemed acquired in a bargain purchase if the actual cost of the inventory (or, if appropriate, the allocated cost of the inventory) was less than or equal to 50 percent of the replacement cost of physically identical inventory. Inventory is not considered acquired in a bargain purchase if the actual cost of the inventory (or, if appropriate, the allocated cost of the inventory) was greater than or equal to 75 percent of the replacement cost of physically identical inventory.

(4) *Effective date.* The rules of this paragraph (h) are applicable for transfers that occur during a taxable year ending on or after December 31, 2001.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, in the table in paragraph (b), the entry for 1.472–8 is revised to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.472–8	1545–0028 1545–0042 1545–1767
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 21, 2001.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–184 Filed 1–8–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–048]

Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary deviation.

SUMMARY: The Commander, Eighth Coast Guard District has authorized a temporary deviation from the regulation governing the Burlington Railroad Drawbridge, Mile 403.1, Upper Mississippi River at Burlington, Iowa. This deviation allows the drawbridge to remain closed-to-navigation for 60 days from 12:01 a.m. Central Standard Time (CST) on December 31, 2001, until 12:01 a.m. Central Standard Time (CST) on March 1, 2002. The drawbridge shall open on signal if at least six (6) hours advance notice is given.

DATES: This temporary deviation is effective from 12:01 a.m. Central Standard Time (CST) on December 31, 2001, until 12:01 a.m. Central Standard Time (CST) on March 1, 2002.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. The Bridge Branch maintains the public docket for this temporary deviation.

FOR FUTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District at (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: The Burlington Railroad Drawbridge provides a vertical clearance of 21.5 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

On November 27, 2001 the Burlington Northern Santa Fe Railroad requested the bridge be maintained in the closed-to-navigation position to allow the bridge owner time for preventative maintenance in the winter and when there is less impact on navigation; instead of scheduling maintenance in the summer, when river traffic increases.

This deviation allows the bridge to remain closed-to-navigation from 12:01 a.m. Central Standard Time (CST) on December 31, 2001, until 12:01 a.m. Central Standard Time (CST) on March 1, 2002. The drawbridge will open on signal if at least six (6) hours advance notice is given. Advance notice may be given by calling Mr. Louis Welte, (309) 345–6103 during work hours and Mr. Larry Moll, (309) 752–5244, after work hours.

Dated: December 28, 2001.

Roy J. Casto,

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

[FR Doc. 02–503 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–045]

RIN 2115–AE47

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Illinois Central Railroad Drawbridge, Mile 579.9, Upper Mississippi River. From 12:01 a.m., December 27, 2001, until 9 a.m., March 11, 2002, the drawbridge shall open on signal if at least 24 hours advance notice is given.

This change is necessary to perform annual maintenance and repair on the bridge.

DATES: This rule is effective from 12:01 a.m. Central Standard Time on December 27, 2001, to 9 a.m. Central Standard Time on March 11, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD08–01–045 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch at (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule is being promulgated without an NPRM due to the short time frame allowed between the submission of the request by the Canadian National/Illinois Central Railroad Company and the date of requested closure. The Coast Guard received the Canadian National/Illinois Central Railroad Company's request on 6 November 2001. Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 24 (Mile 273.4 UMR) until March 2, 2002 and Lock No. 12 (Mile 556.7) until March 11, 2002, will preclude any significant navigation demands for the drawspan opening. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators. No objections were raised.

Background and Purpose

On November 6, 2001, the Canadian National/Illinois Central Railroad Company requested a temporary change to the Operation of the Illinois Central Railroad swing bridge across the Upper Mississippi River, Mile 579.9 at Dubuque, Iowa. Canadian National/Illinois Central Railroad Company requested that navigation temporarily provide 24 hours advance notice for bridge operation to facilitate required bridge maintenance during the winter months.

The Illinois Central Railroad Drawbridge navigation span has a vertical clearance of 19.9 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw opens on signal for passage of river traffic. The Canadian National/Illinois Central Railroad Company requested the drawbridge be permitted to remain closed-to-navigation from 12:01 a.m., December 27, 2001, until 9 a.m., March 11, 2002 unless 24 hours advance notice is given of the need for it to open. Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 24 (Mile 273.4 UMR) until March 2, 2002 and Lock No. 12 (Mile 556.7) until March 11, 2002, will preclude any significant navigation demands for the drawspan opening. The Illinois Central Railroad Drawbridge, Mile 579.9 Upper Mississippi River, is located upstream from Lock 24. Performing maintenance on the bridge during the winter, when the number of vessels likely to be impacted is minimal, is preferred to bridge closures or advance notification requirements during the commercial navigation season. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators. No objections were raised.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of the temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because river traffic will be extremely limited by lock closures and ice during this period.

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L 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. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 378.

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 affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1 (series), this rule is categorically excluded from further environmental documentation. Promulgation of changes to drawbridge regulations has been found not to have significant effect on the human environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 12:01 a.m., December 27, 2001, through 9 a.m., March 11, 2002, § 117.T408 is added to read as follows:

§ 117.T408 Upper Mississippi River.

From 12:01 a.m., December 27, 2001 through 9 a.m., March 11, 2002, the drawspan of the Illinois Central Railroad Drawbridge, mile 579.9, requires 24 hours advance notice for bridge operation.

Dated: December 27, 2001.

Roy J. Casto,

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

[FR Doc. 02–504 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 01–013]

RIN 2115–AA97

Security Zone; Port Hueneme Harbor, Ventura County, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone covering all waters within Port Hueneme Harbor in Ventura County, CA. This security zone is needed for national security reasons to protect the Naval Base Ventura County and the commercial port from potential subversive acts. Entry into this zone is prohibited, unless specifically authorized by the Capitan of the Port Los Angeles-Long Beach, the Commanding Officer, Naval Base Ventura County, or their designated representatives.

DATES: The rule is effective from 12:01 a.m. PST on December 21, 2001 to 11:59 p.m. PDT on June 15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles-Long Beach 01–013 and are available for inspection or copying at Coast Guard Marine Safety Office Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ken O'Connor, Waterways Management, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports, and waterways of the United States. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners advising of this new rule.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center in New York and the Pentagon in Arlington, Virginia, there is an increased risk that further subversive activity may be launched against the United States. These terrorist acts have increased the need for safety and security measures on U.S. ports and waterways as further attacks may be launched from vessels within the area of Port Hueneme Harbor and the Naval Base Ventura County.

In response to these terrorist acts, to prevent similar occurrences, and to protect the Naval Facilities at Port Hueneme Harbor and the Naval Base Ventura County, the Coast Guard is establishing a security zone in all waters within Port Hueneme Harbor. This security zone is necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard

ports, harbors, or waters of the United States in Port Hueneme Harbor, Ventura County, CA. Specifically this security zone prohibits all vessels from entering Port Hueneme Harbor, beyond the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS) demarcation line set forth in section 80.1120 of Title 33 of the Code of Federal Regulations (CFR), without first filing a proper Advance Notification of Arrival as required by sections 160.T208–T214 of Title 33 of the CFR as well as obtaining clearance from Commanding Officer, Naval Base Ventura County, ''Control 1''.

This security zone is established pursuant to the authority of the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including sections 6.01 and 6.04 of Title 33 of the CFR. Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel, a monetary penalty of not more than $10,000, and imprisonment for not more than 10 years.

This rule will be enforced by the Captain of the Port Los Angeles-Long Beach, who may also enlist the aid and cooperation of any Federal, State, county, municipal, and private agencies to assist in the enforcement of this rule. Commanding Officer, Naval Base Ventura County, ''Control 1,'' will control vessel traffic entering Port Hueneme Harbor.

Regulatory Evaluation

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

Small Entities

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

For the same reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that it is categorically excluded from further environmental review.

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. Add a new temporary § 165.T11–060 to read as follows:

§ 165.T11–060 Security Zone; Port Hueneme Harbor, Ventura County, California.

(a) *Location.* The following area is a Security Zone: The water area of Port Hueneme Harbor inside of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS) demarcation line.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, the following rules apply to the security zone established by this section:

(i) No person or vessel may enter or remain in this security zone without the permission of the Captain of the Port Los Angeles-Long Beach, CA, or the Commanding Officer, Naval Base Ventura County, CA, ''Control 1,'';

(ii) Vessels that are required to make Advanced Notifications of Arrival as per §§ 160.T204–T214 of part 160 of this chapter continue to make such reports;

(iii) All vessels must obtain clearance from ''Control 1'' on VHF–FM marine radio 06 prior to crossing the COLREGS demarcation line at Port Hueneme Harbor;

(iv) Vessels without marine radio capability must obtain clearance in advance by contacting ''Control 1'' via telephone at (805) 982–3938 prior to crossing the COLREGS demarcation line at Port Hueneme Harbor.

(2) The Captain of the Port will notify the public of this Security Zone via broadcast and published notice to mariners.

(3) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from complying with the rules of the road and safe navigation practice.

(4) The regulations of this section will be enforced by the Captain of the Port Los Angeles-Long Beach, the Commanding Officer, Naval Base Ventura County or their authorized representatives.

(c) *Dates.* This section becomes effective at 12:01 a.m. PST on December 21, 2001, and will terminate at 11:59 p.m. PDT on June 15, 2002.

Dated: December 21, 2001.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–502 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–223]

RIN 2115–AA97

Safety Zone; Fore River Bridge Repairs—Weymouth, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Fore River (Route 3A) Bridge Repairs, starting January 1, 2002 until September 30, 2002, in Weymouth, MA. The safety zone is to ensure the safe operation of a 55-foot-wide crane barge underneath the Fore River Bridge in order to conduct repair operations, Monday through Saturday of each week during the effective time period and is necessary to protect maritime traffic in the area of the safety zone. The safety zone prohibits vessels from operating within 30-feet of the barge.

DATES: This rule is effective from January 1, 2002 until September 30, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Michael Popovich, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3067.

SUPPLEMENTARY INFORMATION:

Regulatory History

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**. Discussions were held with all interests most likely to be affected by this safety zone. These include Massachusetts Highway Department, The Middlesex Corporation (TMC), Weymouth Fore River operators, barge and ferry companies, and recreational boater representatives. These interests agree that the parameters of the zone will not unduly impair business and unscheduled operations or transits of vessels. Therefore, notice and comment is unnecessary. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to protect marine traffic from bridge construction hazards while transiting a portion of the Fore River, Weymouth, Massachusetts, during the Fore River Bridge repairs. This safety zone should have minimal impact on vessel transits due to the fact that the safety zone does not block the entire channel, and procedures have been established for the movement of the construction barge, should larger vessels that are unable to transit around the barge while in the channel, need to transit the area. Notifications will be made to the maritime community via notice to mariners and marine information broadcasts informing them of boundaries of the zone.

Background and Purpose

A previous rulemaking, published at 66 FR 13851, effective from February 21 through December 31, 2001, established a safety zone identical to that established in this rulemaking to conduct repairs to the Fore River Bridge. Additional time is needed to complete the repairs required to allow for the proper operation of the bridge. The safety zone allows TMC to place a 55-foot-wide crane barge in the Fore River underneath the Fore River Bridge to conduct repair operations, Monday through Saturday of each week from January 1, 2002 through September 30, 2002. This safety zone prohibits vessels from operating within 30-feet of the barge. Most marine traffic may transit safely outside of the safety zone during the repairs. In the event a large vessel should need to transit the channel, the TMC barge shall move upon request. Requests to move the barge should be made directly to TMC at (781) 665–3261 or (978) 590–2754 with as much advance notice as possible (at least 8 hours is preferred). The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts.

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 under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Weymouth Fore River during this bridge repair period, the effect of this regulation will not be significant for several reasons: maritime interests, which frequently use the channel, have provided input into the scheduling of the bridge repairs, the safety zone does not block the entire channel, advanced notice will be given through marine broadcasts, and the construction barge will be required to move upon request for larger vessels unable to transit around it while in the channel.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Weymouth Fore River between January 1 and September 30, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone does not block the entire channel, advanced notice will be given through marine broadcasts, and the construction barge will be required to move upon request for larger vessels unable to transit around it while in the channel.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call Chief Petty Officer Michael Popovich, Marine Safety Office Boston, at (617) 223–3067. 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 would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

This 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

The Coast Guard 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 pose 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. A rule with tribal implications has 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.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 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. From January 1, 2002 until September 30, 2002, add temporary § 165.T01–223 to read as follows:

§ 165.T01–223 Safety Zone: Fore River Bridge Repairs—Weymouth, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of the Weymouth Fore River within a 30-foot radius of The Middlesex Corporation (TMC) construction barge located under the Fore River Bridge.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the

designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) No person may enter the waters within the boundaries of the safety zone unless previously authorized by the Captain of the Port, Boston or his authorized patrol representative.

Dated: December 14, 2001.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–505 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP MIAMI–01–115]

RIN 2115–AA97

Security Zones; Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving security zones 100 yards around all tank vessels loaded with hazardous cargo and passenger vessels with passengers aboard when these vessels enter or depart the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida. We are also establishing temporary fixed security zones 100 yards around all tank vessels loaded with hazardous cargo and passenger vessels with passengers aboard when these vessels are moored in the Ports of Palm Beach, Port Everglades, Miami, or Key West, Florida. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative.

DATES: This rule is effective from 11:59 p.m. on September 25, 2001 until 11:59 p.m. on June 15, 2002 unless terminated earlier by the Captain of the Port, Miami, Florida.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Miami 01–115 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139, between 7:30 p.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Joseph Boudrow, Coast Guard Marine Safety Office Miami, at (305) 535–8701.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and place Coast Guard vessels in the vicinity to advise mariners of the restriction.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Ports of Palm Beach, Miami, Port Everglades, and Key West, Florida against tank vessels and cruise ships entering, departing and moored within these ports. There will be Coast Guard and local police department patrol vessels on scene to monitor traffic through these areas.

The security zone for the Port of Palm Beach is activated when a subject vessel passes the ''LW'' buoy, at approximate position 26° 46′ 18N, 080° 00′ 36W. The security zone for the Port of Miami is activated when a subject vessel passes the ''M'' buoy, at approximate position 25° 46′ 06N, 080° 05′ 00W. The Port Everglades security zone starts when a subject vessel passes ''PE'' buoy, at approximate position 26° 05′ 30N, 080° 04′ 48W. And the security zone for the Port of Key West is activated when a subject vessel passes ''KW'' buoy, at approximate position 24° 27′ 42N, 081° 48′ 06W. The zone for a vessel is deactivated when the vessel passes these buoys on its departure from port.

The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) of all active security zones in the ports by identifying the names of the vessels around which the zones are centered. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida.

Regulatory Evaluation

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to enter the zone on a case by case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 each agency's

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implication 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 Party

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. It is not economically significant and creates no environmental risk to health or risk to safety disproportionately affecting children.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded 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 in the docket for inspection or copying where indicated under **ADDRESSES.**

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 relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports 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 temporary § 165.T07–115 is added to read as follows:

§ 165.T07–115 Security Zones; Ports of Palm Beach, Port Everglades, Miami, and Key West, Florida.

(a) *Regulated area.* Temporary moving security zones are established 100 yards around all tank vessels with hazardous cargo onboard and all passenger vessels with passengers aboard during transits entering or departing the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida. These moving security zones are activated when the subject vessel passes: ''LW'' buoy, at approximate position 26° 46′ 18N, 080° 00′ 36W when entering the Port of Palm Beach, passes ''PE'' buoy, at approximate position 26° 05′ 30N, 080° 04′ 48W when entering Port Everglades; the ''M'' buoy, at approximate position 25° 46′ 06N, 080° 05′ when entering the Port of Miami; and ''KW'' buoy, at approximate position 24° 27′ 42N, 081° 48′ 06W when entering the Port of Key West. Temporary fixed security zones are established 100 yards around all tank vessels with hazardous cargo onboard and all passenger vessels with passengers aboard docked in the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida.

(b) *Regulations.* In accordance with the general regulations of § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port, Miami or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) of all active security zones in port by identifying the names of the vessels around which they are centered.

(c) *Dates.* This regulation becomes effective at 11:59 p.m. on September 25, 2001 and will terminate at 11:59 p.m. on June 15, 2002 unless terminated earlier by the Captain of the Port, Miami, Florida.

Dated: September 25, 2001.

J.A. Watson, IV,

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

[FR Doc. 02–546 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301193; FRL–6812–5]

RIN 2070–AB78

Indian Meal Moth Granulosis Virus; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the Indian Meal Moth Granulosis Virus on dried fruits and nuts when applied/used as a microbial pesticide to control the Indian Meal Moth (*Plodia interpunctella*). AriVir, LLC. submitted a petition to EPA

under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of Indian Meal Moth Granulosis Virus (IMMGV).

DATES: This regulation is effective January 9, 2002. Objections and requests for hearings, identified by docket control number [OPP–301193], must be received by EPA, on or before March 11, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number [OPP–301193] in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8733; and e-mail address: hollis.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at ttp://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301193. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 7, 2000 (65 FR 41984) (FRL–6556–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e), as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide tolerance petition by AgriVir, LLC., 1625 K St., NW., Washington, DC 20006. This notice included a summary of the petition prepared by the petitioner AgriVir, LLC. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of IMMGV.

III. Risk Assessment

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Additionally, section 408(b)(2)(D) requires that the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Based on the toxicology data cited and the limited exposure to humans and domestic animals, there is a reasonable certainty that no harm will result from aggregate exposure to IMMGV to the U.S. population including infants and children to residues of IMMGV when used as viral pest control agent to

control the Indian Meal Moth on stored nuts and dried fruits. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the long history of research, use and safety of testing baculoviruses which is documented in the public scientific literature (Doller, G. 1985. The safety of insect virus as biological control agents. In ''Viral Insecticides for Biolocial Control'' (Eds. Maramorosch, K. and Sherman, H.G.), Academic Press, New York: 399, Heimpel, A.M. 1971. Safety of insect pathogens for man and vertebrates. In ''Microbial Control of Insects and Mites'' (Eds. Burges, H.D. and Hussey, N.W.), Academic Press, New York: 469-489, Groner, A. 1986. Specificity and safety of baculoviruses. In ''The Biology of Baculoviruses Vol. I: Biological Properties and Molecular Biology'' (Eds. Granados, R.D. and Federici, B.A), CRC Press, Boca Raton, Florida: 177-202). Consigili, R.A., D.L, Russell and M.E. Wilson. 1986. The biochemistry and molecular biology of the granulosis virus that infects *Plodia interpunctella*. Cur. Top. Microbiol. and Immunol. 131: 69-101. Hunter, D.K. 1970. Pathogenicity of a granulosis virus of the Indian meal moth. J. Invertebr. Pahtol. 16: 339-341.

IMMGV is a naturally-occurring organism to which some environmental and dietary exposure is likely to be common for most individuals. The conclusion of safety is further supported by the lack of toxic or pathogenic effects on test animals at high doses (data submitted by the registrant, MRID #'s 453070-01, 450662-07 & 450662-08). Baculoviruses have been described in the scientific literature for approximately 40 years. In addition to their natural occurrence, these viruses have a long history of safe use as bioinsecticides. Baculoviruses have been studied extensively in both laboratory and field experiments, which have shown that the virus host range is limited to arthropods. IMMGV has been shown to be very restricted in its insect host range. No toxicological or pathogenic effects produced by the baculovirus itself, have been observed in mammals, birds, fish or plants. The lack of mammalian toxicity at high levels of exposure to IMMGV demonstrates the safety of the product at levels well above maximum possible exposure levels anticipated in the crops. There has been a significant amount of research performed on baculoviruses and numerous scientific references are available which describe the biology of these viruses, their host range, and their mode of action.

Toxicity studies submitted in support of this tolerance exemption include the following:

1. *Acute oral toxicity/pathogenicity (453070-01).* Thirteen male (254-321g) and 13 female (160-208g) albino rats were divided into three groups and treated with 0.1 milliliter (mL) of the test substance. Treatment was administered by oral gavage with at least 1 x 10^8 viral particles per animal. No deaths occurred in any of the test animals. Other than diarrhea during the first few hours following dosing, there were no other apparent clinical symptoms. Based upon the data there were no significant adverse effects reported upon doses of at least 1 x 10^8 viral capsules. Toxicity Category IV.

2. *In vitro mammalian cell viral infectivity in mammalian cells (450662-08).* Human WI-38 and WS1 cell cultures and African Green monkey CV-1 cell cultures were exposed to ≥ 1 x 10^6 units of the test substance. The cell cultures were observed daily for 21 days following inoculation for virus induced cytopathic effects. The test preparation was shown to be highly infectious and cytopathic to the target *Plodia interpunctella* larva. No differences were seen between the virus treated nor the solvent treated control cell cultures with respect to any cytopathic endpoint at any time post-inoculation. Based on the data, there was no evidence that the virus could infect any of the three mammalian cell lines.

3. *In vitro mammalian cell viral induced cytotoxicity (450662-07).* Human WI-38 and WS1 cell cultures and African Green monkey CV-1 cell cultures were exposed to ≥ 1 x 10^6 units of IMMGV Technical (IMMGV) for 1–hour. The cell cultures were then washed, refed with virus-free medium, incubated for 8 days, fixed, stained and the number of colonies counted. The test preparation was shown to be highly infectious and cytopathic to the target *Plodia interpunctella* larva although analysis determined that the actual number of viral capsules used was only 42% of the target value. No differences were seen between the virus treated nor the solvent treated control cell cultures with respect to cloning efficiency in any of the three cell lines. Based on the data, there was no evidence that the test substance was cytotoxic to any of the three mammalian cell lines.

4. *Acute eye irritation (450662-09).* The test substance was instilled in the eyes of four males and two female adult New Zealand albino rabbits at approximately 0.04 g/eye (~7.14 x 10^9 viral capsules). Animals were acclimated for 11 days and before treatment their eyes were checked for normalcy using ophthalmic fluorescein and an ultraviolet (UV) lamp. The right eye of each animal was treated and the other eye served as a control. No deaths occurred. Clinical signs noted included conjunctivitis, corneal opacity and iritis, all of which cleared within 4 days of treatment. Toxicity Category IV.

Data waivers were requested for the following studies:

1. *Acute dermal toxicity.* This study was waived based upon the lack of toxicity in animals dosed orally (453070-01) and more importantly cells inoculated with viral pest control agent (450662-07 & 450662-08). Cell culture infectivity and cytoxicity assays demonstrated that there were no toxic effects to mammalian cell lines (human lung, human endothelial and primate renal cell lines) when infected with doses of IMMGV. Cell culture assays provide valuable information on the ability of the viral pest control agent to infect, replicate in, transform or cause toxicity in mammalian cell lines. Thus, this assay is the most likely indicator of evaluating the toxicity of a viral pest control agent. Unlike the oral, dermal and inhalation routes of exposure, these barriers (exposure conditions) do not exist in cell culture assays as the host cell is completely exposed thus providing a higher exposure potential (for exposure of body tissues, organs and systems). Cell culture studies which demonstrate no toxicity to mammalian cell lines upon infection with the viral pest control agent can therefore be used as an indicator in determining the probability of toxicity to the viral pest control agent via other routes of exposure (oral, dermal, inhalation). Therefore, this evaluation criteria along with the data submitted (referenced above) and the long history of safe use of baculoviruses provided the Agency with a scientific rationale to waive the requirement for an acute dermal toxicity study. In addition, the IMMGV is a characteristically large molecular entity and is therefore unable to penetrate intact skin. However, in the unlikely event that viral penetration does occur through contact with broken skin, the studies submitted by the registrant have demonstrated a lack of toxicity/pathogenicity and infectivity associated with IMMGV.

2. *Acute inhalation toxicity.* This study was waived based upon the lack of toxicity in animals dosed orally (453070-01) and more importantly cells inoculated with viral pest control agent (450662-07 & 450662-08). Cell culture infectivity and cytoxicity assays demonstrated that there were no toxic

effects to mammalian cell lines (human lung, human endothelial and primate renal cell lines) when infected with doses of IMMGV. Cell culture assays provide valuable information on the ability of the viral pest control agent to infect, replicate in, transform or cause toxicity in mammalian cell lines. Thus, this assay is the most likely indicator of evaluating the toxicity of a viral pest control agent. Unlike the oral, dermal and inhalation routes of exposure, these barriers (exposure conditions) do not exist in cell culture assays as the host cell is completely exposed thus providing a higher exposure potential (for exposure of body tissues, organs and systems). Cell culture studies which demonstrate no toxicity to mammalian cell lines upon infection with the viral pest control agent can therefore be used as an indicator in determining the probability of toxicity to the viral pest control agent via other routes of exposure (oral, dermal and inhalation). Therefore, this evaluation criteria along with the data submitted (referenced above) and the long history of safe use of baculoviruses provided the Agency with a scientific rationale to waive the requirement for an acute inhalation toxicity study. In addition, the product labeling includes precautionary language for the pesticide handler to a dust mask as a further measure of safety.

3. *Primary dermal irritation*. This study was waived based upon the lack of toxicity in animals dosed orally (453070-01) and more importantly cells inoculated with viral pest control agent (450662-07 & 450662-08). Cell culture infectivity and cytoxicity assays demonstrated that there were no toxic effects to mammalian cell lines (human lung, human endothelial and primate renal cell lines) when infected with doses of IMMGV. Cell culture assays provide valuable information on the ability of the viral pest control agent to infect, replicate in, transform or cause toxicity in mammalian cell lines. Thus, this assay is the most likely indicator of evaluating the toxicity of a viral pest control agent. Unlike the oral, dermal and inhalation routes of exposure, these barriers (exposure conditions) do not exist in cell culture assays as the host cell is completely exposed thus providing a higher exposure potential (for exposure of body tissues, organs and systems). Cell culture studies which demonstrate no toxicity to mammalian cell lines upon infection with the viral pest control agent can therefore be used as an indicator in determining the probability of toxicity to the viral pest control agent via other routes of exposure (oral, dermal and inhalation). Therefore, this evaluation criteria along with the data submitted (referenced above) and the long history of safe use of baculoviruses provided the Agency with a scientific rationale to waive the requirement for an acute dermal toxicity study. In addition, the product labeling includes precautionary language for the pesticide handler to wear gloves as a further measure of safety.

4. *Literature citations (450662-06)*. Information from the open scientific literature has been cited in support of the relative safety and lack of mammalian toxicity associated with baculoviruses to include the IMMGV. The IMMGV is very host-specific, it does not infect any host other than the Indian Meal Moth larvae and does not cross-infect any Lepidopteran or other insect. The range for the insect host is worldwide. Studies listed in the literature review provide information on the life cycle and mode of action of IMMGV such that it acts by pathogenicity, not a toxic mechanism. It presents no hazard potential to mammals and non-target species.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food*. Because baculoviruses are naturally-occurring organisms, there is a great likelihood for previous exposure for most, if not all individuals. To date, there have been no reports of any hypersensitivity incidents or reports of any known adverse reactions resulting from exposure to IMMGV. The amount of product used will result in a negligible increase, if any, of virus exposure. In addition, even if there is a significant increase in exposure to the virus, the toxicity studies submitted by the registrant along with the extensive reports in the scientific literature indicating the safety of the viruses, suggest that there should not be any additional risk of adverse effects due to exposure to IMMGV.

2. *Drinking water exposure*. Because of the use site and amount of product that will be applied, potential non-occupational exposures in drinking water is negligible. Currently, there are no reports which show that IMMGV has been found in any drinking water. Baculoviruses occur naturally in soil and there is a low likelihood that they would survive passage through the soil to reach underground water (Consigili, R.A., and Wilson, M.E., 1986. The Biochemical and Molecular Biology of the Granulosis Virus that Infects *Plodia Interpunctella*. Current topics in Microbiology and Immunology 131:69-101. MRID 450662-06). Even if the virus is able to reach ground water, it is highly unlikely that the viruses would survive municipal water treatment due to its inability to survive outside its host. Therefore, it is likely there will not be an increase of IMMGV in drinking water. In addition, because the virus host range is limited to the Indian meal moth, even if the virus is found in drinking water, the results of the acute oral toxicity studies using a high dose of the virus, suggest that there will not be any adverse effects upon human consumption in the unlikely event any virus found its way into drinking water, therefore; the Agency has no drinking water exposure concerns.

B. Other Non-Occupational Exposure

Baculoviruses are naturally-occurring viruses that have been described in the scientific literature for approximately 40 years. In addition to scientific research, there has been a long history of safe use of baculoviruses to control arthropods. Because the amount of virus which will be applied is small, it is not likely that there will be a significant increase in potential exposure. Any increase in virus titer is likely to be negligible at most. Baculoviruses have been shown to have a host range limited to arthropods and the host range of this virus is even more restrictive than most baculoviruses (Consigili, R.A., and Wilson, M.E., 1986. The Biochemical and Molecular Biology of the Granulosis Virus that Infects *Plodia Interpunctella*. Current topics in Microbiology and Immunology 131:69-101. MRID 450662-06). Therefore, even if there was an increase in exposure, there should not be any increase in potential human health effects.

VI. Cumulative Effects

The Agency has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to this or other baculovirus-containing products, the Agency is confident that there will not be cumulative effects from the registration of this product.

VII. Determination of Safety

1. *U.S. population.* There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population from exposure to residues of IMMGV. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the long history of safe use of baculoviruses as bioinsecticides, the lack of mammalian toxicity associated with IMMGV, the limited host range of the virus and the inability of IMMGV to infect mammalian cell lines.

2. *Infants and children.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) (MOE) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different MOE will be safe for infants and children. MOEs are often referred to as uncertainty (safety) factors. In this instance, based on all the available information, the Agency concludes that IMMGV is practically non-toxic to mammals, including infants and children and that they will consume only minimal, if any, residues of the microbial pesticide. Thus, there are no threshold effects of concern and, as a result the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

As a result, EPA has not used a MOE approach to assess the safety of the IMMGV.

VIII. Other Considerations

A. Endocrine Disruptors

There are no reports or indications in the available scientific literature which suggests that Indian meal moth granulosis virus has caused or has the potential to cause adverse effects on the endocrine and/or immune systems of humans or animals. The virus host range is limited to the Indian meal moth, where it would be expected to affect the defense systems of the target insect pest. The target insect's response is not different from any animal's response to a disease agent. These suppositions are confirmed by the results of the mammailian toxicity tests cited above.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance without any numberical limitation for the reasons stated above. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purposes for the IMMGV.

C. Codex Maximum Residue Level

There are no Codex Maximum Residue Levels established for residues of the IMMGV.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301193 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 11, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–301193, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request

via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule 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. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 21, 2001.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1218 is added to subpart D to read as follows:

§ 180.1218 Indian Meal Moth Granulosis Virus; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide Indian Meal Moth Granulosis Virus in or on dried fruits and nuts.

[FR Doc. 02–223 Filed 1–8–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Notice 3]

RIN 2137–AD64

Pipeline Safety: High Consequence Areas for Gas Transmission Pipelines

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Research and Special Programs Administration (RSPA) is proposing to define areas of high consequence where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. This proposed rule is the first step in a two step process to address the integrity management programs for gas pipelines.

RSPA created the proposed definition from the comments received on the notice that invited further public comment about integrity management concepts as they relate to gas pipelines (Information Notice). Additionally, RSPA gathered information through a series of discussions and meetings with representatives of the gas pipeline industry, research institutions, State pipeline safety agencies and public interest groups. The proposed definition does not require any specific action by pipeline operators, but will be used in the pipeline integrity management rule for gas transmission lines that RSPA is currently developing.

DATES: Interested persons are invited to submit written comments by March 11, 2002. Late-filed comments will be considered to the extent practicable.

ADDRESSES:

Filing Information

You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except federal holidays. All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

Electronic Access

You may also submit written comments to the docket electronically. To submit comments electronically, log on to the following Internet Web address: *http://dms.dot.gov.* Click on ''Help & Information'' for instructions on how to file a document electronically.

General Information

You may contact the Dockets Facility by phone at (202) 366–9329, for copies of this proposed rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at (202) 366–4571, by fax at (202) 366–4566, or by E-mail at *mike.israni@rspa.dot.gov,* regarding the subject matter of this proposed rule. General information about the RSPA/OPS programs may be obtained by accessing OPS's Internet page at *http://ops.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

We are issuing integrity management program requirements for pipelines in several steps. RSPA began the series of rulemakings by issuing requirements pertaining to hazardous liquid and carbon dioxide pipeline operators. A final rule which applies to hazardous liquid operators with 500 or more miles of pipeline was published on December 1, 2000 (65 FR 75378). That rule applies to hazardous liquid and carbon dioxide pipelines that can affect high consequence areas, which include populated areas defined by the U.S. Census Bureau as urbanized areas or places, unusually sensitive environmental areas, and commercially navigable waterways. We issued a similar proposed rule for hazardous liquid operators with less than 500 miles of pipeline (66 FR 15821; March 21, 2001).

We are now beginning the integrity management rulemakings for gas transmission lines by first proposing a definition of high consequence areas. This definition will be entirely separate from the definition established for hazardous liquid pipelines. We will then propose requirements for gas transmission pipeline operators to develop and implement integrity management programs to provide additional protections to those areas. We are proceeding in two steps for several reasons. We gathered and reviewed a great deal of information on where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. We compared this information to the areas we currently require enhanced protections. We are, however, still collecting information on and verifying the validity of pipeline assessment methods other than internal inspection devices and pressure testing. Information on viable alternative assessment methods for gas transmission pipelines is critical to our proposal for an integrity management program. Unlike hazardous liquid pipelines, a large percent of gas transmission pipelines are not configured for the use of internal inspection devices or cannot be taken out of service for any length of time due to the disruption of critical gas supply to customers. Therefore, we must complete this work before we issue a proposal to address protections for gas pipelines in high consequence areas.

Additionally, while a consensus standard on implementing an overall integrity management program is complete, many consensus standards on pipeline integrity management that could be incorporated into an integrity rulemaking are still under development. Therefore, we decided to proceed with a definition based on information we analyzed, and continue work on proposed assessment and protection requirements for an integrity management program.

RSPA created this definition through a process which began with the goal of improving the assurance of pipeline integrity in those geographic areas where a rupture could have the most significant consequence on people. We thought it necessary to focus on those geographic areas to ensure that operators would expend resources in the areas where the benefits would be greatest, while the regulatory agencies and the industry continued to learn how to effectively improve integrity for the entire pipeline system.

We next assembled technical information to support development of rules to define the geographic areas of focus and prescribe the process to be used to increase the assurance of pipeline integrity. This was accomplished through a series of discussions and meetings with representatives of the gas pipeline industry, research institutions, State pipeline safety agencies and public interest groups. We digested the technical information from these meetings and developed preliminary hypotheses about how the rules should be structured. These hypotheses were documented in the Information Notice (66 FR 34318; June 27, 2001), which invited public comment both on the

hypotheses and on the technical issues requiring resolution.

We developed the definition that we are proposing in this rulemaking based on the technical input received during the series of stakeholder meetings and the comments received on the **Federal Register** Notice. The use of this definition for areas of high consequence, in conjunction with implementation of future integrity management requirements, represents a major step in increasing the assurance of integrity for gas pipeline systems. Once integrity management program requirements are in place for the high consequence areas, RSPA will review the benefits achieved for future consideration of whether to extend integrity management requirements to other areas on pipelines. This review will also help us formulate effective practices to further enhance the integrity of the entire pipeline infrastructure.

RSPA's goal in developing the gas pipeline integrity management rules is to provide the regulatory structure required for operators to focus their resources on improving pipeline integrity in the areas where a pipeline failure would have the greatest impact on public safety. The RSPA philosophy toward gas pipelines is to build on current Class location regulations which require the operator to know what people by location would be impacted by a pipeline rupture, and to require added assurance of pipeline integrity in the areas where the population density is greatest.

These current Class location regulations, which are unique to gas pipelines, require an operator to periodically (typically done annually) monitor and record data on increases in population near its pipelines. Data monitoring gives a current and very accurate picture of where people live and work who could be affected by a pipeline release.

Since January 2000, RSPA has met with State agencies, representatives of the Interstate Natural Gas Association of America (INGAA), the American Gas Association (AGA), Battelle Memorial Institute, the Gas Technology Institute (GTI), Hartford Steam Boiler Inspection and Insurance Company, and operators covered under 49 CFR part 192. (See DOT Docket No. 7666 for summaries of the meetings.) We also met with the Western States' Land Commissioners, National Governors Association, National League of Cities, National Council of State Legislators, Environmental Defense, Public Interest Reform Group, and Working Group on Communities Right-To-Know.

From these meetings we gained a clearer understanding of four significant characteristics of gas pipelines that we used in developing a proposed definition of high consequence areas. First, the effects of a gas pipeline rupture and subsequent explosion are highly localized. The physical properties of natural gas dictate that it rises upward from a rupture or hole in the pipeline as the gas expands into the air. The observation of damage at the sites of pipeline ruptures confirmed this behavior of gas. Second, the zone of damage from an explosion and burning of gas following a pipeline rupture is related to the line's diameter and the pressure at which the pipeline is operated. Again, RSPA confirmed these patterns from observing the heat affected zone surrounding actual pipeline ruptures and explosions. We correlated these observations using a simplified mathematical model relating the properties of the gas, the pipe diameter, and the operating pressure to the predicted heat affected zone. Third, the size of the heat affected zone from pipeline ruptures where pipe diameter was less than 36 inches and operating pressures were at or below 1000 psig, was limited to a diameter of approximately 660 feet.

RSPA corroborated the size of the heat affected zone by observing the sites of actual ruptures. The size of the zone is also consistent with the current Class location definitions. This consistency is not surprising. Thirty-some years ago when the Class location regulations were developed, the 660 foot-wide zone around a pipeline was based on available data about a heat affected zone. However, at that time data only existed on pipeline failures where the pipe diameter was less than 36 inches and the operating pressures were lower than 1000 psig. The fourth piece of information relevant to our proposed definition is that the heat affected zone for pipelines of diameter equal to or greater than 36 inches, operating at pressures in excess of 1000 psig, can extend to as much as 1000 feet from the pipeline. The size of the zone for larger pipelines is based on mathematical models verified by comparison with data on the areas burned around actual gas pipeline ruptures.

On the dates of February 12–14, 2001, we held a public meeting in Arlington, VA, to discuss integrity management requirements for gas pipelines in high consequence areas, and ways to enhance communications with the public about hazardous liquid and gas pipelines. This meeting featured reports on the status of industry and government activities to improve the integrity of gas pipelines. Meeting attendees also participated in in-depth discussions on the integrity of gas pipelines. The reports can be found in the DOT docket (#7666) and on the RSPA Web site under Initiatives/ Pipeline Integrity Management Program/ Gas Transmission Operators Rule.

At the public meeting, industry and State representatives presented their perspectives on a number of issues relating to integrity management. Several members of the public also made comments. Topics included:

- Considerations for defining high consequence areas affected by gas pipelines;
- Evaluation of design factors currently used for gas transmission pipelines;
- Evaluation of performance history and experience with the impact zone in gas transmission failures;
- Integrity management best practices and relationship between incident causes and industry practices;
- Options for various forms of direct assessment of the integrity of gas pipelines, including costs and effectiveness;
- Basis for establishing test pressure intervals;
- Appropriateness of using pressure (stress) to differentiate integrity standards for pipelines
- Status of research activities; and
- Status of development of new national consensus standards.

These presentations can be viewed on the RSPA Web site under Initiatives/ Pipeline Integrity Management Program/ Gas Transmission Operators Rule.

We integrated the results from this meeting with the list of technical perspectives and issues that RSPA developed during the stakeholder meetings held over the previous twelve months. We then formulated the hypotheses on which we expected to base an integrity management rule and questions related to these hypotheses. We published both in a **Federal Register** Notice that we discuss in the next section.

Notice of Request for Comments

On June 27, 2001, RSPA issued a notice of request for comments (66 FR 34318) which asked for further information and clarification, and invited further public comment, on defining high consequence areas and developing integrity management requirements for gas transmission lines. In the notice, RSPA stated its objective to develop a rule on gas pipeline integrity management to address threats posed by pipeline segments in areas where the consequences of potential pipeline accidents pose the greatest risk

to people and property, and provides additional protections for these areas. We had a similar objective when we developed the rules on liquid pipeline integrity management programs, although environmental protection played a larger role in those rules. We also advised on our intention to minimize any actual adverse impact of a new safety requirement on the supply of natural gas to customers.

In the notice, we described the seven elements we believed should be included in any gas pipeline integrity management rule. We used similar elements in developing the liquid pipeline integrity management rules. These elements were based on certain hypotheses we discussed in detail in the notice. Then, we invited comment about these elements and hypotheses. The notice further summarized the areas where RSPA was seeking further information before proposing an integrity management program rule for gas operators. We categorized these information needs into nine categories, seven of which were the elements we described as essential to any integrity management program rule. The other two categories were to seek information about the costs of an integrity management rulemaking, and the rule's potential impact on gas supply.

The first element we discussed was how to define high consequence areas, i.e., those areas where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. We put forth the following hypotheses for comment:

- Data from sites where gas pipelines ruptured and exploded show that the range of impact of such explosions is limited. Therefore, the area in which nearby residents may be harmed or there may be property damaged by potential pipeline ruptures, can be mathematically modeled as a function of the physical size of the pipeline and the material transported (typically, but not exclusively, natural gas).
- Because we require gas pipeline operators to maintain data on the number of buildings within 660 feet of their pipelines, the definition of potentially high consequence areas where additional integrity assurance measures are needed should incorporate these data.
- The range of impact from the rupture and explosion of very large diameter (greater than 36 inches) high pressure (greater than 1000 psi) gas pipelines is greater than the 660 feet currently used in the regulations.
- Special consideration must be given to protect people living or working near gas pipelines who would have difficulty evacuating the area quickly (*e.g.*, schools, hospitals, nursing homes, prisons).
- Due to the relatively small radius of impact of a gas pipeline rupture and subsequent explosion, and the behavior of gas products, environmental consequences are expected to be limited. At this time, RSPA has little information to indicate the definition of high consequence areas near gas pipelines should include environmental factors.
- Given that pipeline operators maintain extensive data on the distribution of people near their pipelines, RSPA intends for operators to use these data, together with a narrative definition of a high consequence area (defined by RSPA), to identify the specific locations of high consequence areas.

Electronic Discussion Forum

To promote greater discussion of these issues, RSPA also initiated an electronic discussion forum which was open from June 27 through August 13, 2001, at the RSPA Web site under the subheading ''More Information Needed on Gas Integrity Management Program.'' A transcript of the electronic discussion forum is placed in this docket. Comments received relevant to a definition of high consequence areas are discussed here.

Comments to FR Notice on Integrity Management Concepts and Hypotheses (Gas Transmission Pipelines)

Comments to the docket were provided by one state public service agency, five industry associations (including one association of industrial gas consumers), sixteen companies or groups of companies that operate gas pipelines, one company that operates hazardous liquid pipelines, and one company that builds pipeline bridges. In this document we summarized the comments relating to the first element—Defining High Consequence Areas. We will summarize and discuss comments on the remaining elements when we propose a rule on requirements for gas pipeline integrity management programs.

Define the Areas of Potentially High Consequence

This element of a rule would define the areas where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and property. In the Information Notice, we discussed a model that was presented at the February public meeting relating gas pipeline diameter and operating pressure to the physical boundaries of the area impacted by the heat from a gas pipeline rupture and subsequent fire. C–FER, a Canadian research and consulting organization, developed the model which predicted the extent of the heat affected zone would be 660 feet for pipelines of up to 36 inches diameter and operating at pressures up to 1000 psig, and 1000 feet for larger pipelines operating at 1000 psig or higher. The model used 5000 BTU/hr-ft^2 as the critical heat flux for defining the impact radius. We requested comment on the validity of this model, and of any other models that could be used in developing a definition. We requested comment on the validity of limiting an impact zone to areas where there are more than 25 houses or a facility housing people of limited mobility.

We requested comment on the feasibility of including all populous areas where the impact radius could exceed 660 feet, and of including high traffic roadways, railways and places where people are known to congregate, such as, churches, beaches, recreational facilities, museums, zoos, and camping grounds. We also requested further information on the impacts of a gas release on areas of environmental significance, and for comment on including any of these areas in a definition.

Comments

AGA and APGA, trade associations representing investor-owned and municipally-owned gas utilities, submitted joint comments. They stated that high consequence areas should be defined by class location, census-based population data and the zone of influence analysis in the C–FER report. They commented that operators collect and use information establishing class location and that such data can be readily incorporated into a definition, but they believe census data should also be an option.

While AGA and APGA agreed with providing special protection for facilities housing people with limited mobility, they maintained that identifying these facilities may be very difficult if they are not licensed and listed by a city or state. They further maintained that it is not appropriate to analyze every place where people may congregate or every roadway intersection, because this information is very dynamic and would be very difficult to keep current. These associations also argued against including commercially navigable waterways or environmentally sensitive areas because Congress did not mandate

these areas be included in a gas pipeline integrity rule, and a gas release would not present a significant risk to these areas.

AGA and APGA argued that requiring operators to maintain and submit detailed population data is inefficient. They pointed out that some operators do not keep current data on populations near their pipelines, but rather treat all lines as though they were Class 4. Also, that for older pipelines, the most available record would be the class location distribution along their pipelines.

AGL Resources, Inc., a parent company of Atlanta Gas Light Co., Chattanooga Gas Co., and Virginia Natural Gas, supported using the current definitions of Class 3 and 4 locations because the large majority of their transmission lines are designed to operate in class 4 locations. .

The Association of Texas Intrastate Natural Gas Pipelines commented that using class locations to define high consequence areas would be appropriate since operators already maintain this information. The Association recommended we only include additional criteria that can be applied uniformly across all pipeline systems, such as class locations where the impact radius exceeds 660 feet. The Association argued against including high traffic roadways and places where people are known to congregate because these areas would be too subjective and therefore difficult to interpret or enforce uniformly. The Association maintained that although gas pipelines pose insignificant environmental risks, it would be appropriate to require operators to evaluate their systems to determine areas where condensate or other liquids are known to accumulate, and where a rupture would lead to release of these liquids near sensitive wildlife areas or bodies of water.

Baltimore Gas & Electric Company (BG&E), a natural gas distribution system operator, commented that a definition should incorporate non-population factors, particularly those based on the risk posed by a pipe segment, not simply the consequences of failure. BG&E also stated that the definition should differentiate transmission pipelines which are part of a distribution system where they are closely coupled to the distribution process, but did not suggest how to do this.

Chevron Pipe Line Company (CPL) supported protecting areas with facilities housing people unable to evacuate the area quickly. CPL was not in favor of including places where people congregate, because CPL thought the term too broad and it could easily encompass the entire length of a pipeline thereby diluting the focus on enhancing integrity in high risk areas.

Consumers Energy Company did not agree with defining high consequence area primarily by population density. Rather, Consumers Energy thought other factors that affect the overall risk a pipeline poses should be considered, such as pipeline operations, performance history and wall thickness.

El Paso Pipeline Group, an operator of five major natural gas transmission pipelines, commented that a definition should protect those areas where population density is greatest. El Paso urged RSPA to develop a workable definition which would take into consideration that operators have been collecting land use data relating to dwellings and other structures located within 660 feet of their pipelines. El Paso further urged RSPA to rely on the Gas Research Institute (GRI) study, dated December, 2001 (GRI–00/0189—''A Model for Sizing High Consequence Areas Associated With Natural Gas Pipelines'') because this study shows that the impact on the heat-affected zone depends on many factors beyond the heat flux value. Due to many factors involved, El Paso was in favor of the value used in the C–FER analysis as a reasonable value.

Enron Transportation Services (ETS) commented that using the current definitions of Class 3 and 4 locations would allow operators to integrate the existing population data they maintain (data on populated areas within 660 feet of a pipeline) into an integrity management plan. ETS maintained that the current definitions of class 3 and 4 areas should pick up less densely-populated areas on the fringe of these areas. ETS recommended that a definition include locations of facilities housing people of impaired mobility because these locations are consistent with the purpose of the class location process. ETS further added that many operators are already locating these facilities as part of their class location survey determination. ETS also supported the critical heat flux value used in the C–FER analysis as a reasonable value for evaluating a high consequence area.

ETS was against including crossings of roads and railways because of the low relative risk posed by pipelines at these locations, compared to the risk presented by vehicle and train traffic. ETS maintained that patrols of these locations, as the pipeline safety regulations currently require, will identify any potential problems. ETS further argued that places where the public congregates are already treated as populated areas requiring an increased level of protection. As for environmental areas, ETS commented that natural gas presents little threat to water and many pipeline rights-of-way have already had cultural resource clearance. Although ETS did not dispute that a threatened species or habitat could be affected, it did not want such areas generally included. ETS recommended operators treat such areas on a case-by-case basis, but such areas not be mapped for security reasons (e.g., the sole remaining habitat of a threatened or endangered species).

INGAA, a trade organization which represents interstate natural gas transmission pipeline companies, offered several comments about the hypotheses for the high consequence area definition. INGAA explained the 660-foot radius used in developing part 192 was based on photographs of actual burn areas from the ignition of a pipeline rupture; however, in 1970, few pipelines larger than 30 inches in diameter or operating at pressures higher than 1000 psig existed. INGAA further explained that the 5000 BTU/hr-ft^2 radiation heat flux used in the C–FER model was developed as part of an integrated analysis to define the heat affected zone around a ruptured natural gas pipeline and the results of this analysis were validated against data on the extent of the burn zone from actual pipeline ruptures. INGAA explained that this model produced a 660-foot radius circle for a 30-inch diameter pipeline operating at 1000 psig. INGAA did not see why the methodology could not be applied to a pipeline transporting hydrogen.

INGAA stated that a 25-house limit for a high impact zone is consistent with the definition for hazardous liquid pipelines, where a population density of 1000 people or more per square mile was used. INGAA maintained that this translates to 25 houses within a circle of 660-foot radius, assuming two people per house. INGAA further argued that based on typical Class 3 population density, 25 houses is an appropriate number and consistent with class location regulations.

INGAA argued that it would be too expensive to collect data on areas beyond the 660-foot radius. However, INGAA would support extending the area of protection beyond the 660-foot corridor for structures containing concentrations of people with limited mobility, such as, hospitals, schools, childcare facilities, retirement communities or prisons. INGAA explained that this is consistent with the current draft of the Integrity

Management Appendix to American Society of Mechanical Engineers (ASME) B31.8 Std.

INGAA argued that current definitions for Class 3 and 4 areas probably cover many areas where people congregate. INGAA acknowledged that high traffic roadways and railways would not be covered if they were not already in Class 3 and 4 areas, but thought these areas are probably addressed through design, construction, operation and maintenance requirements.

INGAA was opposed to including any environmental areas in the definition. INGAA explained that methane releases would inflict very limited collateral damage to wildlife and would not impact water supplies.

Keyspan Energy Delivery, a local distribution company (LDC), was in favor of defining high consequence areas as Class 3 and 4 locations because its lines comply with the requirements for these class locations. Keyspan was also in favor of clearly defined areas, but wanted any definition to recognize that LDCs cannot precisely evaluate and re-evaluate such areas. Keyspan recommended a definition which would allow for performance-based variables but did not provide any examples.

Kinder Morgan, Inc., a large midstream energy company, favored a definition of high consequence areas which uses a model, such as the one C–FER developed, relating pipeline diameter and operating pressure to the physical boundaries of the area of impact. Kinder Morgan recommended further that we use a sliding approach where high consequence areas would be defined as areas of high population density within the C–FER defined hazard area. Kinder Morgan maintained that areas where people congregate are currently covered in the definition of Class 3, and that these areas should be included in the high consequence area definition only if they are located within the defined hazard area for a given pipeline.

MidAmerican Energy Company, a combination gas and electric utility, generally agreed with the definitions recommended by AGA/APGA and INGAA, because these definitions would not impact its operations. MidAmerican commented that if high traffic roadways are included they need to be clearly defined, and suggested definitions. MidAmerican also clarified that including places where people congregate would have minimal impact on its operations.

The New York Gas Group (NYGAS), a natural gas utility trade association, suggested we replace the term high consequence area with a less inflammatory term such as Affected Area. NYGAS agreed with including Class 3 and 4 locations but argued that it will be virtually impossible for local distribution companies to identify facilities housing people with impaired mobility unless such facilities are licensed or are on a list that an operator can obtain. NYGAS was opposed to using census data to determine a high consequence area, because they believe the data is not accurate and is updated every ten years. NYGAS did not support including high traffic roadways, railways and places where people congregate in the definition because of the uncertainty and complexity of trying to include these elements.

New York State Department of Public Service (NYDPS) commented that in addition to facilities housing people with limited mobility, consideration should be given to special features near pipelines, such as places of public assembly, historical landmarks, parks, bridges, power line corridors, other pipeline facilities, major roadways, and railways.

NYDPS supported the concept of an impact radius for determining high consequence areas, but contended that the C–FER model (using 5000 BTU/hr-ft^2) conveniently results in an impact radius of about 660 feet. Based on this outcome, NYDPS believes the impact zone will never extend beyond the current class location for most operators. NYDPS suggested defining a more appropriate critical heat flux value (one lower than the C–FER model) so the impact radius could extend beyond the 660 feet.

The Energy Distribution Segment of NiSource Inc. (NiSource EDG), which is comprised of ten distribution companies, expressed concern that basing a high consequence area on the potential for considerable harm, would be too expansive to be of any practical value. NiSource EDG thought that a definition should consider the number of persons who might be harmed, as well as the potential significance of the harm, and that it should also include identifiable physical locations where people are unable to evacuate or to take protective actions.

NiSource EDG was against basing an impact zone on the number of houses, because data from which an operator could extrapolate the number of houses might not exist. NiSource explained that because many local distribution companies design their systems to be consistent with the requirements of a Class 4 location, they do not monitor housing distribution data near their pipelines. Therefore, NiSource EDG argued, imposing criteria which would require local distribution companies to initiate class location surveys would delay implementation of a rule, increase administrative and record-keeping burdens, and be extremely expensive.

NiSource argued against including an environmental component in the definition, and against including what it maintained were nebulous areas, i.e., high traffic roadways, railways, and places where people congregate.

Pacific Gas and Electric Company (PG&E), a utility subsidiary of PG&E Corporation, supported the use of structure data but noted that once a class location reaches 3, the structure data is no longer accumulated or may not be kept current. PG&E proposed that operators be allowed to use third party data sources which address the location of high consequence structures, as well as census data to determine whether housing density could reach or exceed 25 structures within a circle defined by an analysis such as the C–FER model. PG&E supported use of the C–FER model for larger diameter pipelines, and supported allowing more extensive models for operators that choose to perform a more detailed analysis of the impact zone following a pipeline rupture. PG&E supported including day-care facilities with more than 25 people, but was opposed to including any environmental component in a definition.

Tosco Corporation, an independent refiner and marketer of gasoline and other petroleum products, and a pipeline owner and operator, was in favor of using existing class 3 and 4 location criteria. Tosco also believed that other relevant factors must be considered in determining how to protect an area beyond 660 feet from the pipeline, such as line diameter, line pressure and local environmental conditions. Tosco was opposed to micro-determining a high consequence area down to a foot basis, as maintaining data on such precise areas could be unmanageable. Tosco was not in favor of using census data to define its high consequence areas, rather, it favored counting structures within 660 feet of a pipeline.

Electronic Forum Comments

A commenter to the electronic forum reminded RSPA that the Carlsbad, New Mexico, failure happened in a low consequence area, and high consequence areas should be defined as areas where there is a high probability that the pipeline could be damaged by outside forces.

Another commenter from a school facilities planning division argued that

schools are extremely high consequence areas and should be explicitly mentioned.

The Proposed Rule

RSPA's goal for the gas integrity management rules (the definition and the integrity program requirements) is to provide greater assurance of pipeline integrity in geographic areas where a gas pipeline rupture could do the most harm to people. Through our proposed definition of high consequence areas, and the integrity management program requirements now under development, we will ensure that an operator's resources are expended on areas where the benefits will be the greatest. Once we propose and implement the integrity management program requirements for the areas we define, we will study the results and consider how effective it would be to extend added protection to other areas.

The areas we propose to define as high consequence areas for gas transmission pipelines are different from those we defined for hazardous liquid pipelines (see 49 CFR 195.450). The areas we defined for hazardous liquid pipelines were without regard to where the pipeline was located; whereas the proposed areas for gas transmission pipelines are defined with respect to a zone around a pipeline. Furthermore, certain sensitive environmental areas were included in the high consequence areas for hazardous liquid pipelines but are not included in the proposed definition for gas pipelines. The differences are due to differences in the physical properties of the products and consequences of a gas release versus a hazardous liquid release, and the benefits of having accurate data on population already maintained by gas transmission operators.

Due to the physical properties of gas, the rupture of a gas pipeline impacts a very limited area adjacent to the location of the rupture. In contrast, when a liquid pipeline ruptures, the liquid can flow a greater distance from the site of the rupture. Furthermore, unlike a liquid release, the rupture of a gas pipeline cannot lead to far-reaching damage to habitats of threatened or endangered species. Moreover, gas released from a pipeline rupture flows upward into the air following a rupture, and so cannot pollute drinking water or ecological resources.

RSPA based the population component of the definition for hazardous liquid pipelines on the U.S. Census Bureau's definition of urbanized areas and places. As hazardous liquid operators are not required to maintain population data, we decided to use the U.S. Census Bureau's definitions because they were the best available data on population adjacent to hazardous liquid pipelines. In contrast, because gas pipeline safety requirements are structured according to class location (i.e., population density), gas pipeline operators already maintain current data on the location of people in areas adjacent to their pipelines. We are confident this data is accurate. Thus, it seemed logical to structure a definition that would use the data pipeline companies already collect and maintain.

Nonetheless, even though the we structured the gas pipeline high consequence areas differently from the hazardous liquid high consequence areas, the inclusion of both Class 3 and 4 locations in the proposed definition is consistent with the census-defined areas encompassing population density of approximately 1000 people per square mile. In Class 3 locations, the lower limit on occupied buildings in a sliding mile is 46 (i.e., an area one mile long and 1320 (2×660) feet wide), which is equivalent to a population density of 460 people per square mile assuming 2.5 people per building. Other populated areas included in the hazardous liquid definition are picked up in the proposed definition by the lower population density value used in the Class 3 location definition and by including isolated buildings near a pipeline that house people with limited mobility.

RSPA's proposed definition of high consequence areas for gas transmission pipelines extends to areas beyond current class locations, or in other words, beyond areas where operators are currently required to have data. Our analysis of data on the area affected by a pipeline accident, demonstrated the need for special consideration of buildings located more than 300 feet from the pipeline that house people with limited mobility. It also demonstrated a need for consideration of areas near gas pipelines of diameter greater than 30 inches and operating at pressures in excess of 1000 psig. Therefore, we are including in the proposed definition, areas out to 660 feet from a pipeline (1000 feet from a pipeline with a diameter greater than 30 inches and operating at a pressure greater than 1000 psig) where there are buildings housing people with limited mobility and areas where people congregate. Although operators are not currently required to maintain data on these areas, operators are required to patrol their pipeline right-of-way. Based on these requirements, we believe operators should have knowledge of where people congregate near their pipeline. Additionally, this information should be available from local public safety officials.

Our basis for extending the area to 1000 feet is based on the C–FER model, previously discussed in this document. (Their report is in Docket #7666). The C–FER Model demonstrated that large diameter pipe (greater than 30 inches) operated at pressures greater than 1000 psig has the potential to impact an area greater than 660 feet from the pipeline. The C–FER analysis was based on a simplified model of a gas pipeline rupture. The model included simplified mathematical treatment of several phenomena important to characterizing the extent of damage following a pipeline rupture (for example, critical heat flux, the time of ignition of the escaping gas, the height of the burning jet, the pipe decompression rate). The model also included estimates of several important parameters associated with the phenomena. Due to the simplifications in the model and the need to select values for the key parameters, the model was validated by comparing its predictions with the results of actual incidents for which the burn radius (area around the rupture which experienced damage) associated with a pipeline rupture and ignition could be measured. The C–FER report shows these comparisons between model predictions and observed burn areas. The comparisons appear to validate the predictive ability of the model.

High Consequence Areas

We considered the comments and information received in response to the hypotheses presented in the Information Notice. We developed a proposed definition of high consequence areas for gas transmission pipelines based on the hypotheses and comments, as well as our extensive analysis of technical information from diverse sources. Our primary concern is with protecting populated areas from a gas release. Therefore, we are proposing to include the following class location areas, which are already defined in part 192. We concluded that these areas will encompass about 85% of populated areas, which is comparable to the percentage of populated areas picked by the hazardous liquid definition using the Census Bureau's definitions. These are the areas where gas transmission pipeline operators maintain data on population and buildings near their pipelines.

- Class 3 areas. Class 3 areas are defined in the pipeline safety regulations as a class location unit with 46 or more buildings intended for

human occupancy. A class location unit is an area that extends 220 yards on either side of the centerline of any continuous one-mile length of pipeline. A class 3 area is also an area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area, such as a playground, recreation area, outdoor theater, or other place of public assembly, which is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. Neither the days nor the weeks need be consecutive.

• Class 4 areas. Class 4 areas are any class location unit which include buildings with four or more stories.

We are proposing to extend the definition of areas of high consequence beyond the class location areas. We analyzed the C–FER model against RSPA accident data and concluded that a release from most pipelines would not affect an area greater than 660 feet. However, we also want to ensure that areas where there are facilities with people who may not be able to evacuate an area quickly are better protected from the likelihood of a pipeline release. Therefore, we propose to define these areas as follows:

An area where a pipeline lies within 660 feet of a hospital, school, day-care facility, retirement facility, prison or other facility having persons who are confined, are of impaired mobility, or would be difficult to evacuate.

With the use of a commercial database, we are collecting data on the locations of these facilities to help identify these areas.

Our research further demonstrates that a rupture or release from a larger-sized pipeline would likely affect an area beyond 660 feet, i.e., those pipelines that are more than 30 inches in diameter and operate at pressures greater than 1000 psig. Therefore, we are defining a larger high consequence area for areas where there are larger high pressure pipelines. We propose to define these areas as follows:

An area where a pipeline lies within 1000 feet from a hospital, school, day-care facility, retirement facility, prison or other facility having persons who are confined, are of impaired mobility or would be difficult to evacuate, where the pipeline is greater than 30 inches in diameter and operates at an maximum allowable operating pressure (MAOP) of 1000 psig or greater.

As with the previously described areas, we are using a commercial database to help identify these areas.

In light of recent accident history, particularly, the explosion near Carlsbad, New Mexico, RSPA recognizes that the class location definitions may not cover all areas where a pipeline may pose a risk to the public. There are areas where people may not live, but they gather regularly for recreational or other purposes. We propose to define these areas as follows:

An area where a pipeline lies within 660 feet (or within 1000 feet where the pipeline is greater than 30 inches in diameter and operates at a MAOP of 1000 psig or more) where 20 or more persons congregate at least 50 days in any 12-month period. (The days need not be consecutive.) Examples of such areas include, but are not limited to, beaches, recreational facilities, camping grounds, and museums.

The 20-person number is used in the current definition of a class 3 location. We believe it is representational of the number of people that typically frequent a recreational area. This component of the proposed high consequence area definition should pick up most recreational areas or other areas where the public gathers on a regular basis. We have explicitly included camping areas to ensure that areas like those where the people were camping near the pipeline in Carlsbad will receive additional protection. Also, based on the C–FER model calculations, we propose to increase the area of the impacted zone from the current 300 feet to 660 feet (or 1000 feet for larger diameter pipelines).

As we previously mentioned, gas transmission operators are not currently required to maintain data on areas where people congregate near their pipelines. However, because operators are required to patrol their pipeline rights-of-way, they should have knowledge about these areas. This information should also be available from local public safety officials.

These proposed areas go beyond those specified in current regulations in the following ways:

1. A current Class 3 location includes buildings or areas where people congregate located within 300 feet of the pipeline. The proposed definition extends these areas from the pipeline out to 660 feet for most pipelines and out to 1000 feet for larger pipelines (those greater than 30 inches in diameter and operating at pressures greater than 1000 psig).

2. Current Class location regulations consider people located within 660 feet of a pipeline. The proposed definition includes an impact zone of 1000 feet from the pipeline for pipelines greater than 30 inches in diameter operating at pressures greater than 1000 psig.

3. Current Class location regulations include no explicit provision for facilities housing people with limited mobility. The proposed definition includes these facilities.

4. The proposed definition more explicitly references areas where people congregate near a pipeline, particularly, camping grounds.

We received no comment encouraging the inclusion of environmental areas as high consequence areas. In the proposed definition, we did not include sensitive environmental areas due to the highly localized impact of a gas pipeline rupture and explosion. Since a release from a gas pipeline accident is airborne, it is unlikely any major damage will occur to a threatened or endangered species. We received a similar response to our question on whether to include high traffic areas. We did not include such areas in the proposed definition because special attention is already given to these areas in the design and maintenance of pipelines near road crossings. Furthermore, the number of drivers that could be affected by a gas transmission pipeline accident is limited due to the highly localized effect of a gas release.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures.

DOT considers this action to be a non-significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4,1993). Therefore, the Office of Management and Budget (OMB) has not reviewed this rulemaking document. This proposed rule is also not significant under DOT's regulatory policies and procedures (44 FR 11034: February 26, 1979).

This proposed rule has no cost impact on the pipeline industry or the public, as it is only a definition. A regulatory evaluation is available in the Docket. The High Consequence Areas definition will be used in the forthcoming rulemaking on ''Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Operators).'' When we issue that proposed rule, we will then fully evaluate all the associated costs and benefits.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) RSPA must consider whether a rulemaking would have a significant impact on a substantial number of small entities. This proposed rulemaking will not impose additional requirements on pipeline operators, including small entities that operate regulated pipelines. As this action only involves a definition, there are no cost implications, and thus, we determined it had no impact on small entities. Costs

are likely to result once we issue requirements for actions that use this definition at a later date. RSPA will soon propose integrity management requirements for gas transmission pipelines in high consequence areas; at that time will examine the costs and benefits of that rulemaking. Based on this information demonstrating that this rulemaking will not have an economic impact, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This notice of proposed rulemaking contains no information collection subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)). Therefore, RSPA concludes the proposed rule contains no paperwork burden and is not subject to OMB review under the paperwork Reduction Act of 1995.

This proposed rule is simply a definition of high consequence areas. The definition will be used in the forthcoming rulemaking on ''Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Operators)''. RSPA will prepare a paperwork burden analysis for that proposed rule.

Executive Order 13084

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule does not propose any regulation that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on States and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply. Nevertheless, in public meetings on November 18–19, 1999, and February 12–14, 2001, RSPA invited the National Association of Pipeline Safety Representatives (NAPSR), which includes State pipeline safety regulators, to participate in a general discussion on pipeline integrity. Since then RSPA held conference calls with NAPSR to receive their input before proposing a definition of high consequence areas.

Unfunded Mandates

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We analyzed the proposed rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and preliminarily determined the action would not significantly affect the quality of the human environment. The Environmental Assessment of this proposal is available for review in the docket.

The Environmental Assessment (EA) considered the impacts of the proposed definition, in conjunction with future requirements of an integrity management rule. The EA found that the proposed definition by itself, did not by itself have any impact on the environment. When integrity management program requirements are issued which will incorporate the definition, there should be positive environmental benefits for the areas receiving additional protection.

However, because the environmental consequences from a gas release are limited, any impact is expected to be minimal. Therefore, the proposed definition of high consequence areas for gas pipeline integrity management will not have a significant environmental impact.

List of Subjects in 49 CFR Part 192

High consequence areas, Integrity assurance, Pipeline safety, and Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend part 192 of title 49 of the Code of Federal Regulations as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, and 60108; and 49 CFR 1.53.

2. A New §192.761 would be added under a new heading of ''High Consequence Areas'' in subpart M to read as follows:

Subpart M—Maintenance

* * * * *

High Consequence Areas

§ 192.761 Definitions.

The following definitions apply to this section and § 192.763:

High consequence area means any of the following areas:

(a) A Class 3 area as defined in §§ 192.5(b)(3) and 192.5(c);

(b) A Class 4 area as defined in §§ 192.5(b)(4) and 192.5(c);

(c) An area where a pipeline lies within 660 feet of a hospital, school, day-care facility, retirement facility, prison or other facility having persons who are confined, are of impaired mobility or would be difficult to evacuate;

(d) An area where a pipeline lies within 1000 feet from a hospital, school, day-care facility, retirement facility, prison or other facility having persons who are confined, are of impaired mobility or would be difficult to evacuate, if the pipeline is greater than 30 inches in diameter and operates at a maximum allowable operating pressure (MAOP) greater than 1000 psig; or

(e) An area where a pipeline lies within 660 feet (or within 1000 feet where the pipeline is greater than 30 inches in diameter and operates at a MAOP greater than 1000 psig) where 20 or more persons congregate at least 50 days in any 12-month period. (The days need not be consecutive.) Examples of such areas include, but are not limited to, beaches, recreational facilities, camping grounds, and museums.

Issued in Washington, DC, on January 3, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–543 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. 2001–11213, Notice 2]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2002; Corrections

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination; corrections.

SUMMARY: FRA published a document in the **Federal Register** of January 2, 2002, setting the minimum random drug and alcohol testing rates for calendar year 2002. The testing rates are based on the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Although the original notice correctly set the minimum random testing rates, the overall positive rates for drug testing and alcohol testing were inadvertently transposed. This document corrects the error.

DATES: This correction is effective January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, FRA, 1120 Vermont Avenue, NW, Washington, DC 20005 (Telephone: (202) 493–6313).

Corrections

In the **Federal Register** issue of January 2, 2002, in FR Doc. 01–32047, two sentences need correcting. On page 21, in the third column, correct the first sentence of the **SUMMARY** caption to read:

Using data from Management Information System annual reports, FRA has determined that the calendar year 2000 rail industry random testing positive rate was .79 percent for drugs and .20 percent for alcohol.

On page 22, correct the last sentence in the first column that runs over into the second column, in the **SUPPLEMENTARY INFORMATION** caption to read:

In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002, since the industry random drug testing positive rate for 2001 was .79 percent.

Dated: January 3, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02–559 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 010521133-1307-02; I.D. No. 050101B]

RIN 0648-AP17

Endangered and Threatened Species; Final Rule Governing Take of Four Threatened Evolutionarily Significant Units (ESUs) of West Coast Salmonids

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

ACTION: Final rule.

SUMMARY: Under the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) shall issue such regulations as he deems necessary and advisable for the conservation of species listed as threatened. NMFS now issues a final ESA 4(d) rule adopting regulations necessary and advisable to conserve four salmonid ESUs listed as threatened species. This final rule applies the take prohibitions enumerated in section 9(a)(1) of the ESA in most circumstances to three salmonid ESUs in California: California Central Valley Chinook, California Coastal Chinook, and Northern California steelhead. For these three ESUs, NMFS does not find it necessary and advisable to apply the take prohibitions described in the ESA to certain specified categories of activities that contribute to conserving these ESUs or are governed by a program that adequately limits impacts on these ESUs. Therefore, this final rule also includes 10 such limits on the application of the section 9(a)(1) take prohibitions for these three ESUs. This final rule also modifies an existing ESA 4(d) rule, which applies the take prohibitions to the threatened Central California Coast coho ESU, by incorporating the same 10 limits on the application of the take prohibitions as described for the chinook and steelhead ESUs.

DATES: Effective on March 11, 2002, except for §223.203 (b)(16)(v) and (b)(17)(vii) which are effective on July 8, 2002. Applications for a permit for scientific purposes or a permit to enhance the conservation or survival of Central Valley spring-run chinook, California Coastal chinook and Northern California steelhead must be received by the Assistant Administrator for Fisheries no later than April 9, 2002.

ADDRESSES: Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Craig Wingert at 562–980–4021, Miles Croom at 707–575–6068, Diane Windham at 916–930–3601, or Chris Mobley at 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 1999, NMFS published a final rule listing the California Central Valley (CCV) Spring-run Chinook and California Coastal (CC) Chinook ESUs (*Oncorhynchus tshawytscha* or O. *tshawytscha*) as threatened species (64 FR 50394). In a final rule published on June 7, 2000, NMFS also listed the Northern California (NC) steelhead ESU (*O. mykiss*) as a threatened species (65 FR 36074). These final rules describe the background of the listing actions and provide a summary of NMFS' conclusions regarding the status of these three ESUs.

On October 31, 1996, NMFS listed the Central California Coast (CCC) coho salmon (*O. kisutch*) ESU as a threatened species (61 FR 56138). The final rule describes the background for this coho salmon listing action and also provides a summary of NMFS' conclusions regarding the status of the ESU. In conjunction with the final listing notice for the CCC coho salmon ESU, NMFS published a final ESA 4(d) rule which put in place all of the prohibitions of section 9(a)(1) of the ESA for this ESU.

Section 4(d) of the ESA provides that whenever a species is listed as threatened, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species. Such protective regulations may include any or all of the prohibitions that apply automatically to protect endangered species under ESA section 9(a). Those section 9(a) prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as

endangered, unless with written authorization for incidental take. It is also illegal under section 9 of the ESA to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 11 of the ESA provides for civil and criminal penalties for violation of section 9 or of regulations issued under the ESA.

Whether take prohibitions or other protective regulations are necessary or advisable is in large part dependent upon the biological status of the species and potential impacts of various activities on the species. The salmon and steelhead ESUs that are covered by this final rule have survived for thousands of years through cycles in ocean conditions and weather; therefore, NMFS has concluded that they are at risk of extinction primarily because their populations have been reduced by human ''take''. These ESUs have declined in abundance due to take of fish from harvest, past and ongoing destruction or damage to freshwater and estuarine habitats, hydropower development, hatchery practices, and other causes. Two reports prepared by NMFS (NMFS 1996 and 1998) reviewed the factors which have contributed to the decline of west coast steelhead and chinook populations, including the ESUs covered by this rule, and both conclude that all of the factors identified in section 4(a)(1) of the ESA have played some role in their decline. The reports identify destruction and modification of habitat, over-utilization in fisheries, and hatchery effects as significant factors for the decline of these ESUs. While the most influential factors for decline differ from species to species and among ESUs depending on their geographic location, the loss and degradation of habitat conditions and impacts from harvest among other impacts, are factors that have affected all of the species and ESUs. Accordingly, NMFS has determined that it is necessary and advisable to apply the section 9(a)(1) take prohibitions to the threatened ESUs covered in this final rule in order to reduce take and provide for their conservation.

NMFS believes that with appropriate safeguards, many state, local and other non-Federal activities can be specifically tailored to minimize impacts on listed salmonid ESUs such that additional Federal protections are unnecessary for their conservation. Although the primary purpose of state, local and other non-Federal programs is generally to further some activity such as maintaining roads, controlling development, ensuring clean water or harvesting trees, rather than conserving salmon or steelhead, some entities have modified one or more of these programs to protect and conserve listed salmonids and protect their habitat.

For this reason, NMFS has incorporated a mechanism (termed take limitations) in this final ESA 4(d) rule where state, local and other non-Federal entities can be assured that certain activities (see Substantive Content of Final Regulation for the 10 categories of activities specified in this rule) they conduct or permit are consistent with ESA requirements when they avoid or minimize the risk of take of listed ESUs. When NMFS determines that such programs provides sufficient conservation for the threatened salmonid ESUs covered by this final rule, NMFS will find that it is not necessary and advisable to apply take prohibitions to activities governed by those programs. In these circumstances, as described in more detail herein, additional Federal ESA regulation through the section 9(a) take prohibitions is not necessary and advisable because it would not meaningfully contribute to the conservation of the ESUs. NMFS believes that not applying take prohibitions to programs that meet such conservation standards may result in even greater conservation benefits for these threatened ESUs than would the blanket application of take prohibitions, through implementation of the program itself and by demonstrating to similarly situated jurisdictions or entities that practical and realistic salmonid protection measures exist. An additional benefit of using this take limitation approach is that NMFS can focus its enforcement efforts on activities and programs that have not yet adequately addressed the conservation needs of the ESUs covered by this rule.

Substantive Content of Final Regulation

On August 17, 2001, NMFS proposed to apply the ESA section 9(a)(1) take prohibitions to the CCV spring-run chinook salmon, CC chinook salmon, and NC steelhead ESUs. NMFS has concluded that the section 9 take prohibitions that automatically apply to endangered species are necessary and advisable for the conservation of these three threatened ESUs. Accordingly, this final rule applies the prohibitions of ESA section 9(a)(1) to each of these three ESUs. NMFS applied the section 9(a)(1) take prohibitions to the CCC coho salmon ESU in a previous rulemaking (see 61 FR 56138), and the August 17, 2001, proposed rule (66 FR 43150) did not propose to change those protections.

In its August 17, 2001, proposal (66 FR 43150), NMFS proposed that the take of listed fish in these four ESUs (i.e., CCV spring-run chinook, CC chinook, NC steelhead, and CCC coho salmon) would not be prohibited when it resulted from 10 specific categories of activities that meet specified levels of protection and conservation. As described in the proposed rule, these activities must be conducted in a way that contributes to the conservation of these ESUs, or they must be governed by a program that limits impacts on the ESUs to an extent that makes added protection through Federal regulation not necessary and advisable for their conservation. In this final rule NMFS has concluded that it will not apply the ESA section 9(a) prohibitions to these four ESUs for the 10 categories of activities described in this final rule when they meet the necessary level of protection and conservation.

As an alternative to utilizing the 10 limitations on the take prohibitions described in this final rule, affected entities may choose to seek an ESA section 10 permit from NMFS, or may be required to satisfy ESA section 7 consultation if Federal funding, management, or approval is involved. This final rule does not impose restrictions beyond those applied in other sections of the ESA, but rather provides another option beyond the provisions of sections 7 and 10 for the authorization of incidental take and in some instances directed take.

As discussed above, NMFS has identified 10 categories of activities or programs for which it is not necessary and advisable to impose take prohibitions when they contribute to the conservation of these four ESUs or are governed by a program that adequately limits impacts on these ESUs. Under the criteria specified in the final rule, these activities include the following: (1) Activities conducted in accordance with an existing ESA incidental take authorization; (2) ongoing scientific research activities, for a period of 6 months; (3) emergency actions related to injured, stranded, or dead salmonids; (4) fishery management activities; (5) hatchery and genetic management programs; (6) scientific research activities permitted or conducted by the State of California; (7) state, local, and private habitat restoration activities that are part of approved watershed conservation plans; (8) properly screened water diversion devices (i.e., screening devices per NMFS' guidelines or equivalent configurations); (9) routine road maintenance activities; and (10) municipal, residential, commercial, and industrial (MRCI) development activities. These limitations on the take prohibitions are described in more

detail in the proposed rule and the specific criteria and standards that must be met to qualify for the limitations are described in detail in the regulations contained in this final rule. In general, these take limitations and associated approval criteria are for future programs where NMFS will limit the application of the ESA section 9(a)(1) take prohibitions rather than for existing programs. NMFS anticipates that new take limits for additional activities may be added to these regulations in the future.

NMFS emphasizes that these 10 limitations on the section 9 take prohibitions are not prescriptive regulations. The fact that an activity is not conducted within the specified criteria for one of the 10 take limits does not necessarily mean that the activity violates the ESA or this regulation. Many activities do not affect the threatened ESUs covered by this final rule, and, therefore, do not need to be conducted within any of the 10 categories of take limits to avoid ESA section 9 take violations. Nevertheless, an entity can be certain it is not at risk of violating the section 9 take prohibitions or at risk of enforcement actions if it conducts its activities in accordance with the take limits. Jurisdictions, entities, and individuals are encouraged to evaluate their practices and activities to determine the likelihood of whether take is occurring. Entities can comply with the ESA through this and other 4(d) rules, section 10 research, enhancement, and incidental take permits, or through section 7 consultation with Federal agencies. If take is likely to occur, then the jurisdiction, entity or individual should modify its practices to avoid the take of these threatened salmonid ESUs or seek protection from potential ESA liability through section 7, section 10, or section 4(d) rule procedures.

This final rule does not require jurisdictions, entities, and individuals to seek coverage from NMFS under any of the 10 take limits. In order to reduce its liability, a jurisdiction, entity, or individual may informally comply with a limit by choosing to modify its programs to be consistent with the evaluation considerations described in the individual limits. Alternatively, a jurisdiction, entity, or individual may seek, at its discretion, to qualify its plans, activities, or ordinances for inclusion under one of the 10 take limits by obtaining an authorization from the NMFS' Southwest Region Administrator as detailed in the regulations contained in this final rule (see **ADDRESSES**).

NMFS will continue to work collaboratively with all affected governmental entities to recognize existing management programs that conserve and meet the biological requirements of these and other threatened salmonid ESUs, and to strengthen other programs so that they contribute to the conservation of listed salmonids. This final rule may be amended to add new limits on the take prohibitions, or to amend or delete adopted take limits as circumstances warrant.

The following section entitled ''Notice of Availability'' lists four documents referred to in the proposed rule and this final regulation. The purpose of making these documents available to the public is to inform governmental entities and other interested parties of the technical components expected to be addressed in programs submitted for NMFS' review. These technical documents provide guidance to entities as they consider whether to submit a program to NMFS for coverage under one of the take limits in the final rule. The documents represent guidance, and are not binding regulations requiring particular actions by any entity or interested party.

For example, NMFS' technical report entitled: ''Viable Salmonid Populations (VSP) and the Recovery of ESUs'', which is referenced in the fishery and hatchery management take limits, provides a framework for identifying populations and their status as a component of developing adequate harvest or hatchery management plans. The final rule indicates that Fishery Management and Evaluation Plans (FMEPs) and Hatchery and Genetic Management Plans (HGMPs) should utilize the concepts of 'viable' and 'critical' salmonid population thresholds, consistent with the concepts contained in NMFS's VSP report. Similarly, NMFS' fish screening criteria explicitly recognize that they are general in nature and that site constraints or particular circumstances may require adjustments in design, which must be developed with a NMFS staff member or designee, to address site specific considerations and conditions. Finally, research involving electrofishing comes within the scientific research limit if conducted in accordance with NMFS' guidelines for electrofishing. The guidelines recognize that other techniques may be appropriate in particular circumstances, and NMFS can recognize those as appropriate during the approval process.

The Oregon Department of Transportation's (ODOT) road maintenance program for governing routine maintenance activities is an existing program currently being implemented that NMFS has found adequate for threatened ESU conservation and, therefore, has been established as a take limitation in a previous ESA 4(d) rule (65 FR 42422). Other jurisdictions may seek coverage under the road maintenance limit in this final rule if they use the ODOT program or submit a program that utilizes other practices found by NMFS to meet or exceed the ODOT standards for the protection of threatened salmonids.

Where this rule cites a guidance document, a program's consistency with the guidance is sufficient to demonstrate that the program meets the particular purpose for which the guidance is cited. However, the entity or individual requesting that NMFS concur that a program meets the criteria of a particular limit has the latitude to show that its variant or approach is, in the circumstances where it will apply and affect listed fish, equivalent or better.

NMFS will continue to review the applicability and technical content of its own documents as they are used in the future and make revisions, corrections, or additions as needed. NMFS will use the mechanisms of this final rule to take comment on revisions of any of the referenced state programs. If any of these documents are revised in the future and NMFS relies on the revised version to provide guidance in continued implementation of the rule, NMFS will publish in the **Federal Register** a notice of its availability stating that the revised document is now the one referred to in 50 CFR 223.203(b).

Notice of Availability

The following is a list of documents cited in the regulatory text of this final rule. Copies of these documents may be obtained upon request (see Appendix A to 50 CFR 223.203).

1. Oregon Department of Transportation (ODOT) Maintenance Management System Water Quality and Habitat Guide (July, 1999).
2. Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act (NMFS, 2000a).
3. Fish Screening Criteria for Anadromous Salmonids, National Marine Fisheries Service, Southwest Region, 1997.
4. Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units. (June 2000).

The limits on the take prohibitions in this final rule do not relieve Federal agencies of their duty under section 7 of the ESA to consult with NMFS if actions they fund, authorize, or carry out may affect the ESUs covered by this rule or any other listed species. To the extent that actions subject to section 7

consultation are consistent with a circumstance for which NMFS has limited the take prohibitions, a letter of concurrence from NMFS will greatly simplify the consultation process, provided the program is still consistent with the terms of the limit.

Applicability of Final Rule to Specific ESUs

In the regulatory language in this final rule, the limits on the applicability of the take prohibitions to specific ESUs are accomplished through citation to the Code of Federal Regulations' (CFRs') enumeration of threatened marine and anadromous species in 50 CFR 223.102. For the convenience of readers of this document, 50 CFR 223.102 refers to the threatened salmonid ESUs covered in this final rule through the following designations:

(a)(3) Central California Coast coho salmon

(a)(20) Central Valley spring-run chinook salmon

(a)(21) California Coastal chinook salmon

(a)(22) Northern California steelhead

Summary of Comments in Response to the Proposed Rule

The public comment period for the proposed rule was open from August 17, 2001, through October 1, 2001. During the comment period, NMFS held three public hearings (Chico, CA on 9/13/01; Eureka, CA on 9/18/01; and Ukiah, CA on 9/19/01) to solicit public comments. A limited number of individuals provided oral testimony at the three public hearings. During the comment period, NMFS received 8 written comments on the proposed rule from various agencies, non-governmental organizations, and individuals. A summary of the comments and NMFS' responses to those comments are presented here by specific issue.

Comments and Responses

Tribal Coordination

Comment 1: The Bureau of Indian Affairs (BIA) reminded NMFS of its obligation to consult with potentially affected Indian tribes that might be affected by this ESA 4(d) rule pursuant to Executive Order 13175 (Consultation and coordination with Indian tribal governments). In addition, BIA provided NMFS with a list of recognized Indian tribes that occur within the range of the threatened ESUs covered by this final rule.

Response: In response to the BIA's guidance, NMFS notified all of the potentially affected Indian tribes of the proposed ESA 4(d) rule and the U.S. District Court Order to finalize the rule by December 31, 2001. NMFS offered to meet with any tribe to explain the rule, discuss its potential impact on the tribe, and to explain its relationship to the Tribal ESA 4(d) rule which NMFS published on July 10, 2000 (65 FR 42481). NMFS has consulted in the past with many of these tribes on previous ESA 4(d) rules, as well as the Tribal ESA 4(d) rule, and will consult with any and all tribes as they request us to do so.

Comment 2: BIA requested clarification as to whether or not the Tribal ESA 4(d) rule (65 FR 42481, July 10, 2000) applied to the four ESUs covered in this ESA 4(d) rule.

Response: The Tribal ESA 4(d) rule (65 FR 42481) NMFS published on July 10, 2000, is actually a broadly defined limitation on the ESA section 9(a)(1) take prohibitions for recognized Indian tribes that applies to all threatened salmon and steelhead ESUs including the four covered by this final ESA 4(d) rule and any threatened salmonid ESUs that may be listed in the future. Under this Tribal ESA 4(d) rule, a section 9(a)(1) take limitation was created for resource management plans (e.g., harvest, habitat restoration, research and monitoring, etc.) developed by Tribes where NMFS has determined that implementation of the plan will not appreciably reduce the likelihood of survival and recovery for the listed ESU(s) that are affected by the plan. This Tribal ESA 4(d) rule was intended to harmonize NMFS' statutory conservation efforts under the ESA with tribal rights and the Federal Trust responsibility to tribes.

Comment 3: BIA advised NMFS that Tribal governments may incur direct compliance costs if they choose to pursue coverage under the Tribal ESA 4(d) rule or this final rule.

Response: NMFS does not anticipate that Indian Tribes will pursue coverage under the take limits in this final ESA 4(d) rule. Although Tribes are certainly eligible to pursue coverage under the limitations in this final rule, the purpose of the Tribal ESA 4(d) rule was to provide recognized tribes with a broad take limitation that could cover any type of resource management plan including those that might be developed pursuant to this final ESA 4(d) rule (e.g., routine road maintenance, fish harvest, habitat restoration, etc.). For this reason, NMFS would strongly recommend to Tribes that they utilize the Tribal ESA 4(d) rule instead of this final rule to obtain coverage for their activities if they choose to do so. Not only is the Tribal ESA 4(d) rule sufficiently flexible that it can accommodate the full range of tribal resource management plans, but it provides for a broad and open government-to-government consultation process in developing and evaluating such plans. NMFS recognizes that Tribes may incur direct compliance costs in the development of tribal resource management plans. NMFS is prepared to work closely with interested tribes to develop resource management plans for consideration under the Tribal ESA 4(d) rule that will minimize costs and will also provide technical expertise and other support wherever it can pursuant to the 1997 Secretarial Order (June 5, 1997).

Take Guidance

Comment 4: One commenter stated the proposed ESA 4(d) rule does not adequately state why a take prohibition is necessary for these threatened ESUs, nor does it establish a basis for the conclusion that specified activities are likely to result in a take.

Response: NMFS believes that the listing determinations for each of the ESUs covered by this final rule, as well as all other west coast salmonid listing determinations, have documented the historic and current factors responsible for their decline to the point where ESA protection was necessary. Factors responsible for the decline of these ESUs include loss and degradation of freshwater habitat from a wide range of habitat modifying activities, harvest of fish in recreational and in some cases commercial fisheries, predation, and natural fluctuations in the environment (e.g., ocean conditions, rainfall, drought, etc.). NMFS believes that historic and ongoing take of fish in these ESUs as a result of these factors has contributed significantly to their decline. For this reason, NMFS has concluded that it is necessary and advisable to prohibit and closely regulate the allowable take of these species. Failure to prohibit and regulate take by this final rule would result in continued decline of listed salmonids.

It is NMFS' policy to increase public awareness of, and to identify which activities we believe are likely or not likely to, injure or kill a listed species. The take guidance in the proposed rule and in this final rule are intended to do that. It is only possible based on direct experience with managing populations in their natural environment and from scientific literature to describe the types of activities that may have adverse impacts (i.e., result in take) on fish and their habitat and describe their consequences (e.g., blocking fish from reaching spawning grounds, dewatering incubating redds, etc.). NMFS understands that there is considerable

interest by many entities in knowing as much as possible about what constitutes take of a listed species and the take guidance in this final rule attempts to provide that information. However, determining whether an individual local program or activity will or is likely to injure or kill a listed fish requires an accurate and credible assessment that takes into account local factors and conditions.

Comment 5: One commenter stated that NMFS' take guidance in the proposed rule identifies activities that ''are very likely'' or ''may'' injure or kill listed species, instead of stating only activities resulting in ''actual death or injury.''

Response: NMFS provided broad take ''guidance'' for the purpose of helping individuals understand what actions could possibly lead to take. By offering guidance on what type of activities may cause take, individuals can better avoid any illegal behavior that could result in an actual death or injury.

Comment 6: One commenter stated that the proposed ESA 4(d) rule is more restrictive than the ESA section 9 take prohibitions.

Response: NMFS disagrees. The proposed and final ESA 4(d) rule do impose the section 9(a)(1) take prohibitions in the ESA, but simultaneously it puts into place limitations on those take prohibitions for certain categories of activities under specified conditions. In effect, whenever NMFS finds that an activity falls within a take limit in the final rule, the section 9 take prohibitions do not apply to that activity. In this way, this rule is more flexible and potentially less restrictive than an alternative ESA 4(d) rule that would simply put into place the section 9 take prohibitions without limitation. In this latter case where only the take prohibitions are in effect, the only way to comply with the ESA is to either avoid taking entirely or to have take authorized through ESA sections 7 or 10.

Comment 7: One commenter requested clarification that the rule does not prohibit take associated with an activity when it is conducted pursuant to an approved Federal permit.

Response: If a Federal permit was subject to a previous section 7 consultation for which an incidental take permit was issued, then take associated with the project will have been previously authorized. However, if a Federal permit was issued without section 7 consultation or without an incidental take statement for the ESUs in this final rule, then the permitted activity would not have take authorization for these ESUs and might violate the ESA section 9 take prohibitions. Under this circumstance, ESA section 7 consultation should be initiated or reinitiated with NMFS so that incidental take can be properly authorized.

Comment 8: Several commenters suggested or requested that NMFS create take limitations for other programs such as the Natural Resources Conservation Service's Field Office Technical Guidance and some or all elements of the CALFED program in California's Central Valley.

Response: NMFS believes that the ESA 4(d) rule process provides another opportunity in addition to ESA sections 7 and 10, for state and other jurisdictions to assume leadership for threatened salmonid conservation at the state and local level in addition to the conventional tools that are available through sections 7 and 10 of the ESA. NMFS is prepared to collaborate with Federal, state, tribal, and local entities to develop and evaluate programs that will take advantage of the ESA 4(d) option for achieving salmonid conservation and compliance with section 9 take prohibitions of the ESA. NMFS is especially interested in state-level conservation programs because such programs can more efficiently and comprehensively provide for conservation of threatened salmonids. However, incorporation of any additional take limitations into this or future ESA 4(d) rules will need to go through the rulemaking process.

Federal programs, including many programs and activities being carried out as part of the CALFED implementation program, are subject to ESA section 7 consultation if they may affect listed species. This ESA 4(d) rule does not and cannot relieve Federal agencies of their ESA section 7 consultation obligations under the ESA and, therefore, authorization of incidental take for Federally permitted, conducted, or funded programs must occur through the section 7 process.

Legal Issues/Section 7/National Environmental Policy Act (NEPA)/ Regulatory Flexibility Analysis/ Regulatory Impact Review

Comment 9: The Department of the Interior commented that the ESA 4(d) rule may affect terrestrial and other species under the jurisdiction of the U.S. Fish and Wildlife Service (FWS) and that NMFS should, therefore, consult with FWS pursuant to section 7 of the ESA.

Response: NMFS recognizes that promulgation of this ESA 4(d) rule is a Federal action requiring consultation under section 7 of the ESA. NMFS must ensure through the ESA section 7 process that the 4(d) rule does not jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitat. NMFS has completed the required ESA section 7 consultation with itself concerning the effects of this 4(d) rule on listed species under NMFS' jurisdiction and concluded that the rule is not likely to adversely affect these listed species or adversely modify their critical habitat.

NMFS also consulted with FWS concerning the effects of promulgating this ESA 4(d) rule on listed species under FWS' jurisdiction (FWS' listed species) and their critical habitat. FWS concurred with NMFS that the imposition of ESA section 9(a)(1) take prohibitions for the ESUs addressed by this rule was not likely to adversely affect FWS' listed species or their critical habitat. However, both agencies recognized that plans, programs, or activities developed for future approval by NMFS pursuant to the take limits in this final rule have the potential to affect FWS' listed species or their critical habitat depending on their geographic location and the details of the plan, program or activity. Through the consultation process NMFS has committed to work closely with FWS during development of such plans, programs or activities to determine if and how they may affect FWS' listed species or their critical habitat. As part of this early coordination process, NMFS has committed to work with FWS and any applicant seeking a take limit approval under this final rule to ensure that any plan, program, or activity that is developed either avoids impacts to, or does not adversely affect any of FWS' listed species or their critical habitat. Finally, if a plan, program or activity cannot be developed that will not adversely affect or not avoid impacts to FWS' listed species or their critical habitat NMFS will continue to work with FWS to ensure appropriate compliance with the ESA for FWS' listed species or critical habitat. On the basis of these determinations and commitments, FWS concluded that promulgation of this rule is not likely to adversely affect species under FWS' jurisdiction.

Comment 10: Some commenters asked NMFS to clarify the extent which NEPA applies to the ESA 4(d) rule.

Response: NEPA applies to this and other ESA 4(d) rules, and as this final rule states, NMFS completed Environmental Assessments (EAs) for this regulatory action. Those documents were made available during the comment period and continue to be

available via NMFS' Southwest Region website (http://swr.nmfs.noaa.gov).

Comment 11: One commenter suggested that the EAs prepared by NMFS were inadequate and failed to examine a full range of alternatives, particularly with regard to some of the take limitations contained in the proposed rule.

Response: NMFS believes that the range of alternatives examined in the EAs is appropriate and that no additional alternatives need to be considered.

NMFS believes that the EAs that were prepared for this final rule are adequate to support the regulatory action of imposing the section 9(a)(1) take prohibitions on the CCV spring-run chinook, CCC chinook, and NC steelhead ESUs. However, NMFS has determined that additional NEPA analysis is necessary to support any future agency approvals under the 10 take limitations contained in the rule. NMFS intends to conduct additional, programmatic NEPA analysis that specifically addresses the environmental impacts of approving activities under each of the take limitations (e.g., water diversion screening, etc.) contained in this final rule. This is consistent with the approach NMFS is now taking for the ESA 4(d) rule it published in July 2000 which covered 14 threatened salmon and steelhead ESUs. Until programmatic NEPA analyses are completed for each of the take limitations in this final rule as described above, NMFS will prepare separate NEPA analysis for any plan or activity for which the agency is requested to make an approval under any of the rule's take limitations. For example, until a programmatic NEPA document is completed which specifically addresses recreational angling under the Fishery Management and Evaluation Plan (FMEP) take limitation in this final rule, NMFS will not approve any FMEPs until approval of that plan has been addressed in a plan specific NEPA document.

Comment 12: Two commenters argued that according to the holding in *Alsea Valley Alliance* v. *Evans*, 99-6265-HO (D. Oreg., September 12, 2001), the four threatened salmonid ESUs covered by this ESA 4(d) rule have been improperly listed under the ESA, and hence, NMFS has no statutory authority to issue an ESA 4(d) rule pertaining to them.

Response: NMFS disagrees. Unless a listing decision is invalidated by a court, or superceded by another formal rule making, an ESU remains listed and, thus, properly subject to ESA 4(d) rule protection. None of the four ESUs covered by this final rule were de-listed as a result of the *Alsea* case and, thus, NMFS has an obligation to promulgate ESA 4(d) rules that it believes are necessary and advisable for their conservation.

Comment 13: The National Association of Home Builders (NAHB) commented that it opposes the proposed ESA 4(d) rule on many of the same grounds that are currently being litigated by NAHB against NMFS in *Kittitas County* v. *Evans* with regard to the July 10, 2000 ESA 4(d) rule, particularly the MRCI limit.

Response: NMFS will not address arguments and objections that are raised generally by reference to a pending case, such as Kittitas County. Rather, NMFS will respond to specific comments made in this rulemaking.

Comment 14: NAHB commented that with this ESA 4(d) rule NMFS is interpreting the ESA in a way that alters the federal-state framework by permitting Federal encroachment upon a traditional state power such as the states' traditional and primary power over land and water use. NAHB also asserted that NMFS had failed to demonstrate what it is necessary and advisable to place the additional burden on local governments of creating and submitting to NMFS for approval, ordinances that actively conserve these threatened salmonid ESUs

Response: NMFS disagrees that the ESA 4(d) rule alters the federal-state framework by encroaching on land and water use regulation by state/local governments. NMFS also disagrees that the rule places any additional burdens on state and local governments. To the extent that state or local regulation or permitting of land use or water use may result in the take of these threatened salmonids, the Municipal Residential Commercial and Industrial (MRCI) and other take limitations contained in this rule provide a mechanism for the state/local entity to relieve itself of the take prohibitions. Also, development and submittal of a plan to NMFS for consideration under any of the take limitations in the ESA 4(d) rule is completely voluntary. Should individuals, local governments or the state instead wish to obtain a take exception for threatened species subject to the section 9 prohibitions, they may submit a Habitat Conservation Plan to NMFS under section 10 of the ESA.

Comment 15: NAHB commented that NMFS did not demonstrate why it is necessary and advisable to require that each ordinance be approved by NMFS and placed in the **Federal Register** and be subjected to 30 days of public notice and comment in order to obtain coverage for the MRCI take limitation.

Response: In order for NMFS to determine whether a particular ordinance or plan may be sufficiently protective of threatened species, it must be submitted to NMFS for review and consideration. Prior to making any such determination, NMFS believes that it is important to obtain public and/or agency comments on both the ordinance or plan and our pending determination. For this reason, this final rule calls for publishing a notification in the **Federal Register** announcing the availability of the ordinance or plan for review and comment.

Comment 16: NAHB commented that NMFS cannot hold local governments liable for take under the ESA.

Response: The take limitations in the rule are permissive and not mandatory. Any vicarious liability determination would arise from application of the take prohibitions to the local government, depend upon the specifics of the regulations and the regulated activity, and so would depend upon the circumstances of each case.

Comment 17: NAHB asserted that the proposed ESA 4(d) rule raises 10th Amendment concerns by creating a state duty to administer the Federal law of ''take'' against third parties.

Response: The take limitations in this final rule are permissive, not mandatory (i.e., they impose no requirements on state and local governments). The only prohibition in this final rule is against take of the threatened species covered by this final rule. This final rule does not impose any affirmative duty upon the state to administer the ESA.

Viable Salmon Population (VSP) Framework

Comment 18: One commenter said that references to ''historic abundance levels'' and ''habitat capacity of the population'' in the discussion in the proposed rule about how NMFS would assess population status as part of its VSP framework are ambiguous and unclear.

Response: Historic conditions are meant to serve as one possible reference point in evaluating population status because under historic conditions populations were assumed to have been viable. The time frame, therefore, refers to a period in time where the population or ESU was considered self sustaining and may represent different time frames for different species or populations. Although historical data, if it is available, may be a useful tool in this assessment, it does not mean that NMFS will require or assume that every population must be at a historic

abundance level in order to be viable. Where historic data are not available or are of uncertain accuracy, the assessment of viable population levels could be based upon an evaluation of the habitat capacity or carrying capacity of the habitat available to a population.

Take Limitations - General Comments

Comment 19: Several commenters stated that each of the take limitations should have provisions for monitoring and oversight where NMFS is approving plans or ordinances (e.g., FMEPs, routine road maintenance, water diversion screening, etc.).

Response: NMFS agrees that programs that are approved under the take limits in this rule are incomplete if there is no mechanism to track their effectiveness and implementation. NMFS believes that this final rule provides for a sufficient level of monitoring and oversight of activities that may qualify for coverage under the 10 take limitations. Several of the take limits (e.g., recreational fishing, hatchery and genetic management, routine road maintenance, MRCI) in this final rule specifically require that monitoring be incorporated into programs or plans in order to qualify for coverage under the limitation. In addition, the final rule indicates that NMFS will evaluate on a regular basis the effectiveness of all programs that are approved under the take limits to insure that they are achieving the level of protection that is consistent with the conservation of the threatened ESUs covered in the rule. If a program or plan does not meet the required objectives, NMFS will work with the relevant entity to make adjustments to the program accordingly. If the relevant entity chooses not to adjust the program to meet the necessary objectives for coverage under the take limit, then NMFS will publish notification in the **Federal Register** that the program is no longer exempt from the ESA section 9(a)(1) take prohibitions because it does not sufficiently conserve the threatened ESUs.

Comment 20: One commenter was concerned that activities falling under any one of the 10 take limitation categories in the proposed rule were automatically exempt from the take prohibitions and would not be monitored by NMFS.

Response: Virtually all of the take limitations in this final rule require that entities seeking a limitation submit a plan to NMFS which addresses a wide range of detailed criteria specified in the rule. These include habitat modifying activities such as routine road maintenance, MRCI development, and water diversion screening. Only after NMFS has reviewed these plans against the specified criteria in the rule and responded to public comments on the plans, will NMFS make a determination as to whether or not the plan qualifies for coverage under a limit. As discussed in the preceding response to comment, NMFS believes this final rule requires sufficient monitoring of activities covered under the take limits, and ample opportunity for NMFS to provide oversight of activities covered under the take limits.

MRCI Take Limitation

Comment 21: One commenter expressed concerns that the MRCI take limitation does not explicitly require entities seeking coverage to address cumulative impacts or mitigation and recommended the final rule include such a requirement.

Response: NMFS recognizes the importance of assessing cumulative impacts for MRCI development and other types of activities covered by the take limitations in this final rule. For some take limitations such as recreational angling (i.e. the FMEP take limit), NMFS has explicitly incorporated consideration of cumulative impacts into the rule where it is feasible. For habitat modifying activities, however, this is difficult. NMFS believes, however, that cumulative impacts are addressed at least in part for habitat modifying activities, such as MRCI development and routine road maintenance, since coverage of such an activity under the rule requires NMFS to find that it is contributing to the attainment of, or is contributing to the maintenance of, properly functioning habitat conditions for the threatened ESUs covered in the rule.

Comment 22: One commenter stated that the description of the evaluation criteria relating to riparian management areas in MRCI plans should indicate that such areas are often larger than one site-potential tree height and that it should also specify the types of riparian functions that should be protected in such plans.

Response: NMFS recognizes that riparian areas are important to threatened salmonids and, therefore, provided guidance in this final rule that MRCI plans should provide sufficient riparian management requirements or measures within a distance of one site-potential tree height from the stream channel. This general guidance was based on the best available scientific information which indicates that this stream side area is the one in which development activities most affect riparian zone habitat functions. Although this is a good rule of thumb, NMFS recognizes, as stated in the guidance for riparian zone management, that this distance can vary substantially from location to location and should be determined on a site-specific basis taking into account the conditions of the site or area and the type of habitat that may be affected by the MRCI development.

Comment 23: One commenter indicated that it was unclear whether a plan must be submitted to NMFS when an entity requests coverage under the MRCI take limit, and that it was also unclear who is responsible for approving such a plan if warranted.

Response: NMFS does expect interested jurisdictions to submit a plan to NMFS which describes the MRCI activities to be covered and which addresses the twelve evaluation criteria contained in the take limit. As indicated in this final rule, the Southwest Regional Administrator is responsible for determining whether a MRCI plan qualifies for coverage under this take limit.

Comment 24: The MRCI limit is subjective, violates the ESA, and is arbitrary and void for vagueness.

Response: The MRCI limitation was intended to be more broadly flexible than most of the other take limitations in order to address and provide coverage to the wide variety of circumstances that may arise under this category of activities. As noted elsewhere in this final rule, tailoring activities to comply with the take limitations and submittal of any plan to NMFS for consideration under any of the take limits, including the MRCI limit, is strictly voluntary. The MRCI limit has 12 specific land use considerations relevant to preserving fish habitat that NMFS will use to evaluate submitted land use regulations. NMFS' use of these considerations to make its consistent with conservation and attaining and maintaining properly functioning condition determinations gives adequate clarity and certainty to this part of this regulation.

Comment 25: One commenter felt that NMFS should provide performance standards that ordinances should meet and that the twelve evaluation criteria contained in the MRCI take limit were too vague.

Response: As discussed in this final rule, the fundamental performance standard against which ordinances or plans will be evaluated under this take limit is whether they contribute to maintaining and/or restoring properly functioning habitat conditions that will conserve the threatened ESUs. Under this limit, NMFS will evaluate

ordinances or plans to determine if and how they affect conditions on the landscape and the extent to which they are contributing to the maintenance of or restoration of essential habitat functions. If such plans would maintain or contribute to restoring these functions, then they may qualify under the take limitation.

The 12 considerations contained in this final rule identify the specific issues and/or factors NMFS will use as a framework for evaluating ordinances or plans. These considerations are based on current scientific understanding of salmonid biological requirements. By assessing these twelve considerations, NMFS believes it can evaluate the extent to which an ordinance or plan contributes to maintaining or restoring properly functioning habitat conditions that will conserve the threatened ESUs. Depending on the scope of the ordinance or plan, all twelve of these considerations may not be relevant. NMFS recognizes this fact and will base its evaluation on only those considerations that are relevant.

Recreational Fisheries Take Limitation

Comment 26: One commenter suggested that the final rule should provide a mechanism allowing FMEPs to be ''tiered'' off of Pacific Fishery Management Council (PFMC) approved Fishery Management Plans in order to avoid redundancy and duplication.

Response: The FMEP take limitation in this final rule is intended to provide a more efficient mechanism for insuring that freshwater recreational fisheries managed by the State of California adequately protect and contribute to the conservation of the threatened ESUs covered by the rule while still providing for angling opportunities. Coverage of State managed fisheries in this manner will provide assurance to the State and anglers that they are in compliance with the ESA. Such fisheries are under the jurisdiction of the State and are not managed by PFMC. Since the PFMC manages marine fisheries covered by Federal Fishery Management Plans it is unclear how the FMEP process in this final rule can be tiered off of the FMP process that is implemented by the PFMC. Because the two processes manage two separate fisheries, NMFS does not believe that there will be unnecessary duplication or redundancy in the development of FMEPs. To the extent feasible, however, NMFS will encourage the State to utilize information gathered as part of the FMP process in the development of FMEPs that are submitted for coverage under this rule.

Water Diversion Screening Take Limitation

Comment 27: One commenter argued that the water diversion screening take limitation is inappropriate and does not meet the requirements of the ESA.

Response: NMFS believes strongly that the water diversion screening take limit is appropriate, that it provides for the conservation of the threatened ESUs covered by the rule, and that it is consistent with the ESA. As the commenter pointed out, NMFS is well aware that the entrainment of juvenile salmonids in unscreened or poorly screened water diversions is a problem, both in the central valley and in coastal watersheds. The water diversion screening limit in this rule is intended to provide an incentive for screening unscreened or poorly screened diversions. This final rule and this take limit do not allow unregulated take of listed salmonids at water diversions in the central valley or in coastal watersheds. In fact, this final rule imposes the ESA section 9(a)(1) take prohibitions on these three threatened ESUs making it illegal to entrain these fish into water diversions, and only relieves diverters of the take prohibitions if they qualify by meeting the criteria in the water diversion screening take limit or by obtaining take authorization through the processes of ESA section 7 or 10. NMFS will only provide coverage to water diverters under the water screening diversion take limit if they meet the criteria specified in the rule. These criteria call for: (1) NMFS to certify that a diversion is screened, maintained, and operated in compliance with NMFS' fish screening criteria; and (2) the owner/operator of the facility to allow NMFS to inspect the facility to insure compliance with the criteria. NMFS believes these screening criteria are fully protective of juvenile salmonids and presently uses them as the basis for evaluating water screening diversion projects under ESA sections 7 and 10 of the ESA.

Comment 28: One commenter was concerned that this final rule and this take limitation in particular would exempt all take of these threatened ESUs at the Federal and state water pumping facilities that operate in the central valley, provided they are operated in compliance with whatever screening criteria are in place.

Response: As discussed elsewhere, this final rule will impose the ESA section 9(a)(1) take prohibitions on three threatened ESUs, including the CCV spring-run chinook ESU. The water diversion screening take limit is primarily built into the rule to provide an incentive to smaller, non-Federal water diverters to screen their diversions with appropriate screens. In contrast, the Federal and state pumps and the associated fish protection facilities are part of the Federal and state water projects which are operated in a coordinated fashion by the Bureau of Reclamation and the Department of Water Resources. The combined operation of the Federal and state water projects, including the Federal and state pumps and the associated fish protection facilities, constitute a Federal project activity which is subject to section 7 of the ESA. This final rule does not relieve Federal agencies such as the Bureau of Reclamation of their obligation to consult under the ESA, nor does it exempt the take of these threatened species by Federal agencies. For this reason, the incidental take of CCV spring-run chinook at the Federal and state pumps and the associated fish protection facilities are authorized through section 7 of the ESA, not this final ESA 4(d) rule. Future modifications of the fish protection facilities in the Delta will comport to the extent appropriate with NMFS' fish screening criteria and the mechanism for any required ESA compliance will be section 7 of ESA through the Bureau of Reclamation.

Comment 29: One commenter asserted that NMFS' screening criteria are not well supported or justified scientifically.

Response: NMFS disagrees. NMFS' fish screening criteria are extensively detailed and have undergone a high degree of scientific scrutiny. They are based on decades of operational experience that have yielded some of the best screen designs for salmonid protection in existence. Several States, including California, have adopted NMFS' screening criteria and use them extensively. Lastly, extensive biological evaluations have demonstrated little or no injury to fish when testing screen facilities constructed to NMFS' criteria.

Comment 30: One commenter suggested that this take limit should also ''grandfather'' in older fish screen and passage facilities provided they met the standards that were in existence at the time they were installed.

Response: The intent of this take limitation is to allow a water diversion to be made as safe as possible for the threatened ESUs covered by the rule. Therefore, we believe that the best available information regarding fish screen criteria that are protective of salmonids should be used as the basis for providing coverage to water diversions under this limit. In our view, the 1997 criteria constitute the best

available information. As new biological information becomes available, however, it may be necessary to update these criteria and all new facilities from that point forward would need to comply with any updated criteria. NMFS recognizes that it may not be necessary to retrofit all existing screen facilities with new features every time that new information becomes available and that some older facilities may still function in a manner that is protective of threatened salmonids. In such cases, NMFS may consider certification of screen designs that meet the criteria in place at the time of construction providing there is no evidence to show that the device is causing the take of listed salmonids.

Habitat Restoration Take Limitation

Comment 31: One commenter argued that NMFS should not insert itself in the process of approving watershed conservation plan guidelines. This commenter also contended that NMFS does not have the authority to require states or local governments to consult with the agency in the development of such plans.

Response: The goal of this take limitation is to provide a mechanism for exempting habitat restoration projects from the ESA section 9 take prohibitions when those projects have been identified as being necessary to restore watershed function as a result of watershed scale assessments. In order for NMFS to provide this type of blanket coverage for habitat restoration projects and to avoid having to review all watershed conservation plans and habitat restoration projects separately, we believe it is appropriate for NMFS to link this exemption to an approval of watershed conservation plan guidelines. Absent the process described by this take limitation, the only means available for NMFS to authorize take that may occur as a result of habitat restoration projects is to review and approve them individually through ESA section 7 or section 10 processes. The process described in this take limit, if implemented by the state, can serve to expedite implementation of habitat restoration projects while at the same time promote watershed assessments and the development of watershed conservation plans on the basis of standard guidance. As clearly stated in the proposed and final rule, state and local entities are not required to use any of the take limitations, including the limitation for habitat restoration. In other words, NMFS is not requiring the state and local entities to develop guidelines or watershed conservation plans. We have made this option available as part of a process for facilitating the implementation of habitat restoration projects through exemption from the section 9 take prohibitions. As an alternative to using this take limitation, state or local entities may choose to utilize the section 7 or section 10 processes to obtain take authorization for habitat restoration projects they plan to implement.

Take Guidance

The threatened salmonid ESUs addressed in this final rule are in danger of becoming extinct throughout all or a significant portion of their range in the foreseeable future. Abundance of these ESUs has been reduced by over-fishing, past and ongoing freshwater and estuarine habitat destruction, hydropower development, hatchery practices, and other causes. NMFS has concluded, therefore, that it is necessary and advisable to apply the ESA section 9(a)(1) prohibitions to these ESUS to aid in their conservation. ESA section 9(a)(1) prohibitions make it illegal for any person subject to the United States' jurisdiction to ''take'' these species without written authorization. ''Take'' is defined to occur when a person engages in activities that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a species or attempt to do any of these. Impacts on a protected species' habitat may harm members of that species and, therefore, constitute a ''take'' under the ESA. Such acts may include significant habitat modification or degradation that actually kills or injures listed fish by significantly impairing essential behavioral patterns including breeding, spawning, rearing, migrating, feeding or sheltering (64 FR 60727, November 8, 1999).

On July 1, 1994 (59 FR 34272), NMFS and the FWS published a policy committing both agencies to identify, to the extent possible, those activities that would or would not violate section 9 of the ESA. The intent of this policy is to increase public awareness about ESA compliance and focus public attention on those actions needed to protect listed species.

Based on the best available information, NMFS believes the categories of activities that follow are those activities which as a general rule may be most likely to result in injury or harm to listed salmonids. It is important to emphasize, however, that whether injury or harm results from a particular activity is entirely dependent upon the facts and circumstances of each individual case. The mere fact that an activity may fall within one of these categories does not mean that the specific activity is causing harm or injury. These categories of activity, however, are ones that may be most likely to cause harm and, thus, violate the ESA section 9(a)(1) take prohibitions in this final rule. The activities listed below in A thru J are as cited in NMFS' harm rule (64 FR 60727, November 8, 1999).

A. Constructing or maintaining barriers that eliminate or impede a listed species' access to habitat or ability to migrate.

B. Discharging pollutants, such as oil, toxic chemicals, radioactivity, carcinogens, mutagens, teratogens or organic nutrient-laden water including sewage water into a listed species' habitat.

C. Removing, poisoning, or contaminating plants, fish, wildlife, or other biota required by the listed species for feeding, sheltering, or other essential behavioral patterns.

D. Removing or altering rocks, soil, gravel, vegetation or other physical structures that are essential to the integrity and function of a listed species' habitat.

E. Removing water or otherwise altering stream flow when it significantly impairs spawning, migration, feeding or other essential behavioral patterns.

F. Releasing non-indigenous or artificially propagated species into a listed species' habitat or where they may access the habitat of listed species.

G. Constructing or operating dams or water diversion structures with inadequate fish screens or fish passage facilities in a listed species' habitat.

H. Constructing, maintaining, or using inadequate bridges, roads, or trails on stream banks or unstable hill slopes adjacent to or above a listed species' habitat.

I. Conducting timber harvest, grazing, mining, earth-moving, or other operations which result in substantially increased sediment input into streams.

J. Conducting land-use activities in riparian areas and areas susceptible to mass wasting and surface erosion, which may disturb soil and increase sediment delivered to streams, such as logging, grazing, farming, and road construction.

K. Illegal fishing. Harvest in violation of fishing regulations.

L. Various streambed disturbances may trample eggs or trap adult fish preparing to spawn. The disturbance could be mechanical disruption caused by constructing push-up dams, removing gravel, mining, or other work in a stream channel. It may also take the form of egg trampling or smothering by livestock in the streambed or by

vehicles or equipment being driven across or down the streambed (as well as any similar physical disruptions).

M. Interstate and foreign commerce dealing in listed salmonids and importing or exporting listed salmonids may harm the fish unless it can be shown through an ESA permit that they were harvested in a manner that complies with ESA requirements.

N. Altering lands or waters in a manner that promotes unusual concentrations of predators.

O. Shoreline and riparian disturbances (whether in the riverine, estuarine, marine, or floodplain environment) that may retard or prevent the development of certain habitat characteristics upon which the fish depend (e.g., removing riparian trees reduces vital shade and cover, floodplain gravel mining, development, and armoring shorelines reduces the input of critical spawning substrates, and bulkhead construction can eliminate shallow water rearing areas).

P. Filling or isolating side channels, ponds, and intermittent waters (e.g., installing tide gates and impassable culverts) can destroy habitats the fish depend upon for refuge areas during high flows.

The list provides examples of the types of activities that could have a high risk of causing take, but it is by no means exhaustive. It is intended to help people avoid activities that may violate the ESA and to encourage efforts to protect and conserve the threatened ESUs covered in this final rule. A determination as to whether take has actually occurred depends on the circumstances of a particular case.

Many activities that may kill or injure salmonids, such as fill and removal authorities, National Pollutant Discharge Elimination System or other water quality permitting, and pesticide use are regulated by state and/or Federal processes. For those types of activities, NMFS would not concentrate enforcement efforts on those who operate in conformity with current permits. Rather, if the regulatory program does not provide adequate salmonid protection, NMFS intends to work with the responsible agency to make necessary changes in the program.

For instance, concentrations of pesticides may affect salmonid behavior and reproductive success. Current EPA label requirements were developed in the absence of information about the impacts of such pesticides on aquatic species such as salmonids. Where new information indicates that pesticide label requirements are not adequately protective of salmonids, NMFS will work with EPA through the ESA section 7 consultation process to develop more protective use restrictions and, thereby, provide the best possible guidance to all users. Similarly, where water quality standards or state authorizations lead to pollution loads that may cause take, NMFS intends to work with the state water quality agencies and EPA to bring those standards or permitting programs to a point that does protect salmonids.

Persons or entities concluding that their activity is likely to injure or kill protected fish are encouraged to immediately adjust that activity to avoid take (or adequately limit any impacts on the species) and seek NMFS' authorization for incidental take under: (a) an ESA section 10 incidental take permit; (b) an ESA section 7 consultation; or (c) one of the limits (if available) on the take prohibitions provided in this final rule. The public is encouraged to contact NMFS (see **FOR FURTHER INFORMATION CONTACT**) for assistance in determining whether circumstances at a particular location (involving these activities or any others) would constitute a violation of this final rule.

Impacts on listed salmonids resulting from actions in compliance with a permit issued by NMFS pursuant to section 10 of the ESA would not constitute a violation of this final rule. Section 10 permits may be issued for research activities, enhancement of a species' survival, or to authorize incidental take occurring in the course of an otherwise lawful activity. NMFS consults on a broad range of activities conducted, funded, or authorized by Federal agencies. These include fisheries harvest, hatchery operations, silviculture activities, grazing, mining, road construction, dam construction and operation, discharge of fill material, and stream channelization and diversion. Federally funded or approved activities that affect listed salmonids and for which ESA section 7 consultations have been completed will not constitute violations of this final rule provided the activities are conducted in accord with all reasonable and prudent measures and terms and conditions contained in any biological opinion and incidental take statement issued by NMFS.

References

A list of references cited in this final rule is available upon request (see **ADDRESSES**).

Classification

Regulatory Flexibility Act

In accordance with the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), therefore, NMFS prepared an IRFA which was made available through the proposed ESA 4(d) rule for public comment. Although no comments were received on the IRFA during the public comment period, NMFS has made some revisions to the Final Regulatory Flexibility Analysis (FRFA) by defining further geographic subareas to insure its consistency with the Final Regulatory Impact Review (RIR). The FRFA is available upon request (see **ADDRESSES**) and a summary follows.

This ESA 4(d) rule has no specific requirements for regulatory compliance. Instead, the rule sets an enforceable performance standard in the form of the section 9(a)(1) take prohibitions (i.e., do not ''take'' the threatened ESUs) that applies to all entities and individuals unless an activity is within a carefully circumscribed set of activities for which NMFS will not impose the take prohibitions. Hence, the universe of entities reasonably expected to be directly or indirectly impacted by the prohibition is potentially broad.

The entities potentially affected by imposition of the ESA section 9 take prohibitions occur over a large geographic area which includes the Sacramento River basin in California's central valley, as well as coastal watersheds ranging from the Russian River to Redwood Creek. Activities potentially affecting salmon and steelhead ESUs covered by the proposed rule are those associated with agriculture, fishing, hatcheries, mining, heavy construction, highway and street construction, logging, wood and paper mills, electric services, water transportation, and other industries. As many of these activities involve local, state, and Federal oversight, including permitting, governmental activities from the smallest towns or planning units to the largest cities may potentially be impacted. The activities of some nonprofit organizations may also be affected by these regulations.

NMFS examined the potential impact of the ESA 4(d) rule on a sector-by-sector basis. Unavailable or inadequate data leaves a high degree of uncertainty surrounding both the numbers of entities likely to be affected, and the characteristics of any impacts on particular entities. The problem is complicated by differences among entities even in the same sector as to the nature and size of their current operations, contiguity to waterways, individual strategies for dealing with the take prohibitions, etc. Finally, most of the activities that would be subject to the take prohibitions in the rule are already subject to the take prohibitions

imposed by existing ESA 4(d) rules that protect other salmonid ESUs utilizing the same habitat. Thus, determining the incremental cost of this rule requires information concerning regulated entities' response to pre-existing ESA 4(d) rules, some of which have been in effect for only a little over a year.

In the absence of 4(d) rules, entities could comply with the ESA through section 10 research, enhancement, and incidental take permits with private entities, or through ESA section 7 consultation with Federal agencies. Since implementation of the July 2000 4(d) rule NMFS has received plans from various entities in Oregon, Washington, Idaho and California for approval under the limits to the take prohibitions. States can now send a list of research activities they expect to authorize for the following year instead of sending individual ESA section 10 applications. During promulgation of the July 2000 rule NMFS did not have a complete understanding of the economic impacts entities would incur as a result of imposition of the take prohibitions. To gain some insight as to how entities may have changed their activities in response to implementation of the take prohibitions, we have summarized the numbers of plans submitted and their status under the July 4(d) rule in the following table. While portions of these plans were developed independently of the July 4(d) rule, they may have been modified in order to qualify for the take limits of the rule, as opposed to undergoing ESA section 7 or 10 procedures. Authorization under the rescue/salvage limit, City of Portland, Oregon Parks and Recreation Department's Pest Management Program and Washington's Forest Practices became effective September 8, 2000, and January 8, 2001, for the steelhead and salmon ESUs respectively, and are not listed in the table. Oregon Department of Transportation's (ODOT's) Routine Road Maintenance program also became effective with the effective dates, but other entities can qualify for ESA coverage under this limit if they use ODOT's program or an equivalent program.

Limit	Number of Plans Received to Date	Number of Plans Pending Approval	Number of Plans Approved	Number of Plans Expected in Next Year
Research	3	0	3	4 yearly (Oregon Washington Idaho, California)
Fishery Management Plans	13	12	1	33
Hatchery Genetic Management Plans	9	9	0	61
Joint State/Tribal Plans	2	0	2	12
Habitat Restoration Activities	0	0	0	4
Diversion Screening	20	2	0	100
Oregon Department of Transportation's (ODOT's) Routine Road Maintenance or Equivalent Plan	0	0	0	7-10
Municipal, Residential, Commercial, and Industrial Plans	0	0	0	10

Entities that are now subject to the July 4(d) rule fall into 4 categories: (1) Those entities who have sought or are actively seeking ESA compliance via the July 4(d) rule limits; (2) those who are not sure if their activities will harm salmonids, but are seeking guidance from NMFS; (3) those who are actively seeking ESA compliance via the section 10 or section 7 process; and (4) those entities that are taking salmon but are not seeking ESA compliance.

Examination of the geographical aspects of overlapping ESUs, and consideration of differences in the distribution of the different ESUs within river systems revealed five subareas composing the geographic extent of the four ESUs combined. Subarea 1 consists of that area where this rule's take prohibition for Central Valley spring chinook would be superimposed on existing take prohibitions for threatened Central Valley steelhead and endangered winter-run chinook salmon. In this region only a small variety of activities involving deliberate take of spring-run chinook is expected to be affected.

Subarea 2 consists of that area where Central California coast coho will be subject to limitations on the take prohibition not presently allowed by the existing ESA 4(d) rule for that threatened ESU and no new take prohibition is being added. The impact of this rule in this subarea is the increased flexibility allowed by the 10 take prohibition limits.

Subarea 3 consists of that area where this rule superimposes the take prohibitions for Northern California steelhead and California coastal chinook on the existing take prohibition for Central California coast coho. Deliberate take of the steelhead and chinook will be newly affected in this subarea and the take limits will be introduced for coho, making them congruent with the take limits for steelhead and chinook in that area.

Subarea 4 consists of the area where this rule superimposes the take prohibition for steelhead and chinook on the existing take prohibition for the Southern Oregon/Northern California coho ESU. Deliberate take of steelhead and chinook will be newly regulated in this area, but no change will be made for the take limits applicable to coho.

Subarea 5 consists of those portions of the Northern California steelhead and California coastal chinook ESUs not utilized by either coho ESU. Because steelhead (and chinook to a lesser extent) are much more widely distributed within the ESU boundaries than coho, there are substantial areas where steelhead and/or chinook will be protected which are not utilized by coho. Modifications to habitat which have no risk of taking coho may risk taking steelhead and chinook in such areas.

Although there may be some limited impact in all of these subareas the only substantial economic impacts on individual small entities from this rule, therefore, are expected to occur in the non-federal portions of subarea 5, which lie almost entirely in low population density areas of Humboldt, Mendocino, and Sonoma counties. These three counties had a combined 1998 population of about 640,000 with personal income of about $18 billion. However, most of the people and income are contributed by urban centers in Sonoma and Humboldt counties which are not contained in subarea 5. No population estimate is available for subarea 5, but it is believed to be less than 15,000. Small entities in this

subarea likely to be directly affected by this rule include private timber harvesters, cattle ranches, a small number of farms and vineyards, and possibly small businesses engaged in road and culvert construction. The number of such entities is not known, but is a small subset of the same classes of entities found in the three counties containing subarea 5.

This final rule applies the take prohibitions enumerated in ESA section 9(a)(1), and also limits application of the take prohibitions to certain specified categories of activities that contribute to conserving these ESUs or are governed by a program that adequately limits impacts on these ESUs. There are no record keeping or reporting requirements associated with imposition of the take prohibition; therefore, it is not possible to simplify or tailor record keeping or reporting to be less burdensome for small entities. However, some programs for which NMFS may in the future find it is unnecessary to prohibit take because they fall under one of the take limitations in this final rule would involve recordkeeping and/or reporting to support that continuing determination. NMFS has attempted to minimize any burden associated with these programs.

The public reporting burden per response for this collection of information is estimated to average 5 hours for a submission on screening of a water diversion or for a report on salmonids assisted, disposed of, or salvaged; 20 hours to prepare a road maintenance agreement; 30 hours for an MRCI ordinance development package; and 10 hours for an MRCI development annual report.

This rule also contains a collection-of-information requirement associated with habitat restoration activities conducted under watershed conservation plans that has received PRA approval from OMB under control number 0648-0230. The public reporting burden for the approval of watershed conservation plans is estimated to average 10 hours.

These estimates include any time required for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

In formulating this final rule, NMFS considered several alternative approaches which are described in the IRFA. These included: (1) Enacting a ''global'' ESA 4(d) protective regulation for threatened species through which NMFS would automatically apply the section 9 take prohibitions to all threatened species at the time of listing; (2) enacting ESA 4(d) protective regulations that include the take prohibitions, but contain no take limits, or only a few limits, on the application of the take prohibitions for relatively uncontroversial activities such as fish rescue/salvage; (3) enacting ESA 4(d) regulations which include the take prohibitions in combination with detailed prescriptive requirements applicable to one or more sectors of activity; (4) enacting ESA 4(d) protective regulations similar to the existing interim 4(d) protective regulations for Southern Oregon/Northern California coast coho salmon which includes four additional limitations on the extension of the take prohibitions, for harvest plans, hatchery plans, scientific research, and habitat restoration projects, when in conformance with specified criteria; (5) enacting ESA 4(d) regulations similar to the interim rule for Southern Oregon/Northern California coast coho, but with recognition of more programs and circumstances in which application of take prohibitions is neither necessary or advisable, and (6) enacting no ESA 4(d) protective regulations for the threatened salmonid ESUs. This last approach would leave the threatened ESUs without any protection other than provided by ESA section 7 consultations for actions with some Federal nexus.

The approach taken in this final rule is alternative 5 which would impose the ESA section 9 take prohibition and also create 10 limits to the take prohibitions for specific circumstances or categories of activity (see discussion of take limitations in the proposed rule). This approach is fundamentally the same as that taken in NMFS's July 2000 ESA 4(d) rule for 14 threatened salmonids (65 FR 42422). For several of these activity categories (i.e., recreational harvest, artificial propagation, habitat restoration, road maintenance, and municipal, residential, commercial and industrial development) the regulation is structured so that it allows plans or programs developed after promulgation of this final rule to be submitted to NMFS for review and approval under criteria described in the rule.

All of the other alternatives which provide take prohibitions for the threatened ESUs may result in unnecessary impacts on economic activity of small entities, given NMFS' judgment that more limited protections would suffice to conserve the species. NMFS believes this final rule provides the greatest latitude for individual entities and regulatory agencies to tailor activities and programs to fit individual circumstances while avoiding or minimizing take of threatened salmonids. At present, NMFS concludes that there are no legally viable alternative rules that would have less impact on small entities and still fulfill the agency's obligations to protect these threatened salmonid ESUs.

Executive Order (E.O.) 12866

Pursuant to E.O. 12866 (58 FR 51735, October 4, 1993), NMFS has prepared a Regulatory Impact Review (RIR) which considers costs and benefits of the regulatory alternatives that were considered in developing this ESA 4(d) rule, including the alternative of not promulgating a protective rule. Copies of the RIR are available upon request (see **ADDRESSES**).

Costs and benefits of this final rule and other alternative rule making approaches include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits where estimates cannot be meaningfully made for impacts that are essential to consider. The benefit provided by this rule, as well as each of the other alternatives NMFS considered that afford sufficient protection for the threatened ESUs, is its contribution to the recovery of the threatened ESUs. No monetized measure of the benefit of recovery is available.

The RIR finds that in Area 1, Area 3, and Area 4 the only activities likely to be affected by this final rule are those involving deliberate direct take of listed species, especially angling, hatchery operation, and research. The costs of these activities, either to the state or private parties, are estimated to increase over the baseline due to increased permitting, NEPA documentation, and monitoring requirements. Activities in Area 2, where coho already have a take prohibition in place, will become less costly due to reduced permitting and NEPA requirements. In Area 5, timber harvest, grazing, stream diversions, summer dams, road construction and maintenance, and construction of new or improved culverts will come under increased regulation. Incremental costs associated with summer dams, roads, and culverts are significant but could not be quantified at this time. Aggregate quantified incremental first-year costs for the proposed rule are estimated to be between $11.8 million and $17.7 million, while annual costs thereafter are estimated to be from $4.6 million to $9.1 million. The same costs estimated for a blanket take prohibition with no limits are estimated at $18.9 million to $21.6 million and $6.2 million to $10.7 million, respectively.

The RIR concludes that the proposed rule would substantially improve conditions favorable to recovery of the threatened ESUs compared to taking no action, that the only alternative which could achieve quicker results (detailed prescriptive requirements) is too costly and intrusive, and that the proposed rule is the least costly rule among the alternatives which are sufficiently protective of threatened salmon and steelhead ESUs.

Because this final rule will eliminate application of the section 9 take prohibition to those State or local programs or activities that fall within defined take limitation criteria protective of salmonids, those programs will encourage participation and contribute to the conservation of the threatened ESUs covered by the rule; NMFS' involvement will be more collaborative and less often require enforcement actions. This approach has the greatest probability that compliance burdens will be equally shared, that economic incentives will be employed in appropriate cases, and that practical standards adapted to the particular characteristics of the state or region will aid citizens in reducing the risks of take in an efficient way. For these reasons, it is likely that this final rule will minimize the cost to the public of avoiding or minimizing take over the long term in comparison with the other alternatives that were considered.

Executive Order 13175-Consultation and Coordination with Indian Tribal Governments

E.O. 13175 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This final rule does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13175 do not apply to this final rule.

Nonetheless, NMFS took steps to inform potentially affected tribal governments, to provide information to tribes on the content and scope of the rule and its relationship to the Tribal ESA 4(d) rule (65 FR 42481, July 10, 2000), and to solicit tribal input on the rule. NMFS did not receive any formal comments from Indian tribes, but remains prepared to meet with interested tribes to discuss the rule and its relationship to their activities. As a result of the July 2000 Tribal ESA 4(d) rule, NMFS has already established efforts to coordinate with many of the tribes that are located within the range of ESUs affected by this rule.

Executive Order 13132 - Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this final rule. In fact, this final rule provides a mechanism by which NMFS may defer to state and local government programs, where they provide necessary protections for threatened salmonids.

NMFS' July 2000 ESA 4(d) rule for 14 threatened salmonids (65 FR 42422), including three steelhead ESUs in California, was the first instance in California where the agency defined some reasonably broad categories of activities, both public and private, for which take prohibitions were not considered necessary and advisable when specified criteria were met. Since that rule was promulgated, NMFS has engaged in discussions with various State and local agencies and other organizations in California wishing to pursue development of programs that would qualify under the various take limits contained in that final rule. In addition, NMFS has sought working relationships with other governmental and non-governmental organizations, and endeavored to promote use of the ESA 4(d) rule. Because the threatened ESUs addressed in this rule overlap substantially with the ESUs addressed in the July 2000 ESA 4(d) rule (65 FR 42422), working relationships have already been established with many agencies and organizations that may be affected by this rule.

In addition to these efforts, NMFS staff have given presentations to interagency forums, community groups, and others, and served on a number of interagency advisory groups or task forces considering conservation measures. Many cities, counties and other local governments have sought guidance and consideration of their planning efforts from NMFS, and staff have met with them whenever possible. Lastly, NMFS staff have continued coordination with the state aimed at developing recreational fisheries and artificial propagation management plans and other programs that will be protective of threatened salmonids and ultimately may be recognized within the July 2000 ESA 4(d) rule or this final rule.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This final rule contains collection-of-information requirements subject to the PRA and which have been approved by OMB under control number 0648-0399.

The public reporting burden per response for this collection of information is estimated to average 5 hours for a submission on screening of a water diversion or for a report on salmonids assisted, disposed of, or salvaged; 20 hours to prepare a road maintenance agreement; 30 hours for an MRCI ordinance development package; and 10 hours for an MRCI development annual report.

This final rule also contains a collection-of-information requirement associated with habitat restoration activities conducted under watershed conservation plans that has received PRA approval from OMB under control number 0648-0230. The public reporting burden for the approval of watershed conservation plans is estimated to average 10 hours.

These estimates include any time required for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

National Environmental Policy Act

NMFS prepared EAs, as defined under the authority of NEPA of 1969, addressing each threatened ESU covered by this final rule. Based on a review and evaluation of the information contained in these NEPA documents, NMFS has determined that promulgation of protective regulations for these four threatened salmonid ESUs, including the creation of limitations on the applicability of the prohibitions on taking any of those salmonids, is not a major Federal action that would significantly affect the quality of the

human environment within the meaning of section 102(2)(c) of NEPA of 1969. NMFS believes these EAs examined appropriate alternatives, and that preparation of an Environmental Impact Statement is not required. Copies of the EAs/Findings of No Significant Impact are available on request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 31, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531-1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.203, paragraphs (a), (b)(1), and (c) are revised and introductory text to this section, paragraphs (b)(14) through (b)(22), and Appendix A to this section are added to read as follows:

§ 223.203 Anadromous fish.

Available guidance documents cited in the regulatory text are listed in Appendix A to this section.

(a) *Prohibitions*. The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to the threatened species of salmonids listed in § 223.102(a)(1) through (a)(10), and (a)(12) through (a)(22), except as provided in paragraph (b) of this section and § 223.209(a).

(b) *Limits on the prohibitions*. (1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter implementing such exceptions, also apply to the threatened species of salmonids listed in § 223.102(a)(1) through (a)(10), and (a)(12) through (a)(22).

* * * * *

(14) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(20) through (a)(22) do not apply to activities specified in an application for a permit for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than April 9, 2002. The prohibitions of paragraph (a) of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or September 9, 2002, whichever occurs earliest.

(15) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3), and (a)(20) through (a)(22) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to:

(i) Aid a sick, injured, or stranded salmonid,

(ii) Dispose of a dead salmonid, or

(iii) Salvage a dead salmonid which may be useful for scientific study.

(iv) Each agency acting under this limit on the take prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency or other co-manager has authorized in writing to perform the listed functions.

(16) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3), and (a)(20) through (a)(22) do not apply to fishery harvest activities provided that:

(i) Fisheries are managed in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a letter of concurrence from NMFS. NMFS will approve an FMEP only if it clearly defines its intended scope and area of impact and sets forth the management objectives and performance indicators for the plan. The plan must adequately address the following criteria:

(A) Define populations within affected listed ESUs, taking into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiably unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the listed ESU. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units, describe how the management units are defined, given biological and life history traits, so as to maximize consideration of the important biological diversity contained within the listed ESU, respond to the scale and complexity of the ESU, and help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

(B) Utilize the concepts of ''viable'' and ''critical'' salmonid population thresholds, consistent with the concepts contained in NMFS's technical report entitled ''Viable Salmonid Populations and the Recovery of ESUs'' (NMFS, 2000b). This report provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and ensuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with viable and critical population threshold states and respond accordingly to minimize the long-term risks to population persistence. Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that the likelihood of survival and recovery of the entire ESU in the wild would not be appreciably reduced by greater risks to that individual population.

(C) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status and on a harvest program that assures that those rates or objectives are not exceeded. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations.

(D) Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

(E) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics, such as age, fecundity, size and sex data, and migration timing.

(F) Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

(G) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(H) Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions.

(I) Be consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on a regular basis, as defined in NMFS' letter of concurrence for the FMEP, a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP.

(iii) The state confers with NMFS on its fishing regulation changes affecting listed ESUs to ensure consistency with the approved FMEP. Prior to approving a new or amended FMEP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days.

(iv) NMFS provides written concurrence of the FMEP which specifies the implementation and reporting requirements. NMFS' approval of a plan shall be a written approval by the NMFS' Southwest Regional Administrator. On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If the program is deficient, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit for activities associated with that FMEP. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that the prohibitions would then apply to those fishery harvest activities. A template for developing FMEPs is available from NMFS' Southwest Region web site (http://swr.nmfs.noaa.gov).

(v) The prohibitions of paragraph (a) of this section relating to threatened species listed in § 223.102 (a)(20) do not apply to fishery harvest activities managed solely by the State of California until July 8, 2002.

(17) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3) and (a)(20) through (a)(22) do not apply to activity associated with artificial propagation programs provided that:

(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria:

(A) The HGMP has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet conservation objectives, contribute to the ultimate sustainability of natural spawning populations, and/or is intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program that will be used to measure the program's success or failure.

(B) The HGMP utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in NMFS' technical report entitled: ''Viable Salmonid Populations and Recovery of ESUs'' (NMFS, 2000b). Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population.

(C) Broodstock collection programs reflect appropriate priorities taking into account health, abundances, and trends in the donor population. The primary purpose of broodstock collection programs of listed species is to re-establish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitat. After the species' conservation needs are met and when consistent with survival and recovery of the ESU, broodstock collection programs may be authorized by NMFS for secondary purposes such as to sustain tribal, recreational, and commercial fisheries.

(D) The HGMP includes protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

(E) The HGMP evaluates, minimizes, and accounts for the propagation program's genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by the straying of hatchery fish.

(F) The HGMP describes interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. For those programs of which the purpose is to sustain fisheries, HGMPs must not compromise the ability of FMEPs or other management plans to conserve listed salmonids.

(G) The HGMP provides for adequate artificial propagation facilities to properly rear progeny of naturally spawned broodstock, to maintain population health and diversity, and to avoid hatchery-influenced selection or domestication.

(H) The HGMP provides for adequate monitoring and evaluation to detect and evaluate the success of the hatchery program and any risks potentially impairing the recovery of the listed ESU.

(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed;

(J) NMFS provides written concurrence of the HGMP which specifies the implementation and reporting requirements. For federally operated or funded hatcheries, the ESA section 7 consultation will achieve this purpose.

(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on a regular basis a report summarizing this information, and the implementation and effectiveness of the HGMP as defined in NMFS' letter of concurrence. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP.

(iii) The state confers with NMFS on a regular basis regarding intended collections of listed broodstock to ensure consistency with the approved HGMP.

(iv) Prior to final approval of an HGMP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment for a period of at least 30 days.

(v) NMFS' approval of an HGMP shall be a written approval by NMFS' Southwest Regional Administrator.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level of salmonid productivity commensurate with the conservation of the listed salmonids. If the HGMP is not effective, NMFS will identify to the responsible agency ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions would then apply to that program. A template for developing HGMPs is available from NMFS Northwest Region's web site (www.nwr.noaa.gov).

(vii) The prohibitions of paragraph (a) of this section relating to threatened species listed in § 223.102 (a)(20) do not apply to artificial propagation programs managed solely by the State of California until July 8, 2002.

(18) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(3) and (a)(20) through (a)(22) do not apply to scientific research activities provided that:

(i) Scientific research activities involving purposeful take are conducted by employees or contractors of CDFG or as a part of a monitoring and research program overseen by or coordinated with CDFG.

(ii) CDFG provides for NMFS' review and approval a list of all scientific research activities involving direct take planned for the coming year, including an estimate of the total direct take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(iii) CDFG annually provides to NMFS the results of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by CDFG personnel, or are in accord with a permit issued by the CDFG.

(v) CDFG provides NMFS annually, for its review and approval, a report listing all scientific research activities it conducts or permits that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year's scientific research activities and a summary of the results of such research.

(vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accordance with NMFS' Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act (NMFS 2000a).

(vii) NMFS' approval of a research program shall be a written approval by NMFS' Southwest Regional Administrator.

(19) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(3) and (a)(20) through (a)(22) do not apply to habitat restoration activities, as defined in paragraph (b)(19)(iv), provided that the activity is part of a watershed conservation plan, and:

(i) The watershed conservation plan has been certified by the State of California to be consistent with the state's watershed conservation plan guidelines.

(ii) The State's watershed conservation plan guidelines have been found by NMFS to provide for plans that:

(A) Take into account the potential severity of direct, indirect, and cumulative impacts of proposed activities in light of the status of affected species that are listed as threatened.

(B) Will not reduce the likelihood of either survival or recovery of listed species in the wild.

(C) Ensure that any taking will be incidental.

(D) Minimize and mitigate any adverse impacts.

(E) Provide for effective monitoring and adaptive management.

(F) Use the best available science and technology, including watershed analysis.

(G) Provide for public and scientific review and input.

(H) Include any measures that NMFS determines are necessary or appropriate.

(I) Include provisions that clearly identify those activities that are part of plan implementation.

(J) Control risk to listed species by ensuring funding and implementation of the above plan components.

(iii) NMFS will periodically review state certifications of watershed conservation plans to ensure adherence to approved watershed conservation plan guidelines.

(iv) ''Habitat restoration activity'' is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. ''Primary purpose'' means the activity would not be undertaken but for its restoration purpose.

(v) Prior to approving state watershed conservation plan guidelines under paragraph (b)(19)(ii) of this section, NMFS will publish notification in the **Federal Register** announcing the availability of the proposed guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of not less than 30 days.

(20) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(3) and (a)(20) through (a)(22) do not apply to the physical diversion of water from a stream or lake, provided that:

(i) NMFS' engineering staff or any resource agency or tribe NMFS designates (authorized officer) has agreed in writing that the diversion facility is screened, maintained, and operated in compliance with NMFS' Southwest Region ''Fish Screening

Criteria for Anadromous Salmonids, January 1997'' or with any subsequent revision.

(ii) The owner or manager of the diversion allows any NMFS engineer or authorized officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria.

(iii) On a case-by-case basis, NMFS or an Authorized Officer will review and may approve a juvenile fish screen design and construction plan and schedule that the water diverter proposes for screen installation. The plan and schedule will describe interim operation measures to avoid take of threatened salmonids. NMFS may require a commitment of compensatory mitigation if implementation of the plan and schedule is terminated prior to completion. If the plan and schedule are not met, or if a schedule modification is made that is not approved by NMFS or the Authorized Officer, or if the screen installation deviates from the approved design, the water diversion will be subject to take prohibitions and mitigation.

(iv) This limit on the prohibitions of paragraph (a) of this section does not include any impacts or take caused by reduced flows resulting from the diversion or impacts caused during installation of the diversion device. These impacts are subject to the prohibition on take of listed salmonids.

(21) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3) and (a)(20) through (a)(22) do not apply to routine road maintenance activities provided that:

(i) The activity results from routine road maintenance conducted by employees or agents of the State of California, or any county, city or port in California, that complies with a program substantially similar to that contained in the Oregon Department of Transportation's (ODOT) Transportation Maintenance Management System Water Quality and Habitat Guide (July, 1999) or that is determined to meet or exceed the protections provided by the ODOT Guide; or by employees or agents of the State of California or any county, city or port in California that complies with a routine road maintenance program that meets proper functioning habitat conditions as described further in paragraph (a)(21)(ii) of this section. NMFS' approval of state, city, county, or port programs that are equivalent to the ODOT program, or of any amendments, shall be a written approval by NMFS' Southwest Regional Administrator. Any jurisdiction desiring its routine road maintenance activities to be considered within this limit must first commit in writing to apply management practices that result in protections equivalent to or better than those provided by the ODOT Guide, detailing how it will assure adequate training, tracking, and reporting, and describing in detail any dust abatement practices it requests to be covered.

(ii) NMFS finds the routine road maintenance activities of the State of California, or any city, county, or port, to be consistent with the conservation of threatened salmonids' habitat when it contributes to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the threatened ESUs. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit so that take prohibitions would then apply to the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iii) Prior to implementing any changes to a program within this limit the jurisdiction provides NMFS a copy of the proposed change for review and approval as to being within this limit.

(iv) Prior to approving any State of California, city, county, or port program as being within this limit, or approving any substantive change in a program as being within this limit, NMFS will publish notification in the **Federal Register** announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of not less than 30 days.

(v) Pesticide and herbicide spraying is not included within this limit, even if in accord with the ODOT guidance.

(22) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3) and (a)(20) through (a)(22) do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

(i) Such development occurs pursuant to city, county, or regional government ordinances or plans that NMFS has determined are adequately protective of threatened species by maintaining or restoring properly functioning habitat conditions. NMFS approval or determinations about any MRCI development ordinances or plans shall be a written approval by the NMFS Southwest Regional Administrator. NMFS will apply the following 12 evaluation considerations when reviewing MRCI development ordinances or plans to assess whether they adequately conserve threatened salmonids by maintaining and restoring properly functioning habitat conditions:

(A) The MRCI development ordinance or plan ensures that development will avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(B) The MRCI development ordinance or plan adequately avoids stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed, including peak and base flows of perennial streams.

(C) The MRCI development ordinance or plan provides adequately protective riparian area management requirements to attain or maintain PFC around all rivers, estuaries, streams, lakes, deepwater habitats, and intermittent streams. Compensatory mitigation is provided, where necessary, to offset unavoidable damage to properly functioning habitat conditions caused by MRCI development impacts to riparian management areas.

(D) The MRCI development ordinance or plan avoids stream crossings by roads, utilities, and other linear development wherever possible, and, where crossings must be provided, minimizes impacts through choice of mode, sizing, and placement.

(E) The MRCI development ordinance or plan adequately protects historical stream meander patterns and channel

migration zones and avoids hardening of stream banks and shorelines.

(F) The MRCI development ordinance or plan adequately protects wetlands and wetland functions, including isolated wetlands.

(G) The MRCI development ordinance or plan adequately preserves the hydrologic capacity of permanent and intermittent streams to pass peak flows.

(H) The MRCI development ordinance or plan includes adequate provisions for landscaping with native vegetation to reduce need for watering and application of herbicides, pesticides, and fertilizer.

(I) The MRCI development ordinance or plan includes adequate provisions to prevent erosion and sediment run-off during construction.

(J) The MRCI development ordinance or plan ensures that water supply demands can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(K) The MRCI development ordinance or plan provides necessary enforcement, funding, reporting, and implementation mechanisms and formal plan evaluations at intervals that do not exceed 5 years.

(L) The MRCI development ordinance and plan complies with all other state and Federal environmental and natural resource laws and permits.

(ii) The city, county or regional government provides NMFS with annual reports regarding implementation and effectiveness of the ordinances, including: any water quality monitoring information the jurisdiction has available; aerial photography (or some other graphic display) of each MRCI development or MRCI expansion area at sufficient detail to demonstrate the width and vegetation condition of riparian set-backs; information to demonstrate the success of stormwater management and other conservation measures; and a summary of any flood damage, maintenance problems, or other issues.

(iii) NMFS finds the MRCI development activity to be consistent with the conservation of threatened salmonids' habitat when it contributes to the attainment and maintenance of properly functioning habitat conditions. For this purpose, NMFS defines properly functioning habitat conditions as the sustained presence of a watershed's habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. To contribute to the attainment and maintenance of properly functioning habitat conditions, activities that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward achieving properly functioning habitat conditions. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the threatened species. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit so that take prohibitions would then apply to the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iv) Prior to approving any city, county, or regional government ordinances or plans as being within this limit, or approving any substantive change in an ordinance or plan as being within this limit, NMFS will publish notification in the **Federal Register** announcing the availability of the ordinance or plan or the draft changes for public review and comment. Such an announcement will provide for a comment period of not less than 30 days.

(c) *Affirmative Defense*. In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened species of salmonids listed in § 223.102 (a)(3), (a)(5) through (a)(10) and (a)(12) through (a)(22), any person claiming the benefit of any limit listed in paragraph (b) of this section or § 223.209(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

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Appendix A to §223.203 - List of Guidance Documents

The following is a list of documents cited in the regulatory text. Copies of these documents may be obtained upon request from the Northwest or Southwest Regional Administrators (see Table 1 in § 600.502 of this title).

1. Oregon Department of Transportation (ODOT) Maintenance Management System Water Quality and Habitat Guide (July, 1999).
2. Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act.
3. Fish Screening Criteria for Anadromous Salmonids, National Marine Fisheries Service, Southwest Region, 1997.
3. Fish Screening Criteria for Anadromous Salmonids, National Marine Fisheries Service, Southwest Region, 1997.

[FR Doc. 02–440 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334-1312-02; I.D. 091401B]

RIN 0648-AN88

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to clarify its authority to temporarily restrict the use of lobster trap and gillnet fishing gear within defined areas to protect North Atlantic right whales, and to establish criteria and procedures for implementing a Dynamic Area Management (DAM) program in areas north of 40o N. latitude, in order to further reduce risk of entanglement of right whales by such gear.

DATES: This final rule is effective February 8, 2002.

ADDRESSES: Copies of the Environmental Assessment (EA), its Regulatory Impact Review (RIR), and the

Final Regulatory Flexibility Analysis (FRFA), are available from the Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, progress reports on implementation of the ALWTRP, and a table of the changes to the ALWTRP may be obtained by writing to Diane Borggaard at the address above or Katherine Wang, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432. Copies of the EA, including the RIR and FRFA, can be obtained from the ALWTRP website listed under the Electronic Access portion of this document.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9145; Katherine Wang, NMFS, Southeast Region, 727–570–5312; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this final rule and the take reduction planning process can be downloaded from the ALWTRP web site at http://www.nero.nmfs.gov/whaletrp/. Copies of the most recent marine mammal Stock Assessment Reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at http://www.wh.whoi.edu/psb/sar2000.pdf. In addition, copies of the document entitled ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options'' are available by writing to Diane Borggaard, (see ADDRESSES) or can be downloaded from the Internet at http://www.nero.nmfs.gov/whaletrp/.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of four species of large whales (fin, humpback, minke, and North Atlantic right) in East Coast lobster trap and finfish gillnet fisheries. The background for the take reduction planning process and development of the ALWTRP is provided in the preambles to the proposed (62 FR 16519, April 7, 1997), the interim final (62 FR 39157, July 22, 1997), final (64 FR 7529, February 16, 1999), and interim final (65 FR 80368, December 21, 2000) rules implementing the ALWTRP. Copies of these documents and supporting Environmental Assessments are available from the NMFS, Northeast Region (see **ADDRESSES**).

This final rule implements approved modifications to the ALWTRP deemed by NMFS necessary to satisfy requirements of the Endangered Species Act (ESA) and MMPA. Details concerning the justification for and development of the DAM program and the implementing regulations were also provided in the preamble to the proposed rule (66 FR 50160, October 2, 2001) and are not repeated here.

DAM Trigger Mechanism

Areas that will be considered for DAM are limited to areas north of 40o N latitude. A DAM zone will be triggered by a single reliable report from a qualified individual of 3 or more right whales within an area (75 nautical miles (nm2) (139 km2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting based upon which a DAM zone would be triggered.

Procedures and Criteria to Establish a DAM Zone

NMFS will use the following procedures and criteria to establish a DAM zone:

1. A circle with a radius of at least 2.8 nm (5.2 km) would be drawn around each individual sighting (event). This radius would be adjusted for the number of right whales seen in the sighting such that the density of 4 right whales per 100 nm2 (185.3 km2) is maintained. The length of the radius would be determined by taking the inverse of the 4 right whales per 100 nm2 (185.3 km2) density, which is 24 nm2 (44.5 km2) per whale. This is equivalent to a radial distance of 2.8 nm (5.1 km) for a single right whale sighted, 3.9 nm (7.3 km) for two whales, 4.8 nm (8.9 km) for three whales, etc.

2. If any circle or group of contiguous circles includes 3 or more right whales, this core area and its surrounding waters would be a candidate DAM zone.

Criteria to Determine the Extent of the DAM Zone

Once NMFS identifies a core area containing 3 or more right whales, as described here, it would expand this initial core area to provide a buffer in which the right whales could move and still be protected. NMFS will determine the extent of the DAM zone as follows:

1. A larger circular zone will be drawn to extend 15 nm (27.8 km) from the perimeter of a circle around each core area.

2. The DAM zone will then be defined by a polygon drawn outside, but tangential to the circular buffer zone(s). The latitudinal and longitudinal coordinates of the corners of the polygon will then be identified.

Decision Factors for Implementing Restrictions in a DAM Zone

Once a DAM zone is identified, NMFS will determine whether to impose, in the zone, restrictions on fishing and/or fishing gear. This determination would be based on a variety of factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

Public Notification

If NMFS determines restrictions are necessary in the zone, NMFS may require removal of all gillnet and lobster trap gear from the zone within 2 days of the publication of a notice in the **Federal Register**. At this time, NMFS does not have criteria developed that would allow gillnet or lobster trap gear to be fished within a DAM zone. NMFS may allow fishing within a DAM zone with specified gear if that gear is determined to sufficiently reduce the risk of entanglement to right whales. NMFS may identify acceptable fishing practices and gear in a **Federal Register** document. Gear not in compliance with the imposed restriction may not be set in the DAM zone after the effective date of the restriction. NMFS will publish a document in the **Federal Register** and other appropriate media announcing the establishment of the zone with restrictions imposed. It will also announce them immediately upon filing the document with the Office of the **Federal Register**, which is generally 3 to 5 days before publication of the notice in the **Federal Register**.

If NMFS decides not to implement restrictions within a DAM zone, it will issue an alert to fishermen using

appropriate media to inform them of the fact that right whale density in a certain area has triggered a DAM zone. In addition, NMFS will provide detailed information on the location of the DAM zone and the number of animals sighted within it.

Duration of DAM Zones

NMFS will maintain a DAM zone for a minimum of 15 days from the date NMFS issues an alert (in the case of a zone where no restrictions are imposed), or the 15-day period from the effective date of restrictions (in the case where restrictions are imposed). At the conclusion of a 15-day period, the DAM zone would automatically expire, unless whales are still sighted in the DAM zone, in which case, NMFS will continue the zone to further protect concentrations of right whales. Each extension would be for up to 15 days unless NMFS extends the time frame based on additional sightings.

NMFS may remove restrictions on the DAM zone or rescind an alert prior to its automatic expiration if there are survey efforts and no confirmed sightings of right whales by qualified individuals for 1 week or if other credible evidence indicates that right whales have left the designated zone. NMFS will notify the public by issuing a notification in the **Federal Register** and through other appropriate media.

Comments and Responses

Approximately 58 letters of comment were received during the public comment period on the proposed rule, which ended on November 1, 2001. A complete summary of the comments and NMFS' responses is provided here.

Comment 1: Several letters were received from private individuals in support of NMFS' proposal to implement DAM. Most of those letters expressed serious concerns about the future survival of North Atlantic right whales. In addition, these comments encouraged NMFS to work closely with gillnet and lobster fishermen to protect right whales from future entanglements in fishing gear.

Response: NMFS will continue to work with the ALWTRT and members of the fishing industry to minimize interactions between right whales and fishing gear. NMFS believes that DAM will reduce serious injuries and mortalities to right whales from entanglements by temporarily restricting lobster trap and gillnet fishing gear in areas where right whales congregate to feed. *Comment 2*: Several comments questioned the DAM trigger mechanism. Many felt that it was inappropriate to base a DAM zone on a single sighting by one person. In addition, the Maine Department of Marine Resources requested that NMFS determine a clearer definition of ''qualified individual.'' It was suggested that NMFS establish a tiered process for judging whether or not a report is credible and further suggested that NMFS request corroborating information from the individual providing the report while continuing to verify the initial report during the 5-to 7-day period between filing notice with the **Federal Register** and publication. Furthermore, there were concerns that false sightings would be reported by disgruntled crew or competitors identifying themselves as ''qualified individuals'' wishing to cause hardship on fishermen by closing down their fishing grounds.

Response: NMFS anticipates that it may receive false or exaggerated reports of right whale sightings from people claiming to be ''qualified individuals.'' Therefore, NMFS intends to thoroughly investigate all reports for credibility and reliability. The definitions of ''qualified individual'' and ''reliable report'' were developed with this intent in mind. In addition, NMFS will require that the individual providing the report identify him or herself and the vessel from which the sighting was made. Anonymous reports will not be considered reliable and, therefore, cannot trigger a DAM zone. Furthermore, a document prepared by the Northeast Fisheries Science Center entitled, ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options,'' concluded that a single sighting is appropriate because foraging whales are at risk of entanglement whenever they are feeding, regardless of how quickly a food source is consumed. (Clapham and Pace, 2001). Therefore, to trigger a DAM zone, NMFS feels that a single report of right whales is an adequate trigger mechanism. Simply stated, as long as a single sighting can establish that the whales are feeding in an area, and not merely transiting through, no additional sightings would be necessary based on the understanding that feeding whales are at a greater risk of entanglement.

Comment 3: Many commenters questioned the implementation of a DAM zone based on the proposed trigger of three right whales. Comments from lobstermen and state agencies indicated that NMFS should adopt the trigger of eight whales sighted twice over 2 days, which was discussed at the ALWTRT meeting. Commenters encouraged NMFS to explore all other information available to ensure that the three-whale trigger is appropriate for the implementation of a DAM zone.

Response: The issue of the number of right whales that would trigger a DAM zone was discussed at the ALWTRT meeting. However, the ALWTRT did not produce any consensus recommendations on any one set of whale density criteria and/or triggering levels. NMFS determined that a trigger based on the sighting of three right whales was appropriate after considering the analysis of sighting data performed by the Northeast Fisheries Science Center. Foraging whales are assumed to be at risk of entanglement and DAM was designed to respond quickly to situations where feeding whales and fishing gear overlap in order to reduce the chances that a whale will get entangled. Therefore, the scientific research conducted on DAM sought to establish the smallest number of right whales that could be advanced as a reliable indicator that the animals were engaged in feeding behavior. The scientists concluded that a sighting of three or more right whales in an area was a reasonably good indicator that the animals were residing in an area to feed. (Clapham and Pace, 2001).

Comment 4: Comments were received expressing concern about the size of the DAM zone. In particular, several lobstermen felt that it would take months to remove their gear from a DAM area of 1,000 nm or more and suggested that DAM areas of 10 nm would be more realistic for compliance by the industry. One lobsterman estimated that it would take 12 trips, each lasting up to 10 days, to remove gear from a 1,000-nm DAM zone. In addition, many comments from fishermen explained that if all gear is removed from the DAM zone it will be reset around the boundary of the area, thus creating a wall around the DAM zone, which may create a greater risk of entanglement to right whales.

Response: NMFS appreciates the amount of effort that may be required to remove gillnet and lobster trap gear from a DAM zone. The analysis of sighting data presented in the document ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options,'' found that a 15-nm buffer around the initial core area would enclose all of the whales sighted, irrespective of their movements during the course of the event. (Clapham and Pace, 2001). The size of the DAM zone is dependent on the number of whales that would trigger an event.

Comment 5: Several comments were received that expressed concerns about the amount of time proposed for

compliance with gear restrictions within DAM zones. For example, a comment received from a lobsterman stated that it would be impossible to remove all lobster gear in the time allotted under the proposed rule and, furthermore, the chaos and confusion created would present a safety hazard.

Response: NMFS appreciates the time, effort, and risk involved in hauling fishing gear and removing it from an area that has been designated for DAM. In order to provide fishermen with time to respond to the implementation of gear restrictions within a DAM zone, NMFS will issue a notice at the time the notice is filed with the Office of the **Federal Register**, which is usually 3 to 5 days prior to the regulation being published in the **Federal Register**. Once the decision has been made to remove gear from a DAM zone, NMFS will notify the commercial fisheries affected as quickly and comprehensively as reasonably possible. In addition, when a right whale sighting meets the DAM trigger, NMFS will issue an alert via email to all ALWTRT members and post the alert on the website at www.nero.nmfs.gov/whaletrp/. NMFS hopes that members of the ALWTRT who receive an alert will circulate the information to other interested parties to help insure that the fishermen who may have to eventually remove gear from a DAM zone have time to respond. Fishermen, industry representatives, environmental groups, and all others interested in receiving alerts and notices over the Internet should provide their email address to the Northeast Regional Office (See **ADDRESSES** section). NMFS will also mail letters providing notice to those who request it by contacting the Northeast Regional Office (See **ADDRESSES** section). In addition, NMFS will investigate using a news bulletin service to provide notice through the local press.

Comment 6: Several comments were received that questioned the length of the restricted period. In particular, the Massachusetts Division of Marine Fisheries felt that the rule making process and the time required for fishermen to remove all of their gear from a DAM area would exceed the duration of most sighting ''events.''

Response: NMFS intends to respond to reports of right whale sightings that trigger a DAM as quickly as possible in order to insure that restrictions are implemented in a timely fashion to maximize protection for the animals. See NMFS' response to the previous comment. NMFS believes that an initial restricted period of 15 days with the ability for extension is an adequate and appropriate management measure for protecting right whales. Research conducted by the Northeast Fisheries Science Center concluded that a 15-day restricted period represented the average mean duration of the 13 documented events that began with an initial sighting of three or more right whales. (Clapham and Pace, 2001). Therefore, based on these findings, NMFS established an initial restricted period of at least 15-days with additional extensions to the restricted period if whales continue to meet the trigger for DAM.

Comment 7: A comment from an environmental group expressed concern with the automatic expiration of the DAM zone after 15 days and felt that NMFS should be required to lift restrictions, through notification in the **Federal Register**, once the whales are no longer sighted in the area.

Response: NMFS intends to provide protection for concentrations of right whales that remain present in the area after the conclusion of the 15-day period, if necessary and appropriate, by extending the restricted period, through notification in the **Federal Register**. NMFS believes that an initial restricted period of 15 days with the ability for extension is an adequate and appropriate management measure for protecting right whales. Research conducted by the Northeast Fisheries Science Center concluded that a 15-day restricted period represented the average mean duration of the 13 documented events that began with an initial sighting of three or more right whales. (Clapham and Pace, 2001). Therefore, based on these findings, NMFS established an initial restricted period of at least 15 days with additional extensions to the restricted period if whales continue to meet the trigger for DAM.

Comment 8: Several comments were received from fishermen who felt it is unnecessary to implement DAM because the gear they are currently utilizing is already considered ''whale safe''. Lobstermen fishing in Cape Cod Bay with sinking and neutrally buoyant line and weak links felt that this gear adequately reduces the risk of serious injury or mortality to right whales from entanglements without NMFS requiring further alterations or requiring the removal of gear from the area. Lobstermen also expressed concerns about the economic impact of DAM on their business and added that changing over to neutrally buoyant and sinking line has already been very costly, and expressed displeasure at what was perceived as NMFS' apparent disregard for the efforts of the ALWTRT towards developing gear that can coexist with whales without making closures necessary. In addition, the Massachusetts Division of Marine Fisheries (DMF) encouraged NMFS to adopt more universal ''whale safe'' gear modifications instead of implementing DAM because improving devices, such as buoy line breakaways, eliminates the need to completely remove gear from an area. Conversely, several environmental groups commenting on this issue recommended that NMFS require the removal of all lobster trap and gillnet gear from the DAM zone, in light of the fact that NMFS and the ALWTRT can not agree on gear modifications that sufficiently reduce the risk of entanglement.

Response: NMFS will continue to work with the ALWTRT to modify and develop fishing gear that adequately reduces the risk of entanglement to large whales and when such gear is deemed adequate, NMFS may allow it to be used for fishing within DAM zones. In addition, NMFS encourages fishermen to collaborate with the gear research team towards developing fishing gear that completely reduces the risk of entanglement to right whales. However, until then, the most reliable means for reducing the risk of entanglements to right whales within DAM zones is by requiring the complete removal of all lobster trap and gillnet fishing gear. See response to comment 18.

Comment 9: A comment from an environmental group questioned how NMFS planned to enforce voluntary compliance with gear restrictions within DAM zones.

Response: In the event that right whale sightings trigger a DAM zone, NMFS will determine whether to impose restrictions on fishing and/or fishing gear. This determination will be based on a variety of factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety to human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data. If NMFS determines restrictions are necessary in the zone, NMFS may require removal of all gillnet and lobster trap gear from the zone within two days of the publication of the notice in the **Federal Register**. If NMFS decides not to implement restrictions within the DAM zone, NMFS will follow the protocol developed cooperatively between NMFS and the ALWTRT for voluntary compliance. NMFS will issue an alert to fishermen using appropriate media to inform them of the fact that right whale density in a certain area has triggered a

DAM zone. In addition, NMFS will provide detailed information on the location of the DAM zone and the number of animals sighted within it. Furthermore, NMFS will request that fishermen voluntarily remove lobster trap and gillnet gear from the DAM zone and no additional gear be set inside it. NMFS believes providing this information to interested parties and requesting compliance with gear restrictions, which is in every fisherman's interest, is an appropriate means for maintaining communication with industry while providing protection for right whales.

Comment 10: Several comments suggested that the regulation of state waters would be better served if left to state agencies. Specifically, lobstermen fishing in Cape Cod Bay felt that NMFS should follow the Massachusetts DMF approach to developing rules to reduce entanglements. Other commenters from the lobster fishing industry expressed opposition to Federal regulations that would supersede rules already imposed within state waters because of the feeling that DMF knows the state waters better than NMFS. In addition, a comment received from a member of the lobster industry encouraged NMFS to allow the State of Maine to assess and provide the appropriate regulations in consideration of the unique variability and spacial distribution between right whales and fishing gear off the Maine coast. The Maine Department of Marine Resources echoed these concerns and also believed that the state whale protection plans offer the greatest chance of success.

Response: Although the MMPA provides NMFS with authority to regulate in State waters, states can develop equally protective or more protective restrictions if they choose, and NMFS encourages such action. Further, NMFS has cooperative agreements in place with a number of Atlantic states, which enable states to enforce requirements of the MMPA and its implementing regulations.

NMFS tries to coordinate with states on other issues as well. For example, with regard to gear markings that yield individual vessel information, many of the state and Federal fishery management plans currently require marking of buoys and/or traps with individual vessel identification. NMFS plans to continue to work with state fisheries agencies to investigate gear marking coast-wide and identify gaps in marking of surface gear, gillnets, and traps. This information will be presented to the ALWTRT for future consideration

Comment 11: Comments were received that expressed concerns about the procedure for providing notice to fishermen in the event of a DAM closure. For example, the Massachusetts DMF felt that the May 2001, DAM closure was a failure because NMFS did not contact all of the fishermen affected and questioned whether NMFS could dedicate the staff time to informing fishermen of future DAM closures. Another commenter questioned how NMFS would provide notification to fishermen prior to the publication in the **Federal Register**.

Response: Once the decision has been made to remove gear from a DAM zone, based on the criteria outlined in the preamble, NMFS will notify the commercial fisheries affected as quickly and comprehensively as possible. In order to provide fishermen with time to respond to the implementation of gear restrictions within a DAM zone, NMFS will issue a notice at the time the notice is filed with the Office of the **Federal Register**, which is usually 3 to 5 days prior to publication in the **Federal Register**. In addition, when a right whale sighting meets the DAM trigger, NMFS will issue an alert via email to all ALWTRT members and post the alert on the website at www.nero.nmfs.gov/whaletrp/. NMFS hopes that members of the ALWTRT who receive an alert will circulate the information to other interested parties to help insure that the fishermen who may have to eventually remove gear from a DAM zone have time to respond. Fishermen, industry representatives, environmental groups, and all others interested in receiving alerts and notices over the internet should provide their e-mail address to the Northeast Regional Office. (See the **ADDRESSES** section). NMFS will also mail letters providing notice to those who request it by contacting the Northeast Regional Office in addition to posting such notification on the Northeast Regional Office web site at www.nero.nmfs.gov. In addition, NMFS will investigate using a news bulletin service to provide notice through the local press.

Comment 12: Several commenters pointed out that the procedure for creating a DAM zone in the proposed rule differed from how the process is described in the document ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options.''

Response: NMFS agrees and this inconsistency has been corrected in this final rule. The justification and rationale for the correction can be found in the preamble of this final rule under ''Changes in the Final Rule from the Proposed Rule.''

Comment 13: Many comments received questioned the decision factors NMFS proposed when considering whether to impose restrictions on fishing and/or fishing gear within a DAM zone. In particular, several environmental groups felt that, except for the consideration of weather conditions as they relate to the safety of life at sea, the factors listed in the proposed rule should not influence the decision to impose restrictions on fishing because such restrictions should be automatic once a concentration of right whales triggers a DAM zone. It was also noted that NMFS should require the complete removal of all gear automatically once a DAM zone has been triggered. A letter from the Marine Mammal Commission also expressed concerns over the discretion reserved by NMFS with respect to whether to impose restrictions within a DAM zone and felt that the factors should only be considered for setting a deadline when gear should be removed.

Response: NMFS believes that the agency should be provided with some level of discretion when deciding whether to impose gear restrictions within a DAM zone. Therefore, NMFS will base its decision on the enumerated factors that are relevant based on the circumstances surrounding the implementation of a DAM zone.

Comment 14: Several comments from environmental groups expressed concerns over the proposed regulatory language which provides NMFS with the option of deciding whether or not to require the complete removal of lobster trap and gillnet gear from a DAM zone. For example, one commenter felt that this discretion merely maintains the status quo and, therefore, would not sufficiently reduce jeopardy. Another commenter felt that, because NMFS and the ALWTRT cannot agree on gear modifications that would sufficiently reduce the risk of entanglement to right whales, NMFS should require the complete removal of all lobster trap and gillnet gear from the DAM zone.

Response: NMFS believes that reserving the discretion to decide whether to implement gear restrictions within DAM zones gives the agency a reasonable amount of flexibility to respond to the vast multitude of scenarios under which a DAM zone may be triggered. NMFS feels that DAM, in combination with the proposed rules for Seasonal Area Management (SAM) and additional gear modifications, are collectively sufficient to remove the likelihood of jeopardy to the continued existence of North Atlantic right whales.

DAM was specifically included as one of the multiple management components to the Reasonable and Prudent Alternative (RPA) discussed in the four BOs on the Fishery Management Plans for spiny dogfish, monkfish, multispecies, and Federal regulations for the American lobster fishery. According to the RPA, DAM, SAM, and expanded gear modifications were developed to cumulatively eliminate serious mortality and serious injuries of right whales in gillnet and lobster trap gear, eliminate serious and prolonged entanglements, and significantly reduce the total number of right whale entanglements in gillnet and lobster trap gear. NMFS does not feel that reserving the discretion on deciding whether to implement gear restrictions within DAM zones implies that the agency will fail to respond when sightings of right whales trigger DAM. In addition, while NMFS feels that, at the current time, requiring the complete removal of gillnet and lobster trap gear from within a DAM zone is the appropriate means for reducing the risk of entanglement to right whales, the agency continues to encourage fishermen and gear researchers to work on innovating and developing ways to improve fishing gear to avoid serious injury and mortality from entanglements. In recognition of the fact that gear research and development is ongoing, NMFS felt it was important to maintain the option of allowing fishing with ''risk averse'' gear inside a DAM zone in the event that such gear is perfected and approved.

Comment 15: One commenter suggested that NMFS clarify the circumstances under which a DAM would continue and how it would be limited. The commenter expressed concern regarding a hypothetical situation where, during the 15-day restricted period for a DAM zone, a second grouping of whales triggered another separate DAM zone outside but adjacent to the initial zone specified in the notice. Based on this scenario, the commenter was concerned that the initial DAM zone would be enlarged to create a single, very large closure.

Response: In the event that right whales are sighted and a DAM zone is triggered, NMFS would maintain the area for at least 15 days. If a DAM zone is triggered, but no restrictions are implemented, the 15-day period would begin from the time NMFS issues the alert. If, on the other hand, NMFS implements gear restrictions within the DAM zone, the 15-day period would begin on the date the restrictions become effective (i.e., 2 days after publication in the **Federal Register**). In response to the hypothetical situation described, while it is possible that there may be some days that the successive DAM zones overlap, the first DAM zone will automatically expire after 15 days, unless NMFS decided to extend the restricted period to further protect concentrations of right whales. However, NMFS also has the option of removing restrictions prior to the 15-day automatic expiration if subsequent survey efforts confirm that right whales have left the designated area. The second DAM zone would be maintained separately with its own 15-day restricted period.

Comment 16: The U.S. Coast Guard commented on aerial patrols to assist in confirming sightings and enforcing restrictions within the DAM zone. Due to a re-prioritization of law enforcement missions, the Coast Guard will only be able to devote minimal aircraft hours to assist NMFS in the implementation and enforcement of DAM. In addition, surface patrols will be more limited than in the past. Finally, the U.S. Coast Guard stated that, if fishing gear is modified and approved for use within a DAM zone, the U.S. Coast Guard will not be able to assist in enforcement of those restrictions because they are not equipped or trained to haul fixed gear.

Response: NMFS greatly appreciates the support the U.S. Coast Guard has provided in the past for implementing and enforcing management programs designed to protect and conserve marine mammals. These two agencies have a strong commitment to cooperating in the development, implementation, and enforcement of programs for marine protected resources, including North Atlantic right whales and other marine mammals. NMFS acknowledges the fact that the duties of the U.S. Coast Guard have been re-prioritized in light of recent national events. NMFS notes, however, that other means of enforcing the DAM restrictions exist aside from pulling gear and that other law enforcement resources can be used to enforce DAM restrictions.

Comment 17: Several comments were received expressing concerns over the burden placed on American fishing to protect whales while only a token effort is directed towards ship strikes and Canadian fixed gear.

Response: NMFS acknowledges that ship strikes and entanglements with fishing gear of foreign flag vessels also cause serious injury and mortality to right whales. NMFS is currently addressing these threats through other means and policy discussions. NMFS is issuing this final rule specifically to address commercial fishery impacts from four fisheries. This final rule stems from a component of the RPA resulting from consultations required under the ESA on the continued operation of the monkfish, spiny dogfish, multispecies, and lobster fisheries. However, the ALWTRP is designed to respond to the threats posed by domestic fishing gear. NMFS appreciates the continued involvement of the gillnet and lobster trap fisheries in the ALWTRT and their efforts to reduce serious injury and mortality to marine mammals, especially right whales. NMFS understands that right whales are injured and killed by other sources and will continue to work toward reduction of those impacts. For example, NMFS is currently taking into consideration recommendations from the Northeast Implementation Team for the Recovery of the Northern Right whale and the Humpback whale and the Southeast U.S. Right Whale Recovery Plan Implementation Team on ways to reduce the impacts of ship strikes from the recreational and commercial shipping sectors. In addition, NMFS is working on a proposed rule to regulate whale watching. Finally, NMFS is working with representatives from the Canadian Department of Fisheries and Oceans to develop and implement protective measures for right whales in Canadian waters.

Comment 18: A comment received from an environmental groups requested that, if NMFS is planning on allowing gear to be fished within a DAM zone that is determined to sufficiently reduce the risk of entanglement to right whales, then NMFS should clarify what constitutes a ''sufficient'' reduction.

Response: Although NMFS is considering gillnet and lobster trap gear modifications as part of the proposed rule for the SAM program, at present, NMFS does not have criteria developed that would allow gillnet or lobster trap gear to be fished within a DAM zone. NMFS may allow fishing within a DAM zone with specified gear if that gear is determined to sufficiently reduce the risk of entanglement to right whales. The DAM program is designed for a rapid response to the presence of right whales in areas at times that are generally unpredictable. The regulatory text and preamble of the proposed rule notes that any gear modifications determined by NMFS to sufficiently reduce the risk of entanglement to right whales would be identified in the **Federal Register** notice implementing the DAM zone. To the extent practicable, NMFS will provide a separate notification in the **Federal Register**regarding any determination that gear modifications sufficiently reduce the risk of entanglement to right

whales in DAM zones in advance of imposition of any DAM zones with those gear modifications.

Comment 19: One commenter suggested that NMFS initiate inter-agency and international cooperation to assist in the development of programs to protect right whales.

Response: NMFS notes that under section 7 of the Endangered Species Act, Federal agencies must consult with NMFS to insure that any action authorized, funded, or carried out by such agency (referred to as the ''action agency'') is not likely to jeopardize the continued existence of any endangered or threatened species. After discussions with the action agency, if NMFS concludes in a biological opinion that an activity is likely to jeopardize the continued existence of any endangered or threatened species, NMFS must include in its opinion any RPAs to avoid the likelihood of jeopardy to the listed species from the Federal activity. Furthermore, NMFS has established Memoranda of Agreement between several Federal agencies, such as the U.S. Navy, U.S. Coast Guard, and U.S. Army Corps of Engineers, to help better protect and recover listed species. With respect to international cooperation, NMFS is continuing to work with the Canadian government to develop and implement protective measures for right whales in Canadian waters. In addition, NMFS is working with Canadian whale biologists and support teams to improve and expand disentanglement efforts in Canadian waters.

Comment 20: One commenter suggested that NMFS issue regulations to close portions of the Right Whale Critical Habitat Areas to gillnet and lobster fishing and completely prohibit the use of ''high risk'' types of fishing gear in critical habitat during periods of known use by the whales.

Response: Although NMFS has not specifically defined or designated ''high risk'' types of fishing gear, data collected from past entanglements indicates that serious injuries and mortalities to right whales have occurred from interactions with gear used by the anchored gillnet and lobster trap fisheries. As a result, NMFS has implemented regulations that restrict the use of these gear types within right whale critical habitat during the months that the whales are present in these areas. For example, from April 1 to June 30, no lobster trap or anchored gillnet gear may be set in the Great South Channel Critical Habitat. In addition, from January 1 to May 15, anchored gillnetting is prohibited within the Cape Cod Bay Critical Habitat. Lobster trap fishing is permitted during this restricted period within Cape Cod Bay Critical Habitat, but the gear must be set with weak links and sinking lines that reduce the risk of serious injury and mortality from entanglements.

Comment 21: NMFS should develop take reduction plans (TRPs) that would mitigate bycatch of all strategic stocks of marine mammals in commercial fisheries.

Response: NMFS has chosen to develop TRPs on particular stocks. NMFS manages multiple stocks through some TRPs such as the ALWTRP. Decisions on whether a TRP addresses single or multiple stocks is dependent on the similarities of the fisheries that impact these stocks. No take reduction team can be tasked with suggesting recommendations to mitigate bycatch of all strategic marine mammal stocks in commercial fisheries, and NMFS does not have the funds to develop additional take reduction teams at this time. Presently, NMFS is considering the take reduction teams currently formed, and the success of each TRP toward reaching the goals of the MMPA, in order to determine whether funds could be redirected to support additional take reduction teams.

Comment 22: One commenter noted that NMFS must undertake an adequate program of research and development for the purpose of devising improved fishing methods and gear so as to reduce the incidental taking of right whales in commercial fishing.

Response: NMFS is committed to gear research and development, and will expand this program as funding allows. NMFS has gear laboratories and research teams that specifically focus on gear development and testing. Additionally, NMFS contracts with researchers, individuals and companies to develop gear solutions. Many of the current TRP measures are based on the outcome of such gear research (e.g. weak links) conducted and/or funded by NMFS. The gear modifications are important to reduce interactions between right whales (and other large whales) and fishing gear to further reduce serious injury and mortality of large whales due to entanglement in fishing gear. In addition, NMFS intends to continue to support the contributions made by the ALWTRT's Gear Advisory Group. NMFS is collaborating with other organizations to host a gear workshop, tentatively scheduled for February 2002, to investigate additional options and gear enhancements for gillnet and lobster trap gear. The results of this workshop will be distributed to the ALWTRT for consideration of future gear recommendations to NMFS.

Comment 23: Several commenters expressed concerns over the lack of notification regarding the publication of the proposed rules.

Response: Time constraints prevented NMFS from holding public hearings on the current regulations; however, NMFS used other ways to let the public know that public comments were being sought on a proposed rule to address commercial fishery/large whale interactions. In addition to publication of the proposed rule in the **Federal Register**, efforts included distributing the information to ALWTRT members who represent various stakeholder groups and provide valuable links to distribute information to the public, NOAA press release, announcement in NOAA's FishNews, and communications with state managers. NMFS will consider other means of communicating with the public and welcomes recommendations on ways to disseminate such information such as through letters to permit holders.

Comment 24: One commenter suggested that NMFS use emergency publication to expedite the process for implementing DAM.

Response: NMFS is not planning on using emergency publication to implement DAM based on the following reasons. Once the agency has determined to implement gear restrictions within a DAM zone, NMFS intends to forward the signed document to the Office of the **Federal Register** with a request for ''file immediately'' status. As soon as the notification is filed, NMFS will begin to notify interested parties. NMFS has found that requesting emergency publication does not significantly expedite the process for providing notice above what is being provided in this final rule. However, NMFS will consider requesting emergency publication if the particular facts of a situation indicate that doing so would be warranted.

Changes in the Final Rule from the Proposed Rule

This final rule will correct and clarify one of the criteria used to determine the extent of a DAM zone. The description of the criterion presented in the proposed rule did not accurately reflect NMFS' intent in establishing the size of a DAM zone. At issue is the location of the 15 nm (27.8 km) radius that is used to determine the size of a DAM zone.

As published in the preamble of the proposed rule, a 15-nm (27.8 km) radius from the ''event epicenter'' would be used to draw a larger circular zone around each core area encompassing a concentration of right whales. The event epicenter was defined in the proposed rule as the geographic center of all

sightings on the first day of an event. However, the criterion described in the proposed rule does not clearly describe the intent contained in the reference document. The reference document used to establish this criterion, ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options'' (see **ADDRESSES** for copies), describes the DAM zone buffer as the boundary of a circle that extends 15 nm (27.8 km) from the perimeter of a circle around the initial whale sightings or core area. The DAM zone will then be defined by a polygon drawn outside but tangential to the circular buffer zone(s). The latitudinal and longitudinal coordinates of the corners of the polygon will then be identified.

Therefore, § 229.32(g)(3)(ii) is revised to identify the DAM zone as a larger circular zone drawn to extend 15 nm (27.8 km) from the perimeter of a circle around each core area.

Classification

NMFS prepared a FRFA for this rule. A copy of this analysis is available from NMFS (see ADDRESSES). Five alternatives were evaluated, including a status quo or no action alternative, the preferred alternative (PA), and three other alternatives. A summary of that analysis follows:

(1) The ''No Action'' alternative would leave in place the existing regulations promulgated under the ALWTRP, but specific criteria and procedures for DAM would not be included in the regulations. The no action alternative would result in no additional economic burden on the fishing industry, at least in the short-term. However, if the status quo is maintained now, more restrictive and economically burdensome measures than those in this final rule may be necessary in the future to protect endangered right whales. The No Action alternative was rejected because it would not enable NMFS to meet the RPA measures of the BOs required under the ESA.

(2) NMFS considered but rejected an alternative that would require different triggers within each respective state jurisdiction as discussed by the ALWTRT. None of the proposals offered by the states were supported by data. No information has been presented to demonstrate the potential for these triggers to result in DAM zones that would reduce the risk of entanglement to right whales. The ALWTRT discussed having different triggers within each respective state jurisdiction. This could only be considered if the state trigger was found to be more restrictive than the Federal trigger, which is not the case with the triggers suggested by Maine, Massachusetts and/or Rhode Island. The state triggers were evaluated as if they would apply consistently to all waters - federal and state.

(3) NMFS considered but rejected an alternative that would trigger a DAM zone using the observation of one right whale on a single day. In addition, a buffer of 15 nm would be drawn around each individual animal observed. The observation of one or two right whales does not appear to be a good indicator of residency. The trigger in this alternative is not effective at predicting residency, and thus may trigger DAM zones more often than necessary.

(4) NMFS considered but rejected an alternative in which the trigger and buffer would generally be the same as in the preferred alternative (PA)(i.e., the observation of four right whales in a 100-nm2 area and the buffer would be 15 nm), however, instead of imposing a restriction requiring removal of all lobster gear, a 50-percent reduction in vertical lines would be required for lobster gear. The restrictions for gillnet gear would be the same as in the PA which requires complete removal. Based on right whale sightings data in 2000, six areas could potentially be closed. Because this alternative would require the removal of only 50 percent of vertical lines for lobster gear rather than all vertical lines (i.e. all gear), NMFS is concerned that this alternative may not be consistent with statutory objectives.

(5) The PA will temporarily restrict lobster trap and gillnet fisheries when NMFS receives a single reliable report from a qualified individual of three or more right whales within an area (75 nm2) such that right whale density is equal to or greater than 0.04 right whale per nm2. Based on right whale sightings data from 1999 and 2000, a DAM zone would have been triggered four times in 1999 and six times in 2000. NMFS accepted this alternative as these DAM zones are appropriate to avoid jeopardizing the continued existence of North Atlantic right whales and enable NMFS to meet a portion of the RPA in the BO's.

The action is part of the RPA that resulted from the BOs issued by NMFS, in accordance with section 7 of the ESA, to remove the likelihood of jeopardy of North Atlantic right whales posed by the continued operation of the multispecies, spiny dogfish, monkfish and lobster fisheries. The objective of this action is to reduce the level of serious injury to and mortality of North Atlantic right whales in East Coast lobster trap and finfish gillnet fisheries.

NMFS has taken steps to minimize the significant economic impact on small entities through this PA by reserving discretion to issue an alert or impose gear restrictions, rather than closing DAM areas, if these measures would be sufficient to protect concentrations of right whales. The small entities affected by this final rule are gillnet and lobster trap fishermen. The geographic areas for consideration for DAM are limited to areas north of 40° N latitude. Since DAM will be used to respond to unusual and unexpected sightings of right whales, it is difficult for NMFS to predict exactly where DAM zones may be implemented in the future. It is difficult to quantify the economic impacts of NMFS using its discretion in implementing 50 CFR 229.32(g)(2) as the restrictions that will be are unknown at this time in addition to the unknowns of the particular event such as the time and location of the restrictions and the level of fishing effort at that time and location. Therefore, providing an accurate estimate of the number of small entities that will be affected is problematic. Based on the available data, a maximum of 7,539 state and federally permitted lobster vessels and 310 gillnet vessels, which includes federally permitted vessels and may include state permitted vessels, could be affected by this action. However, NMFS does not expect that number of vessels to be affected by any one DAM closure because of the limited size of a DAM zone. For example, the retrospective analysis of the April-May 2000 DAM Area 1 estimated that 210 lobster vessels and 42 gillnet vessels would have been affected by the hypothetical closure.

NMFS received two public comments relating to the economic impacts of this final rule. These comments were considered by NMFS before it approved this final rule and are characterized and responded to by NMFS in the ''Comments and Responses'' section of the preamble to this final rule, as comment/response numbers four and eight. No changes to the rule were made as a result of these comments.

This action contains no new reporting or record keeping requirements. There are no relevant Federal rule actions that duplicate, overlap, or conflict with this action.

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed

with our conclusion that the rule is consistent with the enforceable policies of the approved coastal management program for that state.

This final rule contains policies with federalism implications that were sufficient to warrant preparation of a federalism assessment under Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate official(s) of affected state, local and/or tribal government in October 2001. No comments on the federalism implications of the proposed action were received in response to this notification. However, one affected state did respond on the federalism implications during the comment period for the proposed rule. The comment is characterized and responded to by NMFS in the ''Comments and Responses'' section of the preamble to this final rule, as comment/response number 10. No changes to the rule were made as a result of the comment received.

This final rule implements a portion of the RPA, which resulted from ESA section 7 consultations on three FMPs for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. This final rule implements a component of the RPA contained in the BOs issued by NMFS on June 14, 2001. Therefore, no further section 7 consultation is required.

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

References

ALWTRT. 2001. Draft Atlantic Large Whale Take Reduction Team Meeting Summary. Summary prepared by RESOLVE, Inc. and submitted to the National Marine Fisheries Service July 16, 2001.

Bisack, K. 2001. Economic analysis of Wilkinson Basin closure. Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA. 02543.

Bisack, K. 2001. (Draft) Economic analysis of dynamic area management (DAM). Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA. 02543.

Clapham, P.J. and R.M. Pace, III. 2001. Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options. Northeast Fisheries Science Center Reference Document 01-06. April 2001.

National Marine Fisheries Service. 2000. Environmental Assessment of the Atlantic Large Whale Take Reduction Plan and Implementing Regulations. NMFS. Northeast Region. December 2000.

National Marine Fisheries Service. 2001. Preliminary estimates of the revenue losses to the gillnet and lobster fleet in 1999 due to potential dynamic area closures to protect right whales. NMFS. Northeast Region. March 2001.

National Marine Fisheries Service. 2001. Endangered Species Act section 7 consultation. Biological opinion regarding Fishery Management Plans for monkfish, spiny dogfish, and multispecies and Federal regulations for American lobster. June 14, 2001.

Dated: December 31, 2001.

Rebecca Lent,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

List of Subjects in CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and record keeping requiremnts.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.2, a definition of ''Qualified individual'' and ''Reliable report'' are added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Qualified individual means an individual ascertained by NMFS to be reasonably able, though training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS.

* * * * *

Reliable report means a credible right whale sighting report based upon which a DAM zone would be triggered.

* * * * *

3. In § 229.32, paragraph (g)(3) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g)***

(3) For the purpose of reducing the risk of fishery interactions with right whales, NMFS may establish a temporary Dynamic Area Management (DAM) zone in the following manner:

(i) *Trigger.* Upon receipt of a single reliable report from a qualified individual of three or more right whales within an area NMFS will plot each individual sighting (event) and draw a circle with a 2.8 nm (5.2 km) radius around it, which will be adjusted for the number of right whales sighted such that a density of at least 0.04 right whales per nm2 (1.85 km2) is maintained within the circle. If any circle or group of contiguous circles includes 3 or more right whales, NMFS would consider this core area and its surrounding waters a candidate DAM zone.

(ii) *DAM zone.* Areas for consideration for DAM zones are limited to areas north of 40o N latitude. Having identified any circle or group of contiguous circles including 3 or more right whales as candidates for protection, as identified in paragraph (g)(3)(i) of this section, NMFS will determine the extent of the DAM zone as follows:

(A) A larger circular zone will be drawn to extend 15 nm (27.8 km) from the perimeter of a circle around each core area.

(B) The DAM zone will then be defined by a polygon drawn outside but tangential to the circular buffer zone(s). The latitudinal and longitudinal coordinates of the corners of the polygon will then be identified.

(iii) *Requirements and prohibitions within DAM zones.* Notice of specific area restrictions will be published in the **Federal Register** and will become effective 2 days after publication. Gear not in compliance with the imposed restrictions may not be set in the DAM zone after the effective date. NMFS may either:

(A) require owners of gillnet and lobster gear set within the DAM zone to remove all such gear within 2 days after notice is published in the **Federal Register**, or

(B) allow fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement to right whales. Acceptable fishing practices and gear modifications would be identified in the **Federal Register** notification implementing the DAM zone.

(C) The determination of whether restrictions will be imposed within a DAM zone would be based on NMFS' review of a variety of factors, including but not limited to: the location of the

DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

(iv) *Restricted period*. Any DAM zone will remain in effect for a minimum period of 15 days. At the conclusion of the 15-day period, the DAM zone will expire automatically unless it is extended by subsequent publication in the **Federal Register**.

(v) *Extensions of the restricted period*. Any 15-day period may be extended if NMFS determines that the trigger established in paragraph (g)(3)(i) of this section continues to be met.

(vi) *Reopening of restricted zone*. NMFS may remove any gear restriction or prohibition and reopen the DAM zone prior to its automatic expiration if there are no confirmed sightings of right whales for at least 1 week, or other credible evidence indicates that right whales have left the DAM zone. NMFS will notify the public of the reopening of a DAM zone prior to the expiration of the 15-day period by issuing a document in the **Federal Register** and through other appropriate media.

[FR Doc. 02–272 Filed 1–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 011120279–1311–02; I.D. 092401E]

RIN 0648–AP68

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Interim final rule.

SUMMARY: NMFS is issuing an interim final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to provide further protection for large whales, with an emphasis on North Atlantic right whales, through a Seasonal Area Management (SAM) program. The SAM program defines two areas based on the annual predictable presence of North Atlantic right whales in which gear restrictions for lobster trap and anchored gillnet gear will be required. This action is necessary due to the critical status of the North Atlantic right whale population. The intent of this action is to reduce interactions between North Atlantic right whales and fishing gear and to reduce serious injury and mortality of North Atlantic right whales due to entanglement in fishing gear.

DATES: Effective March 1, 2002. Comments on this interim final rule must be postmarked or transmitted via facsimile by 5 p.m. Eastern Standard Time, on February 8, 2002. Comments transmitted via e-mail will not be accepted.

ADDRESSES: Send comments on this interim final rule to the Chief, Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries and progress reports on implementation of the ALWTRP may be obtained by writing to Gregg LaMontagne, NMFS/Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Gregg LaMontagne, NMFS, Northeast Region, 978–281–9291 or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this proposed rule and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.nmfs.gov/whaletrp/*. Copies of the most recent marine mammal Stock Assessment Reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.nmfs.noaa.gov/prot_res/mammals/sa_rep/sar.html*. Information on disentanglement events is available on the web page of NMFS' whale disentanglement contractor, the Center for Coastal Studies, *http://www.coastalstudies.org/*.

Background

This interim final rule implements modifications to the ALWTRP as deemed necessary by NMFS to satisfy requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). On June 14, 2001, NMFS issued four Biological Opinions (BOs) as the result of ESA section 7 consultations on the three Fishery Management Plans (FMP) for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. The BOs concluded that the fisheries conducted pursuant to the three FMPs and the lobster regulations are likely to jeopardize the continued existence of right whales. In response to the section 7 consultation's jeopardizing finding, NMFS developed a Reasonable and Prudent Alternative (RPA) with multiple management components. As part of its RPA, NMFS developed gear restrictions for the anchored gillnet and lobster trap fisheries based on predictable annual concentrations of right whales. Details concerning the justification for and development of the SAM program and the implementing regulations were also provided in the preamble to the proposed rule (66 FR 59394, November 28, 2001) and are not repeated here.

Approved Measures

SAM Areas

The SAM program is established to protect predictable annual congregations of North Atlantic right whales in the waters off Cape Cod and out to the Exclusive Economic Zone line (see figure 1) as observed in aerial surveys from 1999–2001 (Merrick, et al. 2001). NMFS has defined two areas, called SAM West and SAM East, in which gear restrictions for lobster trap and anchored gillnet gear are required. These requirements are more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Northern Inshore Lobster Waters and Other Northeast Waters (gillnet area description). SAM West and SAM East will occur on an annual basis for the period March 1 through April 30 and May 1 through July 31, respectively. The dividing line between SAM West and SAM East is at the 69° 24′ W. longitude line. See table 1 for the spatial and temporal definitions of the areas.

TABLE 1.—SEASONAL AREA MANAGEMENT AREAS

Point	Latitude (north)	Longitude (west)	Comment
SAM West Polygon—In effect from March 1–April 30			
1	42° 04.8′	70° 10′	NE landfall of Cape Cod Bay (CCB) Critical Habitat (CH) at shoreline.
2	42° 12′	70° 15′	NE corner CCB CH.
3	42° 30′	70° 15′	NW Corner SAM West.
4	42° 30′	69° 24′	NE Corner SAM West.
5	41° 48.9′	69° 24′	NW side of GSC CH.
6	41° 45′	69° 33′	Runs along GSC CH.
7	41° 45′	69° 55.8′	SW landfall at Cape Cod return along shoreline to point 1.
SAM East Polygon—In effect from May–July 31			
1	41° 48.9′	69° 24′	NW side of GSC CH.
2	42° 30′	69° 24′	NW corner of SAM East.
3	42° 30′	67° 27′	NE corner SAM East.
4	41° 45′	66° 48′	SE corner SAM East.
5	41° 45′	68° 17′	Runs to GSC.
6	42° 10′	68° 31′	Runs along NE side GSC CH return along NW side of GSC CH to point #1.

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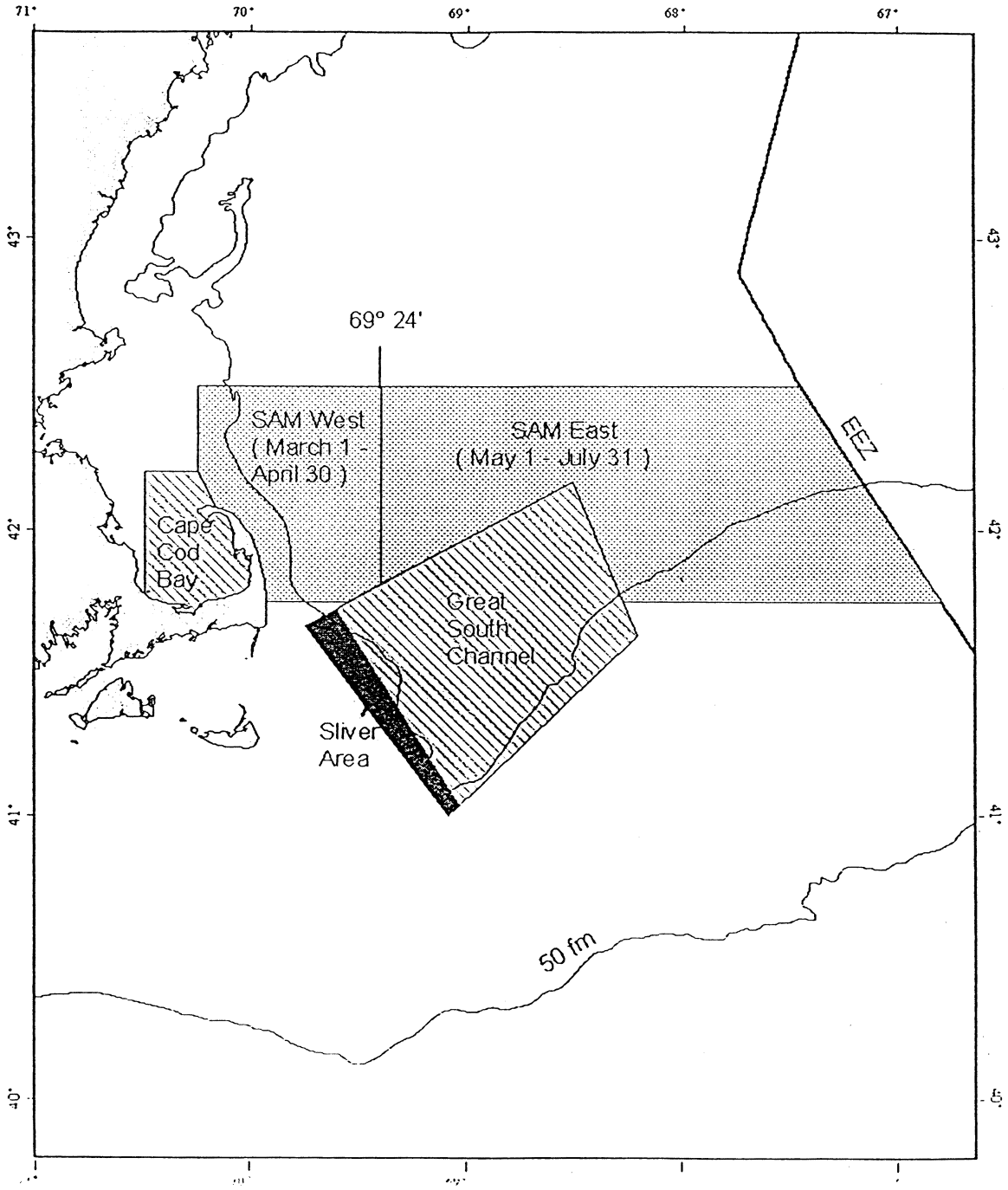
Figure 1

Atlantic Large Whale Take Reduction Plan Seasonal Area Management (SAM)



Lobster Trap Gear

Fishermen utilizing lobster trap gear within the portions of the Northern Nearshore and Northern Inshore State Lobster Waters that overlap with a SAM area must utilize all the following gear modifications when a SAM area is in effect:

1. Groundlines and buoy lines must be made entirely of either sinking or neutally buoyant line. Floating groundlines and buoy lines are prohibited;

2. A weak link must be placed at all buoys with a maximum breaking strength of 600 lb (272.2 kg) at each buoy. Each weak link must be installed as close to each individual buoy as operationally feasible (See figure 1); and

3. Fishermen utilizing lobster trap gear within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the trawl string depending on the direction of the set.

Fishermen utilizing lobster trap gear within the portion of the Offshore Lobster Waters Area that overlaps with a SAM area must utilize all the following gear modifications when a SAM area is in effect:

1. Groundlines and buoy lines must be made of either sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

2. A weak link must be placed at all buoys with a maximum breaking strength of 1,500 lbs (680.4 kg). Each weak link must be installed as close to each individual buoy as operationally feasible (See figure 2);

3. Fishermen utilizing lobster trap gear within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the trawl string depending on the direction of the set.

Figure 2

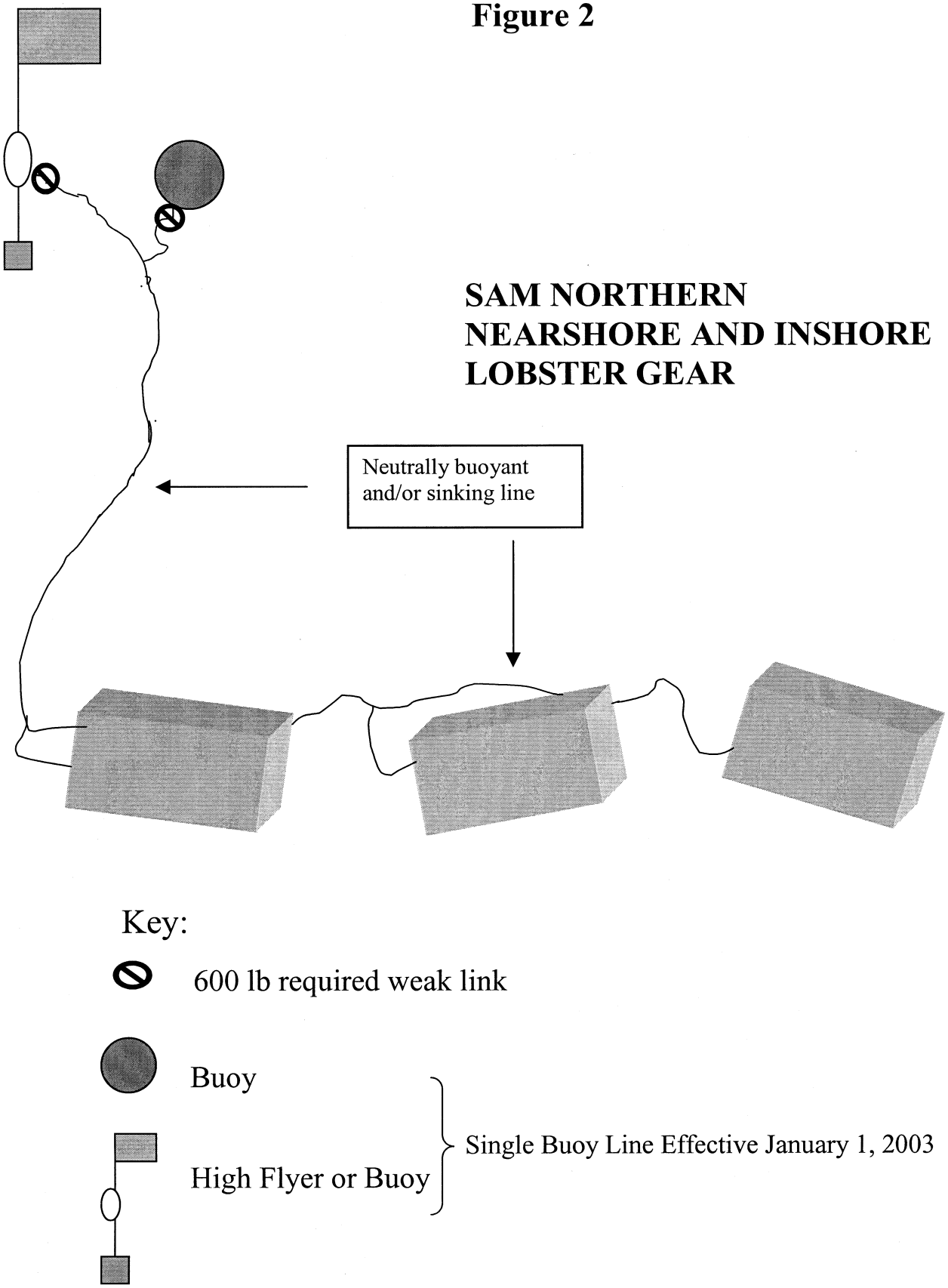
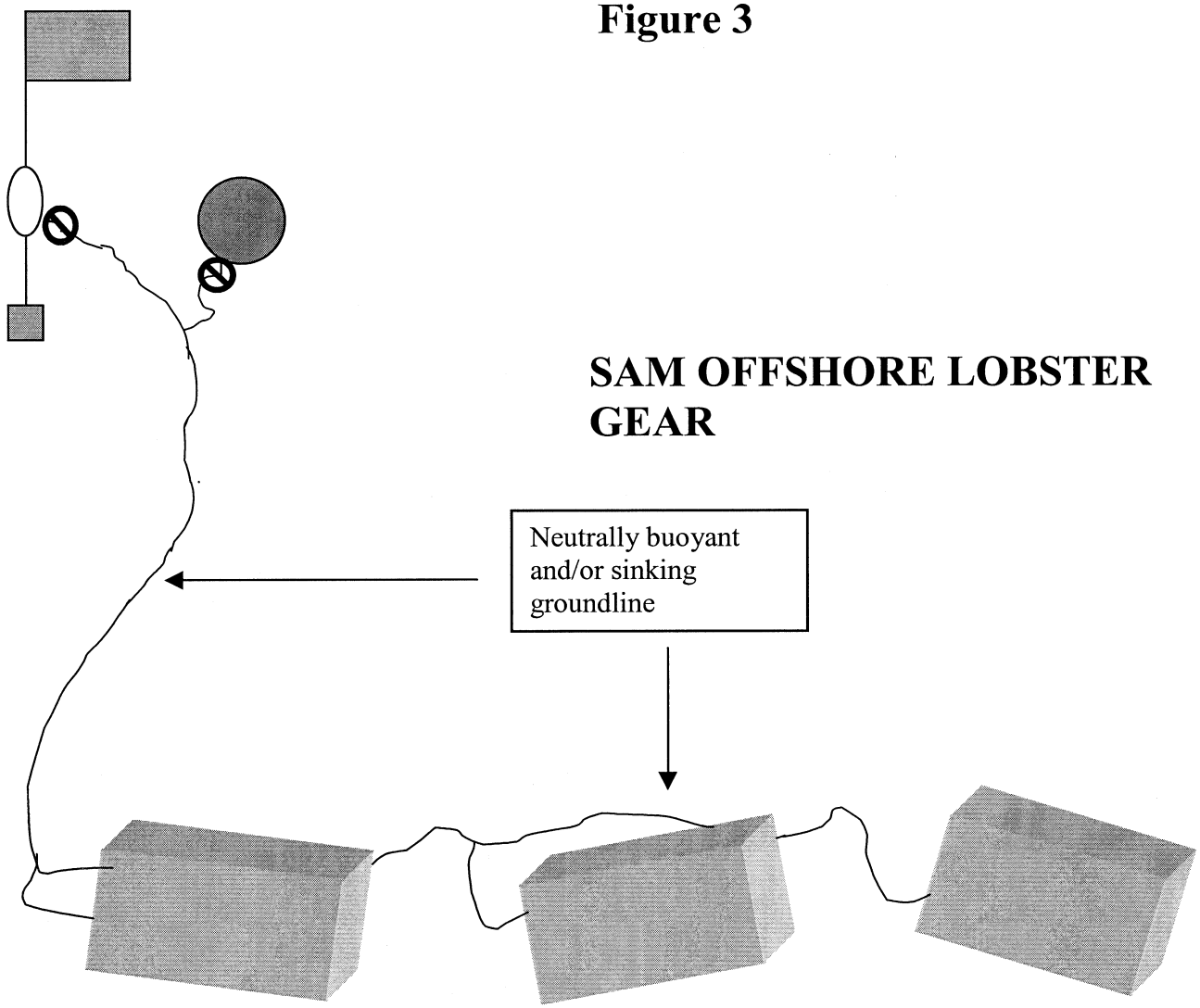

SAM NORTHERN
NEARSHORE AND INSHORE
LOBSTER GEAR
Neutrally buoyant
and/or sinking line
Key:
600 lb required weak link
Buoy
High Flyer or Buoy
Single Buoy Line Effective January 1, 2003

Figure 3



Key:

1500 lb required weak link

Buoy

High Flyer

Single Buoy Line Effective January 1, 2003

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Waters Area that overlaps with a SAM area must utilize all the following gear modifications when a SAM area is in effect:

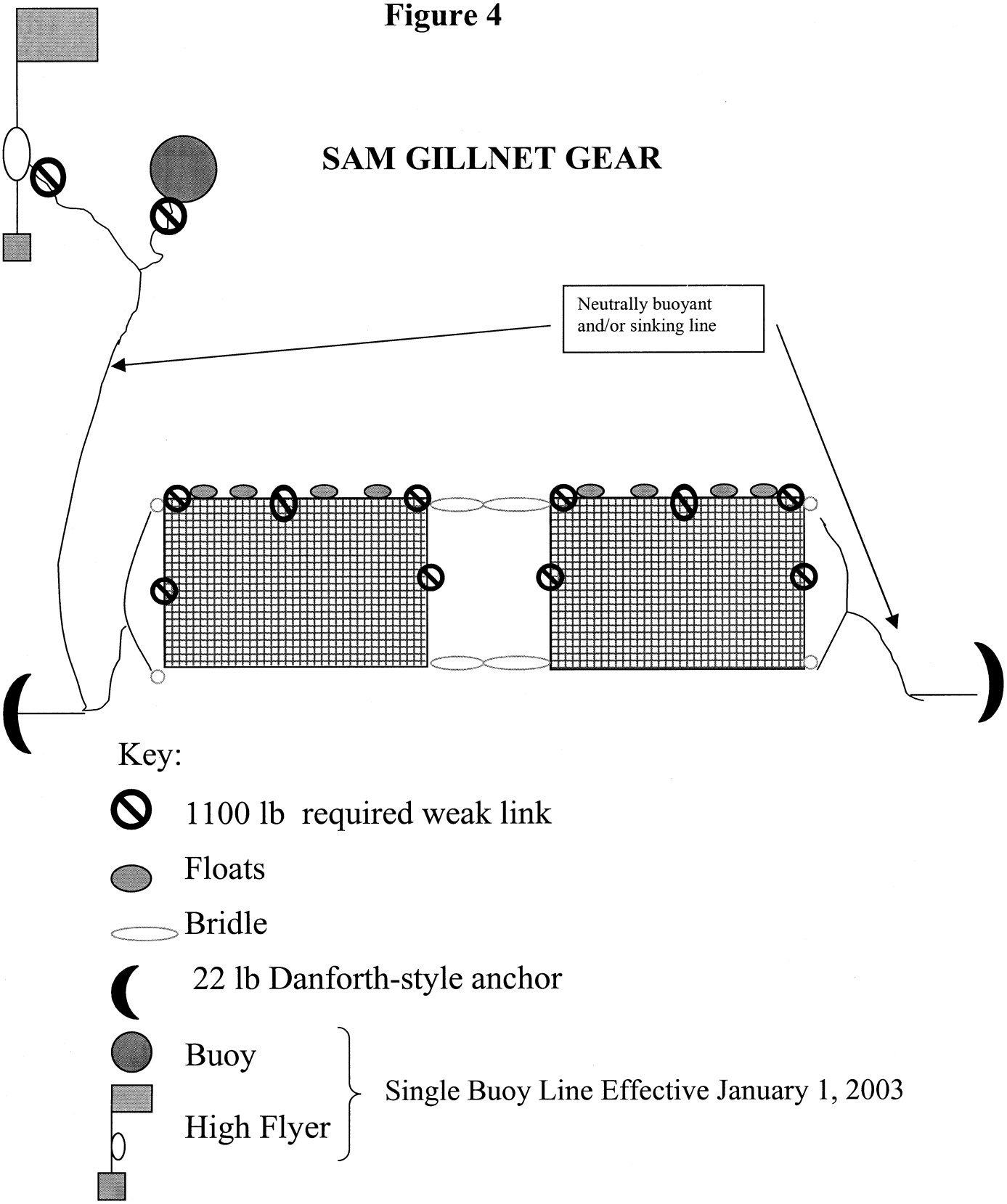
1. Groundlines (the lines between the net bridle and the anchors) and buoy lines must be made of sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

2. Each net panel must have a total of 5 weak links with a maximum breaking strength of 1,100 lbs (498.9 kg). Net panels are typically 50 fathoms in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be, one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends (See figure 4);

3. Fishermen utilizing gillnets within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the gillnet string depending on the direction of the set; and

All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (9.9 kg) Danforth style anchor at each end of the net string.

Figure 4



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Interaction With Other Restrictions

The gear restrictions required for the SAM areas do not preempt existing restrictions within Cape Cod Bay and the Great South Channel critical habitat for North Atlantic right whales. As described in the proposed rule to implement the Dynamic Area Management (DAM) program (66 FR 50160, October 2, 2001), NMFS maintains its authority to implement the DAM program, if conditions warrant such action. DAM is designed to respond to unexpected aggregations of North Atlantic right whales outside of critical habitat and other regulated waters, such as the proposed SAM areas. NMFS anticipates that the DAM program will be implemented as a final rule no later than December 31, 2001. Because SAM areas would protect areas of known North Atlantic right whale aggregations, NMFS does not anticipate that DAM areas will be established within SAM areas. However, the DAM program allows NMFS to implement DAM within SAM areas if conditions warrant such action. NMFS anticipates that the DAM program could be necessary during the times and in the areas when SAM is not in effect. NMFS will consider comments received on this interim final rule on SAM to further refine the relationship between DAM and SAM.

Comments and Responses

On October 3, 2001, NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) and a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for SAM (66 FR 50390). As discussed in the preamble to the proposed rule for this action (66 FR 59394, November 28, 2001), the Federal District Court for the District of Massachusetts ordered NMFS to have a signed proposed SAM rule by November 23, 2001. Consequently, NMFS published a proposed rule and requested public comments regarding the proposed action. Approximately 168 letters of comment were received during the public comment periods for the ANPR and proposed rule. NMFS considered the comments received on both the ANPR and proposed rule as part of its decision making process. A complete summary of the comments and NMFS' responses is provided here.

ANPR Comments

NMFS received 14 sets of comments on the SAM ANPR. The comment period for the ANPR ended November 2, 2001.

General Comments

Comment 1: Seven commenters generally supported additional regulations or management measures, including Seasonal Area Management (SAM), to protect North Atlantic right whales (right whales). Four of these commenters further stated that fixed gear fisheries should be allowed to continue operating in SAM areas with modified fixed gear and practical regulations.

Response: NMFS believes SAM is necessary as an element of the Reasonable and Prudent Alternative (RPA) required under the Endangered Species Act (ESA) to protect the right whales. NMFS acknowledges the preference for a management plan that facilitates continued fishing with gear modifications that address both the goal of reducing the total number of entanglements and the goal of avoiding serious injury or mortality to North Atlantic right whales.

Comment 2: One commenter was opposed to any regulatory changes.

Response: Due to the endangered status of the North Atlantic right whale population, there is a need to further reduce serious injury and mortality caused by the multispecies, spiny dogfish, monkfish, and lobster fisheries as currently prosecuted. NMFS believes SAM is necessary as an element of the RPA required to protect the right whales. NMFS has determined that the additional regulatory measures included in SAM, DAM and the additional gear modifications are necessary to meet the objectives of the ESA and the MMPA. The ESA requires that the NMFS ensure that activities it authorizes, including commercial fishing, do not jeopardize the continued existence of right whales. The MMPA provides that the immediate goal of a take reduction plan is to reduce incidental mortality or serious injury of marine mammals taken in the course of commercial fishing to levels less than the potential biological removal level and the long-term goal is to reduce such incidental mortality or serious injury to insignificant levels approaching a zero rate. Because the potential biological removal level for right whales is zero, these goals are essentially the same for right whales. These regulatory changes are necesssary to attain these goals.

Comment 3: One commenter stated strong opposition to removal of lobster gear from a SAM zone as a management measure.

Response: NMFS did consider closure to lobster and gillnet gear in the proposed rule and selected gear modification as the management measure of choice. In selecting the approach of gear modifications, we determined that it was consistent with the reasonable and prudent alternative (RPA) in the biological opinions for the gillnet, Northeast multispecies, and monkfish fishery management plans and the Federal regulations for the lobster fishery. The Management Action identified in the RPA is to utilize data to ''effect annual restrictions to minimize interactions between fishing gear and right whales.'' Area restrictions that could be included in the management scheme as specified in the RPA include closing areas to fishing gear or restricting the areas to only modified gear that has been proven to prevent serious injury or mortality to right whales. It is important to note that the language in the RPA did not direct NMFS to eliminate interactions between fishing gear and right whales but to minimize the interaction. Another factor in NMFS' identification of gear modifications rather than closures as the preferred option was the concern that closures would result in concentration of gear at the edges of the SAM management area. Since that gear would not include the additional gear modifications that NMFS is requiring within the SAM zone, it would pose a greater risk to right whales. Additional conservation benefit gained through the adoption of a gear modification approach is obtained due to the fact that once fishermen re-rig their gear to comply with the SAM gear modifications, it is likely that they will maintain these gear modifications even while fishing outside of the SAM restricted zone.

Comment 4: One commenter expressed a preference for measures such as SAM versus management measures contained in the Dynamic Area Management (DAM) proposed rule. The commenter's interpretation is that SAM would include the widespread use of practical whale safe gear.

Response: NMFS acknowledges the preference for SAM over DAM given that SAM is predictable and allows for fishing activity to continue with the use of modified gear. DAM and SAM are both elements of the RPA's management plan and as such both must be utilized to provide protection to right whales. NMFS anticipates that the need to utilize DAM will be significantly decreased through the implementation of SAM since the vast majority of sightings of right whale concentrations occur during the time and area identified in the SAM.

Comment 5: One Commenter stated that the input and support of the fishing industry is critical to the success of these regulations in meeting the

objectives. There was further concern expressed that the comment and response process NMFS utilized did not allow adequate time for response.

Response: NMFS values the input and support of the fishing industry in developing measures to protect right whales. NMFS is engaged in the Atlantic Large Whale Take Reduction Team (ALWTRT) process as a means to incorporate the knowledge and experience of the constituents early in the regulatory process. Some of the recommendations contained in this interim final rule are a product of the ALWTRT. Though NMFS may not always implement ALWTRT recommendations exactly as stated, NMFS does consider this information when developing regulations. The comments and response process was expedited in this interim final rule due to a court order to finalize rulemaking by December 31, 2001 associated with the critical status of the North Atlantic right whale population.

Comment 6: One commenter indicated that NMFS should immediately identify at-sea enforcement as a high priority and develop protected resource penalty schedules for the ALWTRP.

Response: NMFS agrees that at-sea enforcement is important to the success of the ALWTRP and will conduct enforcement activities as the budget allows. NMFS also relies on its partnership with the U.S. Coast Guard and state agencies to monitor compliance with the ALWTRP. NMFS has existing penalty schedules for violations of the MMPA and the ESA, and regulations pursuant to those statutes. In addition, NMFS enforcement has entered into agreements with many states to encourage and facilitate joint enforcement of regulations.

Gear Modification Comments

Comment 7: Three commenters stated that lobster gear modifications for use in the SAM area should correspond to what is currently used and proposed for use in Cape Cod Bay Critical Habitat (CCBCH). These gear modifications would include neutrally buoyant and/or sinking line for groundlines and weak links for buoy lines. Two commenters also endorsed neutrally buoyant line as a gear modification to be employed in SAM areas. One of these commenters is already using neutrally buoyant line and weak links and believes this gear is ''whale safe''.

Response: NMFS does endorse the measures currently employed in CCBCH and acknowledges that some fishermen are already using gear similar to what is proposed for use in SAM areas. NMFS has included neutrally buoyant line and/or sinking line as well as weak links as gear modifications for lobster trap gear to be used in SAM areas.

Comment 8: Two commenters endorsed the use of neutrally buoyant line for gillnet bridles in SAM areas. One of these commenters endorsed the expanded use of weak links in the net panels of gillnets.

Response: NMFS has prohibited the use of floating line for gillnet bridles in SAM areas and increased the number of weak links in the gillnet panels as a part of this rule. Neutrally buoyant or sinking line are methods of complying with this prohibition.

Comment 9: One commenter indicated that NMFS should prohibit fishing in SAM areas until such time as whale safe or low risk gear, as defined at the June 27–28, 2001, ALWTRT meeting, is developed. This commenter further indicated that the ANPR did not specify gillnet gear modifications and as such gillnets should be prohibited from any SAM.

Response: NMFS has included a description of gillnet and lobster trap gear which NMFS believes does meet the low risk definition. Lobster trap and gillnet gear that meets the definition is described in this rule. Gear research and testing will continue to identify ways to further reduce risk and to make progress toward the goal of identifying ''whale safe gear.''

Rulemaking Process Comments

Comment 10: Two commenters indicated that the full administrative process, including an Environmental Impact Statement (EIS) as required under the National Environmental Policy Act, should be carried out prior to the final determinations of SAM area boundaries. These commenters also wanted the conservation equivalencies of closures required under the Harbor Porpoise Take Reduction Plan and existing groundfish closures to be considered in determining management actions and the SAM boundaries.

Response: NMFS has completed an Environmental Assessment (EA) for the SAM interim final rule which is available to the public (see Addresses section). NMFS did consider other management actions in the Gulf of Maine when drafting these regulations. The closures/restrictions referenced by the commenter will impact gillnet activities but not lobster trap activities in the SAM areas and as such other management measures may or may not contribute to the protection of right whales.

SAM Implementation Comments

Comment 11: One commenter indicated that the SAM area should encompass the Jeffreys Ledge area which is reported to be a seasonal high use area in a recent paper titled: Right Whales (*Eubalaena glacialis*) on Jeffreys Ledge: A Habitat of Unrecognized Importance. This commenter supports designating areas that encompass approximately 90 percent of seasonal sightings as SAM areas.

Response: NMFS utilized the Dynamic Area Management (DAM) trigger and associated protective zones to define the SAM zones in terms of time and space (Clapham and Pace, 2001). The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, *et al.* 2001). NMFS utilized the criteria that the animals were sighted in sufficient density, as described in the DAM trigger document, in at least 2 survey seasons. This approach was utilized to impose predictable restrictions in areas and times where animals were sighted while also accounting for inter-annual variation. NMFS will continue aerial survey efforts in 2002 and should animals appear in sufficient density in the Jeffreys Ledge area, NMFS could implement a DAM closure to provide further protection for North Atlantic right whales. Additional survey data could also support expansion of the SAM area or delineation of additional separate SAM areas.

Comment 12: One commenter favored the implementation of the entire area for the entire time period rather than dividing the area.

Response: NMFS did not believe that data supported a SAM area for the entire area over a 5-month period. NMFS did employ a divided polygon to define the SAM areas. The SAM West and East designation was determined based on the distribution (spatially and temporally) of North Atlantic right whales.

Comment 13: Three commenters preferred ''rolling restrictions'' running from west to east as the animals moved east and the season progressed. This concept would result in no initial restrictions until right whales were sighted, followed by the lifting of restrictions as the animals depart the area. One commenter indicated that an initial restriction date with sequential openings to follow as the animals departed an area would be preferred.

Response: NMFS did consider this approach in developing this rule. The

approach was not employed due to the logistical difficulties inherent in the regular monitoring and surveillance of right whales over such a large area. The areas defined in this interim final rule support sufficient right whale density to trigger a management action, as demonstrated by data for the last three consecutive years. NMFS will continue survey efforts to refine the boundaries of SAM as required. In addition, a programmed restriction, at a predetermined time and location, which the industry is aware of in advance, is reported to be preferred by the fishing industry thereby increasing the likelihood of compliance. The gear modifications required to fish in a SAM area are extensive and NMFS believes fishermen will not be able to change gear quickly to comply with SAM. NMFS believes that fishermen who want to fish in a SAM area will need to plan months in advance to have their gear in compliance. These factors were considered in using programmed restrictions. An additional logistical difficulty in using sightings to impose or lift SAM regulations is that it requires regular monitoring and surveillance of right whales over such a large area. NMFS has determined that there is sufficient survey data to support the SAM area in this rule; additional survey data may provide insights into other candidate SAM areas.

Comment 14: One commenter indicated that additional survey effort is urgently needed to assure that seasonal management zones are adequate in time and area.

Response: NMFS agrees that additional survey data is necessary to refine management initiatives for right whales. NMFS will continue aerial survey efforts in the Gulf of Maine/New England area in 2002 in pursuit of this goal.

SAM Timing Comments

Comment 15: One commenter indicated that a SAM zone east of Cape Cod for the period April–June 30 might be a reasonable measure.

Response: NMFS utilized aerial survey data from the last 3 field seasons (1999–2001) to determine the time and areal extent of the SAM areas. The SAM West and SAM East areas represent times and areas where right whales were sighted in all 3 survey seasons. This area is east of Cape Cod and covers the time period from March 1–July 31.

Comment 16: One commenter indicated that the SAM area should be in effect beginning in January of every year to protect right whales as they arrive from the southern wintering areas and any animals that wander out of the Cape Cod Bay Critical Habitat Area.

Response: NMFS utilized the DAM trigger and associated protective zones to define the SAM zones in terms of time and space (Clapham and Pace, 2001). The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, *et al.* 2001). Should animals appear in sufficient density in the geographic area defined as SAM prior to the effective dates of the restriction, DAM would be implemented thus providing protection for the animals. NMFS will continue to conduct surveys to refine management measures such as SAM for the protection of right whales. SAM was not intended to encompass every right whale sighting, but to provide additional protection to feeding aggregations of right whales due to their increased vulnerability.

Comment 17: Two commenters suggested a specific area be defined as an Offshore Lobster SAM area. The suggestion was an area east of a point defined by the easternmost location of a whale aggregation that met the DAM trigger as shown during the June 27–28 ALWTRT and reflected on page 4 of the meeting summary prepared by Resolve, Inc. This commenter indicated that fishermen in this area would fish with neutrality buoyant or sinking line and weak links at the buoy of not more than 1500 lbs (680.4 kg) breaking strength.

Response: NMFS believes this area corresponds to an area east of 68°15′ W. long. out to the Hague Line. NMFS did include these gear modifications for the area specified as well as all Offshore Lobster Waters (as defined by the ALWTRP, 50 CFR 229.32(c)(5)(i)) within a SAM area. It is important to note that at the time of the ALWTRT meeting, NMFS presented only preliminary data that included only 2001 sightings. Many commenters discuss the SAM area and refer only to the preliminary data that was presented at the ALWTRT meeting. The analysis that was conducted following the ALWTRT meeting included sightings data from 1999, 2000 and 2001. The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, *et al.* 2001).

Comment 18: One commenter stated that the ANPR/NOI was inadequate to meet the RPA and that all three actions (DAM, SAM and gear modifications) must be in place simultaneously.

Response: NMFS recognizes the concern expressed by the commenter. NMFS followed the ANPR with a proposed rule which provided additional information. This interim final SAM rule addresses the concern that a rule implementing SAM be in place with the DAM and gear modification rules, which are also being published in final form.

Comment 19: One commenter indicated that SAM is a poor substitute for stronger regulations in critical habitat and that critical habitat should be extended to the areas determined to be appropriate for SAM.

Response: NMFS recognizes the concern expressed by the commenter. The designation of an area as critical habitat does not automatically add regulations stronger than those in place for SAM areas. NMFS will consider designating SAM areas as critical habitat as part of the comprehensive EIS planned for 2002.

Proposed Rule Comments

NMFS received a total of 168 sets of comments on the proposed rule for SAM. Approximately 150 of these were of a standard format. The comment period ended December 13, 2001.

General Comments

Comment 1: Four commenters stated that the SAM regulations as proposed do not provide the protection necessary to achieve the reasonable and prudent alternative under the ESA or constitute an effective take reduction plan under the MMPA.

Response: NMFS believes that the SAM program in combination with other measures in the RPA constitute the level of protection necessary to meet the requirements under the ESA and coupled with the other elements of the ALWTRP does constitute an effective take reduction plan under the MMPA. NMFS is implementing a strategy for addressing the threat posed by commercial fishing practices to right whales which includes the following components: Adoption of broad based gear modifications to reduce the risk of serious injury or mortality of right whales; specific, more restrictive, gear modifications in areas and at times of greater concentration of right whales (SAM); specific, more restrictive, restrictions in areas which contain physical or biological features essential to the conservation of North Atlantic right whales (and, therefore, designated as critical habitat under the ESA); an ability to impose restricts in areas and at times when concentrations of right whales are observed (DAM); support for implementation of a disentanglement

program to respond to observed entangled marine mammals; and investigation and testing of additional gear modifications to further reduce the risk of entanglement and serious injury or mortality of rights whales. Collectively, this approach is designed to avoid jeopardy to right whales from commercial fishing practices and supports the achievement of a zero mortality rate goal.

Comment 2: One commenter stated that management initiatives based on the distribution and occurrence of right whales may have little or no impact on the entanglement rate of other large whales species the ALWTRP is charged with protecting.

Response: NMFS disagrees with the commenter and does believe that the management initiatives implemented by this interim final rule will benefit other species of large whales that NMFS is charged with protecting. Obviously right whale distribution was the principal driving force in the delineation of the SAM area. However, the additional gear modifications reduce the risk posed by this gear to large whales, including but not limited to right whales. Since we expect that fishermen who modify their gear to be able to fish within the SAM zone will likely fish that same modified gear outside the time and area of the SAM restriction, additional benefits to right whales and to other large whales outside of SAM will be realized.

Comment 3: All commenters supported the concept of SAM which facilitates continued fishing coupled with gear modifications which reduce entanglements and hence serious injury or mortality. Several commenters wanted to see specific changes to the implementation of the measure or questioned the overall conservation benefits of the SAM program as described in the proposed rule.

Response: NMFS has responded to the comments received and adopted some specific recommendations shown in this interim final rule. The conservation benefit of the SAM program is that it offers increased protection to anticipated concentrations of right whales at a time when they may be more vulnerable to entanglement, i.e. when they are feeding. NMFS has used past sightings data to predict right whale concentrations in time and in space and has identified and required modified fishing gear that poses a low risk to right whales of serious injury or mortality. This SAM program is a very important component in the overall NMFS strategy for the protection and recovery of right whales.

Comment 4: One commenter supported SAM in concept but indicated that all gillnet and lobster fishing should be prohibited in the SAM area until such time as fishing gear proven to be unlikely to seriously injure or kill right whales has been developed. Three commenters supported gear modifications as opposed to total closures.

Response: NMFS considered the concept of a total closure to lobster trap and gillnet gear in the SAM areas and determined that gear modifications developed through the TRT process would result in more conservation benefits to the animals. The basis for this determination is that total closures refocus fishing efforts to other areas and may result in an edge effect where gear is concentrated around the periphery of a closure posing a greater risk of entanglement. NMFS believes that the gear modifications required in this interim final rule prevent entanglements where possible and reduce the severity of entanglements when they do occur and will alleviate the threat of serious injury or mortality. NMFS maintains that the data available and presented in the proposed rule provides sufficient evidence that fishing within the SAM area with the gear modifications required is unlikely to result in serious injury or mortality of a right whale.

Comment 5: Two commenters identified at-sea enforcement as a priority and requested a schedule of protected resources penalties be developed for the ALWTRP regulations.

Response: See comment and response 6 in the ANPR Comments and Responses.

Comment 6: Two commenters stated that ship strikes remain a major problem for right whales. One of the two wanted to know how DAM and SAM would impact vessel traffic.

Response: NMFS agrees that ship strikes remain an issue and is addressing the issue under the Northeast Implementation Team for the Recovery of the Northern Right Whale and the Humpback Whale and the Southeast U.S. Right Whale Recovery Plan Implementation Team, including their Ship Strike Committees. The shipping industry has been responsive in this forum and the agency is actively seeking solutions to the problem. DAM and SAM are management actions directed at the commercial lobster and gillnet fisheries in the SAM area and will not impact vessel traffic.

Comment 7: One commenter indicated that NMFS should seek out additional historical data other than the 1999–2001 aerial survey data in developing the SAM boundaries as the SAM area may be overstated.

Response: The aerial survey efforts of 1999–2001 were partially based on the historical presence of right whales such as the data used to support the critical habitat designation in Great South Channel. Historical data is not available in suitable quantity for the areas in question and as such could not be utilized in this analysis. There is no reason to expect that the observations of right whales in 1999, 2000 and 2001 are not representative of the future presence of right whales.

Comment 8: Four commenters stated that NMFS should develop broad based gear modifications for regional use based on the tracking data from several right whales observed during the 2001 field season which demonstrated these animals can range far and wide and may not remain in the areas defined as critical habitat. A broad based gear requirement would also be less complex to implement and more readily enforced.

Response: NMFS agrees with the concept of broad based gear modifications but the experience to date is that unique physical environments require unique gear modifications. Different breaking strength weak links for the Offshore Lobster Waters versus Nearshore Lobster Waters is an example of such unique environmental requirements. The fishing industry has objected to gear modifications in areas that are not documented to support whales as an unnecessary economic burden with no perceived benefit to the animal. NMFS recognizes the economic impact on industry and has strived, through the ALWTRT process and outreach, to minimize economic impact while maximizing conservation benefit from the management measures implemented. The gear modifications required in the SAM areas are over and above broad based gear modifications; however, NMFS believes that the additional burden to comply with these more restrictive gear modifications is justified based on the increased potential for interactions between right whales and fishing gear in the SAM area (due to the observed concentrations of right whales).

Comment 9: One commenter indicated that the rulemaking process did not facilitate a full and open process to include public hearings and industry feedback on the management plan.

Response: See comment and response 5 and in the ANPR Comments and Responses.

Comment 10: Two commenters indicated that a regulation with gear modifications of this magnitude will require time. One of the commenters indicated that NMFS should develop a

phase-in schedule to change over all lobster and gillnet gear that is fished in waters where right whales occur routinely.

Response: NMFS appreciates the comments which address the need for manufacturers and suppliers to manufacture the neutrally buoyant and/or sinking line in sufficient quantity and time for the fishermen to replace the existing gear. In fact, the limitation on supply, as well as the increased economic cost, is one of the reasons why it is not reasonable at this time to impose these gear modifications more broadly. Due to the critically endangered status of right whales, and agency mandates under the ESA and MMPA, however, we must take immediate action within SAM areas to decrease the risk to right whales. Fishermen who cannot comply with the gear requirements in the allotted timeframe still have the option of fishing outside of the SAM areas.

Comment 11: One commenter encourages NMFS to utilize passive acoustics and aerial surveys to detect right whales for DAM actions.

Response: NMFS will continue to conduct aerial and shipboard surveys to detect right whales for research and monitoring purposes. The use of passive acoustics appears promising based on a presentation at the 2001 Right Whale Consortium held in October and its use may be more prevalent in the future.

Comment 12: Three commenters indicated that NMFS should continue survey efforts to modify SAM boundaries and effective dates. One commenter indicated that survey efforts may have been inadequate to detect aggregations in areas such as Jeffreys Ledge.

Response: See response to comment 15 in the ANPR Comments and Responses.

SAM Timing Comments

Comment 13: One hundred and fifty commenters indicated that the proposed rule for SAM should be strengthened to protect right whales. The commenters recommended that restrictions in the entire SAM area should be in effect from January 1 through July 31st with areas only open to unrestricted fishing after the whales have left the area. Sixty of these commenters also stated that they are willing to pay more for products if it will ensure the protection and survival of whales.

Response: NMFS appreciates the large response to this important rulemaking process. The level of support from the general public for additional measures to protect right whales is encouraging. The rationale provided for having the SAM areas in effect beginning March 1st as opposed to January 1st, are stated in the proposed rule. NMFS is aware of the migration of right whales into the CCBCH, but believes these animals are transiting the area and not aggregating to feed as described in the DAM trigger document (Clapham and Pace 2001). As stated previously in this document, the SAM area is not intended to encompass every right whale, but rather to offer increased protection to concentrations of feeding right whales, which we believe may be at higher risk of entanglement. Should animals appear in sufficient density in the geographic area defined as SAM prior to the effective dates of the restriction, DAM could be implemented thus providing protection for the animals. NMFS will continue to conduct surveys to refine management measures such as SAM for the protection of right whales. NMFS appreciates the fact that these commenters recognize that conservation comes at some economic cost to fishermen, which may be passed on to the consumer in the form of higher prices for seafood products.

Comment 14: Four commenters indicated that the timing for the SAM West and SAM East was incorrect and should be expanded. The comments generally supported SAM West from January–May 31 and SAM East from March 1–July 31. This expansion of time was considered necessary to protect animals arriving into the Cape Code Bay Critical Habitat and animals that may wander out of the critical habitat as evidenced by two specific animals during the 2001 season.

Response: See response to comment 16 under ANPR section above.

SAM Area Division/Extent Comments

Comment 15: Two commenters stated that the division between SAM West and SAM East was incorrect based on discussions at the ALWTRT meeting on June 27–28, 2001. These commenters indicated the dividing line between these two areas should be in the vicinity of the western most side of the eastern most DAM circle shown on the figure on page 4 of the meeting summary (Resolve 2001). This division would be at approximately the 68° 15′ W. long. line.

Response: NMFS agrees that the dividing line between SAM West and SAM East is not as recommended in the ALWTRT meeting summary. NMFS welcomes such recommendations from the TRT process through the recommendations are not always implemented for a variety of reasons. At the time of the ALWTRT meeting, NMFS presented only preliminary data from 2001 sightings. The discussion at the ALWTRT meeting and any recommendations made at that time were based only on the limited preliminary data presented for general discussion purposes. Following the ALWTRT meeting, NMFS conducted an analysis of the distribution of animals from the aerial surveys conducted from 1999–2001 to determine the appropriate division in time and space of the SAM area. NMFS uses the best available scientific data in developing its regulations which would include all three years of survey data. The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, et al. 2001). NMFS based the areas on this analysis and overlaid it on the existing ALWTRP areas.

Comment 16: Three commenters stated that the SAM area is too large and the eastern end of the SAM East area should be at 67° 45′ W. long. as there are infrequent sightings of animals east of this longitude line. Two of these commenters indicated that right whales do not appear south of the 50-fathom line on the Georges Bank Northern Edge and, therefore, the polygon should be adjusted to exclude waters south of the 50-fathom line that occur east of the Great South Channel Critical Habitat.

Response: NMFS extended the SAM area out to the Hague Line based on the sightings of right whales as reported in the document titled: Identification of SAM Zones for North Atlantic right whale conservation (Merrick, et al. 2001). Figure 9 of that document shows whale aggregations clustered around the Hague Line in all three survey years, 1999–2001. The portion of the SAM East area south of the 50 fathom line is necessary to encompass the 15 nautical mile buffer, as described in Clapham and Pace 2001, which provides a margin of protection to encompass the movement of the animals during an aggregation.

Comment 17: Two commenters opposed the boundaries as presented in the proposed rule and indicated that states should be able to manage whale issues in their waters. One of the commenters indicated that the SAM area should not extend into state waters located east of Cape Cod, MA due to the fact that right whales are only seen on occasion in that area during March and April and furthermore that fishing gear is rarely seen close to shore in that area. The commenter indicated that there was not sufficient risk to the animals to justify federal regulations that would preempt state regulations.

Response: The data presented in Merrick, *et al.,* 2001 demonstrates that aggregations of right whales do occur east of Cape Cod in March and April. While these aggregations have not been observed in state waters, within 3 nautical miles of the shore, the 15-nautical mile protective buffers from the sightings do encompass state waters. NMFS has determined that Federal regulations are required in order to achieve the mandates and goals of the ESA and MMPA.

Comment 18: Two commenters indicated that the Jeffreys Ledge area should be included as part of the SAM program. One of the commenters acknowledged that NMFS has proposed DAM in order to address such aggregations, but they lack confidence in DAM and therefore stated that the agency should not rely on that measure.

Response: See comment and response 11 above in the ANPR Comments and Responses. NMFS does believe that DAM is a meaningful management measure which will result in real protection for right whales. Furthermore, NMFS maintains that sufficient data is needed to confidently identify an area of predictable right whale concentration prior to designating it as a SAM area. Sufficient data is not currently available for Jeffreys Ledge.

SAM Gear Modifications Comments

Comment 19: One hundred and fifty commenters stated that, within a SAM area buoy lines extending from the fishing gear to the surface should break at no more than 1,100 lbs (498.8 kg.) to allow right whales to break free in the event of an entanglement. Other commenters questioned the value of this additional weak link at all.

Response: NMFS appreciates the large response to this important rulemaking process. The level of support from the general public for additional measures to protect right whales is encouraging. NMFS interprets these comments to mean that all lobster and gillnet gear allowed to fish in the SAM areas should utilize a weak link with a maximum breaking strength of 1100 lbs (498.8 kg). This comment appears to be in response to the 3780-lbs (1714.3-kg) weak link proposed for the Offshore Lobster Waters and Other Northeast Waters, as defined by the ALWTRP (50 CFR 229.32 (c)(5)(1)), for lobster and gillnet fishermen operating within a SAM area. NMFS proposed this 3780-lbs (1714.3-kg) maximum breaking strength ''system'' weak link based on the analysis of an entanglement, and subsequent successful disentanglement, which occurred on July 20, 2001, in the area of Jeffreys Ledge. This proposal was to introduce an additional weak link at a new location (between the surface and subsurface gear), not to increase the breaking strength of any of the existing required weak links. NMFS did consider setting the breaking strength of the system weak link at the same level as the buoy link (which is required at the buoy itself). The buoy weak links for gillnet buoys are 1100 lbs (498.8 kg), and for lobster trap buoys are 1500 lbs (680.4 kg) for SAM in Offshore Lobster Waters and 2000 lbs (906.9 kg.) for Offshore Lobster Waters outside of SAM. The values of 1100, 1500 and 2000 lbs (498.8, 680.4, 906.9 kg) have all been exceeded in load cell testing measurements. If a weak link of any of these breaking strengths was introduced between the surface and subsurface system, it would likely break when gear was being hauled, potentially leading to a dangerous situation and also contributing to ghost gear. These load cell measurements exceeded the 2800 lbs (363.2 kg) limit of the load cell and clearly demonstrate that loads in excess of 1100, 1500 and 2000 lbs (498.8, 680.4, 906.9 kg) have occurred in these gear types. Based on this load cell data, NMFS cannot require a weak link with a breaking strength below values we have measured in the buoy line section of the gear. Based on the comments received regarding this analysis NMFS believes that this system weak link proposal requires further discussion and development in the take reduction team arena. The proposal for a system weak link was completely removed from the interim final rule and will be discussed further with the ALWTRT.

NMFS proposed the weak link between the surface and subsurface system with the intention of introducing another point where the gear could break away from a right whale. Many of the comments questioned the value of the proposed weak link. The theory behind this proposal was that if a right whale encountered the vertical line in the buoy/end line reaching to the surface it could exert sufficient drag on the line to part it. The right whale would then be able to swim freely with little or no gear attached. Several commenters stated that the effectiveness of a weak link at this location is severely compromised by the fact that there would not be resistance on either side of the weak link to exert the pressure needed to break this weak link. Given these concerns, we will table this requirement for now and discuss it further with the ALWTRT and also at the upcoming gear workshop.

Comment 20: Nine commenters indicated that dropping an endline or the use of only a single buoy line is operationally problematic throughout the SAM areas. Four of these nine commenters stated that this measure raised safety issues as well. The basis of the safety contention is that extreme tides and weather from Cape Cod to the Hague Line are a major factor in determining which end of a trawl line to haul from in order to minimize strain on the lines, assuming there are two buoys/high flyers per lobster trap trawl/gillnet string. These commenters further indicated that a single mark, buoy/highflyer, will lead to gear conflicts and an increase in lost gear resulting in increased ghost gear and a resulting potential increase in entanglement risk. Three commenters offered strong support for the reduction in endlines as a step resulting in a tangible decrease in vertical line in the water column.

Response: NMFS acknowledges the comments concerning potential safety issues. NMFS also acknowledges that a 50 percent reduction in endlines/buoy lines furthers the goal of eliminating entanglements as indicated in the comments. NMFS further recognizes the potential for gear conflicts and other fishery management regulations which require both ends to be marked.

NMFS continues to support this measure as an acceptable risk reduction measure due to the very real decrease in the volume of line in the water column. The operational difficulties will require the industry to work together to come up with coordinated procedures to reduce gear conflicts. NMFS has required the single buoy to be at the northern or western end of the trawl string depending on the direction of the set as a standard procedure. NMFS will work with the industry to define more suitable standard practices if the industry has a better approach to this issue. As noted earlier in this rule, NMFS is accepting comments regarding this interim final rule (see **DATES** Section of this interim final rule) and is seeking additional comments on this measure.

Four of the nine commenters indicated their operation is partly based on safety. As this was not a universal concern NMFS interprets this to mean that the issue may be fishery specific (offshore versus inshore) and, as noted, is seeking additional comment during the 30-day comment period for this interim final rule which may lead to unique solutions in the fisheries/areas where safety is an issue.

In 2002, NMFS will pursue resolution of the safety and gear conflict issues at a gear workshop in February and also at the next meeting of the ALWTRT. Representatives from the environmental community and the fishing industry will participate in these meetings.

Comment 21: One commenter indicated that weak link characteristics need to be more clearly and uniformly defined.

Response: The Atlantic Large While Take Reduction Plan Regulations (50 CFR 229.32) define a weak line as a breakable component of gear that will part when subject to a certain tension load. The regulations further provided a variety of known weak link configurations and offer that other material or devices may be approved in writing by the Assistant Administrator for Fisheries of NMFS. NMFS believes the regulations adequately define various methods of compliance with the weak link requirements and offer a process for innovative techniques to be developed and introduced for consideration.

Comment 22: One commenter indicated that they disagreed with NMFS' conclusion regarding the entanglement of right whale #2427 which occurred on July 20, 2001, in the area of Jeffreys Ledge. NMFS concluded in the proposed rule that the gear measures required for SAM would have likely allowed the animal to free itself of all gear.

Response: NMFS agrees with the commenter and has decided to eliminate the requirement for the 3780 lb weak link, which was based on the conclusion regarding the entanglement of right whale #2427. NMFS has provided its basis for this change under changes in the Interim Final Rule from the Proposed Rule.

Comment 23: Two commenters indicated that weak links, as they are employed in the proposed rule, do not prevent entanglement of whales in the fishing gear remaining in the water or provide sufficient risk reduction to render gear ''whale safe'' and further are not proven to meet the criteria of ''low risk'' gear as defined in the proposed rule.

Response: NMFS recognizes that weak links in and of themselves do not constitute ''whale safe'' gear. However, NMFS does believe the weak links are an important component of the low risk gear determination. The weak links are intended to facilitate the animal's escape from gear should an entanglement occur in SAM gear or any gear in which weak links are required. The ability to escape from gear quickly and relatively easily is very important to avoid serious injury or mortality. As illustrated by the load cell and testing data presented in the proposed rule. NMFS does believe that there is sufficient data to demonstrate that weak links do break when sufficient strain is exerted on them. Breaking of line at the point of the weak links reduces the likelihood that a whale will become wrapped in the gear and will either not be able to freely swim away from the gear or only be able to swim away with a significant portion of the gear remaining attached. The weak links allow an entangled whale to break away from the gear with little or no gear attached minimizing the potential for the entanglement episode to have any significant adverse effects on the individual right whale.

Comment 24: Three commenters indicated that it is technically feasible to remove all vertical lines from the water column in gillnet and lobster fisheries using a corrodible link (link which corrodes in sea water at a known rate) with a bundled or coil buoy line and a hard float.

Response: NMFS recognizes these techniques exist and are reported to be used in some Caribbean pot fisheries. The NMFS Gear Research Team presented data on field tests using corrodible links as part of the June 27–28 ALWTRT. This technique has not been employed in the fixed gear fisheries which occur along the Eastern seaboard due to the potential for gear conflicts which are expected to result in lost gear further resulting in increased ghost gear with associated entanglement risks. The observations of these commenters are correct that it is technologically feasible to elimiante endlines/buoy lines for part of the time that fixed gear is in the water. NMFS has determined it is not practical at this time for the reasons stated earlier. NMFS will seek further discussion of these techniques and resolution of the gear conflict issues in the upcoming gear workshop and the 2002 meeting of the ALWTRT.

Comment 25: One commenter indicated that the fixed gear (lobster trap and gillnet) and mobile gear fisheries (trawling) should be segregated to specific parts of the ocean to reduce gear conflicts.

Response: NMFS acknowledges that this management approach would alleviate gear conflicts between fixed and mobile gear fisheries, but has determined that conflicts within the fixed gear fishery are also a problem of considerable magnitude. Lobster and gillnet fisheries rely on the visual or radar reflector reference to an endline/buoy line when setting out and retrieving gear to prevent gear conflicts and subsequent gear loss. Without this visual guide, one lobster fishermen could set his gear directly on top of another set of traps. Segregation of mobile and fixed gear types does not appear to solve the problem of gear conflicts.

Comment 26: One commenter indicated that NMFS should develop a ghost gear recovery program, similar to the program in the Commonwealth of Massachusetts, in conjunction with the states to remove gear that may entangle whale from the water.

Response: NMFS acknowledges the comment and will discuss the viability of ghost gear programs with state managers in an effort to remove ghost gear as an entanglement risk. The concept will also be suggested as a discussion item at the next ALWTRT Meeting.

Comment 27: One commenter indicated that states should reduce the number of recreational lobster pots allowed which would result in a reduced number of vertical lines in the water column.

Response: NMFS does not have jurisdiction over state managed recreational fisheries through the ALWTRT. The concept has merit and NMFS will suggest it as a discussion item with the participating states at the next ALWTRT Meeting.

Comment 28: Two commenters endorsed the concept of SAM which allows modified gear into an area in lieu of a complete closure based on the fact that a complete closure results in an edge effect. The commenter described an edge effect as a situation where a concentration of gear is set along the periphery of the closed area.

Response: NMFS acknowledges the comment in support of the SAM program and has experienced the edge effect as a result of other commercial fishery closures. For the reasons specified in the proposed rule, in the response to comments and elsewhere in this interim final rule, NMFS believes that greater conservation benefit is realized from gear restrictions within SAM areas as compared to a complete closure.

Comment 29: One commenter indicated that NMFS should provide estimates of the amount of actual lobster trap and gillnet gear which will be displaced in the event of a total closure or if fishermen decide the gear modifications are not feasible and consequently decide to fish elsewhere.

Response: NMFS has completed an EA for the SAM interim final rule which is available for public review. NMFS has identified impacts on the fishing industry, including the number of vessels impacted, in that document.

Comment 30: Four commenters indicated that NMFS should modify the requirement for a weak link between the surface and subsurface system. These

commenters indicated the proposed weak link should be at the same breaking strength as the buoy weak link or be completely removed. The basis for removal or replacement was that the proposed maximum breaking strength of 3780 lbs (1714.3 kg) provided no benefit to entangled animals as it may actually prevent the animal from physically reaching the lower breaking strength buoy weak link(s) thus reducing the ability of an animal to free itself from an entanglement.

Response: NMFS proposed this 3780-lb (1714.3-kg) maximum breaking strength ''system'' weak link based on the analysis of an entanglement, and subsequent successful disentanglement, which occurred on July 20, 2001, in the area of Jeffreys Ledge. NMFS did consider setting the breaking strength of the system weak link at the same level as the buoy weak link, but the buoy weak links are 1100 lbs (498.8 kg) for gillnet buoys and 1500 lb (680.4 kg) (SAM in Offshore Lobster Waters maximum) and 2000 lb (906.9 kg) (Offshore Lobster Waters maximum for non-SAM use) for lobster trap buoy weak links. The values of 1100, 1500 and 2000 (498.8, 680.4, 906.6 kg.) have all been exceeded in load cell testing measurements. These load cell measurements exceeded the 2800 lb (363.2 kg.) limit of the load cell and clearly demonstrate that loads in excess of 1100, 1500 and 2000 lbs (498.8, 680.4, 906.6 kg.) have occurred in these gear types. Based on this load cell data NMFS cannot require a weak link with a breaking strength below values we have measured in the buoy line section of the gear. Based on the comments received regarding this analysis NMFS believes that this system weak link proposal requires further discussion and development in the take reduction team arena. The proposal for a system weak link was completely removed from the attached interim final rule and will be discussed further with the ALWTRT.

Comment 31: Four commenters indicated that NMFS did not propose a 600-lbs (272.4-kg) weak link in all SAM areas west of the proposed offshore SAM area agreed to by the offshore lobster fishery representative at the June 27–28, 2001, ALWTRT meeting. This proposed division was at approximately 68° 15′ W. long.

Response: NMFS recognizes that a 600-lb (272.4-kg) weak link west of the proposed offshore SAM area was not proposed. The entire SAM area includes 4 distinct areas which have year round gear requirements in place already per the ALWTRP (50 CFR 229.32). These areas, from west to east, are the Northern Inshore Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Waters (gillnet area description). The intent of the SAM program is to leave these distinct areal definitions in place and require additional gear modifications for the portions of these areas that have a SAM area overlaid on them. This approach is clarified in this rulemaking. Given that this is the approach, a subdivision of the Offshore Lobster Waters area into two areas with a 600-lb (272.4-kg) buoy weak link for one area and a 1500-lb (680.4-kg) buoy weak link for the other area during a SAM period was determined by NMFS to be too complex. Complex regulatory structure can result in confusion which may lead to unintended non-compliance.

Comment 32: Three commenters indicated that NMFS should require gillnet weak link breaking strengths at values less than 1100 lb (498.8 kg) based on NMFS testing reported in the proposed rule.

Response: NMFS did conduct research with 1100 lb (498.8 kg) and reduced strength weak links, 600 lb (272.4 kg), in gillnets as reported in the proposed rule and continues to work towards reducing weak link breaking strengths to the lowest possible value which will allow fishing and provide an increased probability that an entangled animal will be able to break free from gear should an entanglement occur. The difficulty with going to a 600-lb (272.4-kg) breaking strength weak link at this point in time is that the Other Northeast Waters (as defined by the ALWTRP, 50 CFR 229.32) includes waters out to the Hague Line. The expansive area covered by the gillnet ALWTRP includes physical environments that require that the 1100-lb (498.8-kg) breaking strength weak link be maintained. As stated previously, NMFS will continue gear research to determine the lowest possible value which will allow fishing to continue safely and provide a higher probability that an entangled animal will be able to free itself in the event of an entanglement.

Neutrally Buoyant Line Issues

Comment 33: Five commenters specifically indicated their support for the use of neutrally buoyant or sinking line for ground lines and buoy lines to reduce the risk of entanglement.

Response: NMFS acknowledges the general support for the use of neutrally buoyant line to reduce the probability of entanglement. This measure was included in the interim final rule based on the support of the fishing industry and the environmental community and NMFS' belief that this measure will provide considerable benefits in the elimination of entanglements.

Comment 34: Four commenters expressed concern over the cost of neutrally buoyant line for replacement of ground lines and buoy lines in the lobster and gillnet fisheries. Commenters estimated costs ranging from $6,000 for inshore fishermen to $65,000 for offshore fishermen to change over from their present gear to neutrally buoyant line. One of these commenters indicated that the SAM East would impact one particular company quite hard in that they operate five offshore lobster vessels in that area. Due to the territorial nature of lobster fishing, these fishermen cannot relocate their gear as a general matter. Two of these commenters also referenced the poor quality of neutrally buoyant line available and cited a usable life of 6 months for some of this neutrally buoyant line recently tested in the field.

Response: NMFS is aware that the cost of compliance with these regulations will be greater than any previous whale plan gear modifications. The status of the animals is such that a measure of this magnitude is required to continue prosecuting the fishery. The higher cost and burden on the industry in order to be able to fish within the SAM areas is justified by the increased risk posed of entanglement in this area due to the presence of concentrations of feeding right whales. NMFS acknowledges that some of the neutrally buoyant line which was field tested by NMFS in cooperation with the fishing industry was of inferior quality and would not be suitable for use. NMFS does believe that other manufacturers of neutrally buoyant line have performed well and the manufacturer that had difficulty is working to improve their product through the information gained during these experimental gear deployment with the industry.

Comment 35: Three commenters opposed the measure that endlines/buoy lines be composed of entirely neutrally buoyant line or sinking line due to operational difficulties associated with the buoy line snagging on the fishing gear or other bottom materials. These commenters requested that the requirement be modified to require that the top two-thirds of the buoy line be composed of neutrally buoyant and/or sinking line and that the bottom section of line be allowed to be floating line, not to exceed one-third the length of the buoy line.

Response: NMFS recognizes the operational difficulty of a buoy line composed entirely of neutrally buoyant and/or sinking line as well as the industry practice of splicing in floating

line at the base of the buoy line to prevent snags. NMFS also recognizes that existing winter restricted period regulations for fishing in the Cape Cod Bay Restricted Area (CCBRA) allows a section of floating line not to exceed one-third the overall length of the buoy line. However, the status of the North Atlantic right whale is such that a measure of this magnitude is required to continue prosecuting the fishery. The BOs provide that the Conservation Significance of the SAM component of the RPA is ''reducing the potential for interactions between North Atlantic right whales and fishing gear''. NMFS believes that the gear restrictions for SAM reduce the potential for interaction to occur and also reduce the potential for interaction between North Atlantic right wales and fishing gear that would otherwise result in serious injury and/or mortality.

Changes in the Interim Final Rule From the Proposed Rule

NMFS proposed to require the installation of weak links with a maximum breaking strength of 3,780 lb in the offshore lobster trap and anchored gillnet gear between the surface system (all surface buoys, the high flyer, and associated lines) and the buoy line leading down to the trawl and gillnet, respectively. This proposed measure was the result of analysis conducted by NMFS from a successful disentanglement of a 7-year-old male North Atlantic right whale, catalog #2427, on July 20, 2001. NMFS' analysis concluded that the gear recovered during the disentanglement and the description of the owner's typical gear configuration indicated that the surface system was separated from the buoy line going to the trawl by a weak link with a breaking strength of 3,780 lb. It was felt that the presence and location of this weak link in the gear may have prevented the animal from becoming further entangled in the buoy line.

However, since the publication of this proposed measure, NMFS technical experts have re-evaluated this proposed measure. Although in theory the proposed measure would add an extra level of protection to potentially prevent the risk of serious injury to North Atlantic right whales should they become entangled in the buoy line, this measure is not practical from a mechanical standpoint. Operationally, having any weak link below the float system will essentially be ineffective. In order to break, a link would need to have adequate resistance from the relevant end of the gear. Given that any whale that is caught below the link would be pulling against nothing more than the surface system and the buoy, one cannot reasonably conclude that the resistance involved would be sufficient to trigger the break of the weak link. Therefore, NMFS has reconsidered this measure and is not requiring the use of weak links between the surface system and the buoy line for the offshore lobster trap and anchored gillnet gear within the SAM areas.

A technical change was also made to correct and clarify the intent of the regulations. ALWTRP gear requirements are described for designated areas which include: Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Waters (gillnet area). These areas require specific gear modifications to meet the ALWTRP regulations. As proposed, the SAM gear modifications are required in addition to or in place of existing requirements based on the fishery specific area defined by the ALWTRP.

Although the proposed rule discussed the relationship between the proposed SAM restrictions and the current gear requirements within the ALWTRP, the description of the lobster trap gear and anchored gillnet gear requirements in the proposed rule did not explicitly articulate the specific gear requirements for the portions of the Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, and Other Northeast Waters (gillnet area) that are overlapped by the SAM areas. this interim final rule will correct and clarify the regulations to explicitly define the gear requirements for each of these areas that are overlapped by SAM Areas.

Classification

This interim final rule has been determined to be significant for the purposes of Executive Order 12866, because the proposal is controversial.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this rule. A copy of this analysis is available from NMFS (*see* **ADDRESSES**). Five alternatives were evaluated, including a status quo or no action alternative, the preferred alternative (PA), and three other alternatives. A summary of the analysis follows:

1. NMFS considered but rejected a ''no-action'' alternative that would result in no changes to the current measures under the Atlantic Large Whale Take Reduction Plan. The ''no-action'' alternative would result in no additional economic burden on the fishing industry, at least in the short-term. However, if the status quo is maintained now, more restrictive and economically burdensome measures than those in this interim final rule may be necessary in the future to protect endangered right whales from the fisheries. The no action alternative was rejected because it would not enable NMFS to meet the RPA measures of the BO required under the ESA.

2. NMFS considered but rejected an alternative that would implement one SAM zone comprised of the two separate SAM zones with gear restrictions throughout the designated time frame. From the data collected during the 3 years of aerial surveys, it was determined that the core SAM area, in combination with the existing Cape Cod Bay and Great South Channel Restricted Areas, encompassed 134 (90 percent) of the 149 events from 1999–2001. The analysis of this data also led to the finding that, within the core SAM area, right whale events occur more frequently in the western part of the zone (near Cape Cod Bay and the Great South Channel) in March–April than in June–July. For example, 13 of the 15 events outside of the Cape Cod Bay and Great South Channel Restricted Areas occurred in the area NMFS has defined as SAM West, which lies west of 69° 24″ W. long.

Conversely, during May–July, all of the events within the area defined as SAM East, which were not in the Great South Channel Restricted Area, were east of 69° 24″ W. long. This analysis strongly suggests that right whales migrate from west to east within the SAM core area between the months of March and July. Therefore, NMFS does not believe that the scientific data supported a single SAM zone covering the entire area for the duration of the 5 month period.

3. NMFS considered but rejected an alternative that would implement a single SAM zone based on gear restrictions initially required throughout the zone, but lifted sequentially over time as concentrations of right whales move across the zone from west to east. This alternative is similar to the one described in section 5.3 of the EA with the only differences being the sequential lifting of gear restrictions as right whales migrate across the SAM zone from west to east instead of maintaining gear restrictions for the 5 month duration of the SAM zone. The analysis of the aerial surveys found that, during the 3 years data was collected, right whales consistently migrated across the core SAM area from west to east between the months of March and July. Therefore, this alternative acknowledges and responds to the most recent scientific study of right whale distribution and abundance in the Gulf of Maine.

However, although sequential openings would make this alternative somewhat less burdensome than sustaining restrictions over the entire area for a 5 month period, implementation of this alternative presents significant logistical difficulties inherent in the regular monitoring and surveillance of right whales over such a large area.

4. NMFS considered but rejected an alternative that would implement a single SAM zone based on the same criteria as the preferred alternative (PA) with no initial gear restrictions required until concentrations of right whales begin to appear in the area and then lifted as the animals leave the area. This alternative would be extremely difficult if not impossible to implement, as NMFS would need to continuously monitor for the presence of right whales and then inform industry in a timely manner.

5. The PA would protect predictable annual congregations of North Atlantic right whales in the waters off Cape Cod and out to the exclusive Economic Zone line. NMFS has defined two areas (SAM East and SAM West), where gear restrictions for lobster trap and anchored gillnet gear are required. These requirements are more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Northern Inshore Lobster Waters and Other Northeast Waters (gillnet area description).

The time/area restrictions are based on the annual predictable presence of North Atlantic right whales as observed in aerial surveys from 1999–2001. SAM West will occur on an annual basis for the period March 1–April 30. SAM East will occur on an annual basis for the period May 1–July 31. NMFS accepted this alternative as these gear modifications are necessary to avoid jeopardizing the continued existence of North Atlantic right whales and enable NMFS to meet a portion of the RPA in the BOs.

The small entities affected by this interim final rule are gillnet and lobster trap fishermen. The geographic range of the gear modifications will include the Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, and Other Northeast Waters (gillnet area). Under the preferred alternative, 49 vessels are affected, of which 18 are lobster vessels and 31 are sink gillnet vessels. This action contains no new reporting or record-keeping requirements. However, it does require modifications to lobster and sink gillnet gear. There are no relevant Federal rules that duplicate, overlap, or conflict with this interim final rule except the requirements related to no more than one buoy line per trawl being allowed in the SAM area. These requirements supersede the requirements at 50 CFR 697.21, which require one radio reflector at each end of a trawl with more than three traps.

NMFS received only one public comment relating to the economic impacts of this interim final rule. This comment was considered by NMFS before it approved this action, and is characterized and responded to by NMFS in the ''Comments and Responses'' section of the preamble to this interim final rule. No changes to the rule were made as a result of the comment received.

NMFS has taken steps to minimize the significant economic impact on small entities through this PA. The PA meets a portion of the EPA designed to remove jeopardy, consistent with the requirements of the ESA, while allowing fishing to continue and, therefore, reduces economic impacts compared to fishery closures.

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that this interim final rule is consistent with the enforceable policies of the approved coastal management program for that state.

This interim final rule implements a portion of the RPA, which resulted from section 7 consultations on three FMPs for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. This interim final rule implements a component of the RPA contained in the BOs issued by NMFS on July 14, 2001. Therefore, no further section 7 consultation is required.

This interim final rule contains policies with federalism implications that were sufficient to warrant preparation of a federalism assessment under Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate official(s) of affected state, local and/or tribal government in October 2001. No comments on the federalism implications of the proposed action were received in response to the October 2001 letter.

References

Merrick, R.L.; Clapham, P.J.; Cole, T.V.N.; Gerrior, P.; Pace, R.M., III. 2001. Identification of seasonal area management zones for North Atlantic right whale conservation. Northeast Fisheries Science Center Reference Document 01–14. October 2001.

Clapham, P.J.; Pace, R.M., III. 2001. Defining triggers for temporary area closures to protect right whales from entanglements: issues and options. Northeast Fisheries Science Center Reference Document 01–06. April 2001.

Resolve. 2001. Meeting Summary Atlantic Large Whale Take Reduction Team Meeting, June 27–28, Portland, Maine. October 22, 2001.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: December 31, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.32, paragraph (g)(4) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g) * * *

(4) Seasonal Area Management (SAM) Program. All vessels deploying anchored gillnet or lobster trap gear may fish in the SAM Areas as described in paragraphs (g)(4)(i)(A) and (g)(4)(ii)(A) of this section, provided the vessel complies with the gear requirements during the times specified in paragraphs (g)(4)(i)(B) and (g)(4)(ii)(B) of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(i) *SAM West.* (A) *Area.* SAM West consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM WEST

Point	N. Lat.	W. Long.
SAM1	42°04.8′	70°10′
SAM2	42°12′	70°15′

SAM WEST—Continued

Point	N. Lat.	W. Long.
SAM3	42°30′	70°15′
SAM4	42°30′	69°24′
SAM5	41°48.9′	69°24′
SAM6	41°45′	69°33′
SAM7	41°45′	69°55.8′

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator for Fisheries, NMFS, in accordance with paragraph (g)(2) of this section, from March 1 through April 30, no person may fish with anchored gillnet or lobster gear unless that person's gear complies with the following gear characteristics:

(*1*) *Anchored gillnet gear.* (*i*) Ground line—All ground lines area made entirely of sinking or neutrally buoyant line.

(*ii*) Buoy weak links—All buoy lines are attached to the buoy with a weak link having a maximum breaking strength of up to 1,100 lb (498.9 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*iii*) Net panel weak link—Each net panel must have a total of five weak links. The breaking strength of these weak links must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Three of the five weak links must be located on the floatline. One floatline weak link must be placed at the center of the net panel, and two weak links must be placed as close as possible to each of the bridle ends of the net panel. The remaining two of the five weak links must be placed in the center of each of the up and down lines at either end of each panel.

(*iv*) Buoy line—No more than one buoy line per net string may be used, and it must be deployed at the northern or western end of the gillnet string depending on the direction of the set.

(*v*) Gillnet anchor—All anchored gillnets, regardless of the number of net panels, must be securely anchored with a holding power of at least a 22-lb (9.9-kg) Danforth-style anchor at each end of the net string.

(*2*) *Lobster Trap gear.* (*i*) Sinking ground line—All ground lines must be made entirely of sinking or neutrally buoyant line.

(*ii*) Offshore Lobster buoy weak links—All buoy lines must be attached to the buoy with a weak link having a maximum breaking strength of up to 1,500 lb (680.4 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*iii*) Buoy line—No more than one buoy line per trawl is allowed. The buoy line must be attached to the northern or western end of the trawl string depending on the direction of the set. These requirements supersede the requirements found at § 697.21, which require one radar reflector at each end of a trawl with more than three traps.

(ii) *SAM East.* (A) *Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM EAST

Point	N. Lat.	W. Long.
SAM5	41°48.9′	69°24′
SAM4	42°30′	69°24′
SAM8	42°30′	67°26′
SAM9	42°30′	66°50′
SAM10	41°45′	66°50′
SAM11	41°45′	68°17′
SAM12	42°10′	68°31′

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator for Fisheries, NMFS, in accordance with paragraph (g)(2) of this section, from May 1 through July 31, no person may fish with anchored gillnet or lobster gear unless that person's gear complies with the gear characteristics found at paragraph (g)(4)(i)(B) of this section.

[FR Doc. 02–274 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 121701E]

Fisheries of the Exclusive Economic Zone off Alaska; Bycatch Rate Standards for the First Half of 2002

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

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 2002. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program (VIP). This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to avoid excessive prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 20, 2002, through 2400 hours, A.l.t., June 30, 2002. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., February 7, 2002.

ADDRESSES: Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, fax 907–586–7465, e-mail mary.furuness@noaa.gov.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and ''other trawl'' fisheries, and the BSAI yellowfin sole and ''bottom pollock'' fisheries. Vessel operators also must not exceed red king crab bycatch rate standards specified for the BSAI

yellowfin sole and ''other trawl'' fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21 (f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the Federal Register. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Because the Alaskan groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23 (c)), the Administrator, Alaska Region, NMFS (Regional Administrator), is promulgating bycatch rate standards for the first half of 2002 effective from January 20, 2002, through June 30, 2002.

As required by § 679.21 (f)(4), bycatch rate standards are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under §§ 679.21(d) and (e);

(D) Anticipated groundfish harvests for that fishery;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

At the October 2001 Council meeting, NMFS staff presented an analysis of recent bycatch rates of Pacific halibut and red king crab in the groundfish trawl fisheries to provide the Council with a basis for setting bycatch rate standards for the first half of 2002. The analysis showed that since 1999, actual bycatch rates experienced by vessels participating in the groundfish trawl fisheries were lower than the established bycatch rate standards with the exception of vessels participating in the BSAI yellowfin sole and the GOA ''other trawl'' fisheries. Based on this information, NMFS suggested to the Council that an upward adjustment of the bycatch rate standard in the yellowfin sole fishery may be warranted and that downward adjustments of the halibut bycatch rate standards in the BSAI and GOA midwater pollock fisheries and the red king crab bycatch rate standards in the BSAI yellowfin sole and ''other trawl'' fisheries may be warranted. Specifically, for the BSAI yellowfin sole fishery, the analysis indicated that an increase of the halibut bycatch rate standard to 15 kg/mt of groundfish would encompass 73 percent of the vessels participating in the yellowfin sole fishery. For the BSAI and GOA midwater fisheries, the analysis indicated that a decrease of the halibut bycatch rate standard to 0.5 kg/mt of groundfish would encompass 99 percent of the vessels participating in the BSAI midwater pollock fishery and 90 percent of the vessels in the GOA midwater pollock fishery. Finally, for the BSAI yellowfin sole fishery and ''other trawl'' fisheries, the analysis indicated that a decrease of the BSAI Zone 1 red king crab bycatch rate standard to 1.0 kg/mt of groundfish would encompass 82 percent of the vessels participating in the BSAI yellowfin sole fishery and 92 percent of the vessels participating in the BSAI ''other trawl'' fishery.

The Advisory Panel recommendation and public testimony did not agree. The public testified that upward adjustments of the rates appeared to reward violators of the rates while downward adjustments appeared to penalize fishermen for their effort in avoiding prohibited species. The public also testified that the Council should pursue the development of alternative incentive programs such as an individual vessel bycatch allowance or similar program in which the costs or benefits of excess or reduced bycatch would be limited to the vessel conducting the fishing.

After considering public testimony, the Council recommended that the same rates used in the first half of 2001 be used for the first half of 2002. Further, the Council requested that NMFS consider the effects of observer sampling procedures and changing fishing practices due to the American Fisheries Act, improved retention/improved utilization, and Steller sea lion protection measures on prohibited species bycatch rates. Until such an assessment is conducted, the Council recommended that the existing bycatch rate standards adequately meet the intent of the VIP. The Council's recommended bycatch rate standards are listed in Table 1.

TABLE 1—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 2002 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

Fishery and quarter	2002 by-catch rate standard
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch	
BSAI Midwater pollock	.....

TABLE 1—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 2002 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.—Continued

Fishery and quarter	2002 by-catch rate standard
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch	
Qt 1	1.0
Qt 2	1.0
BSAI Bottom pollock	.....
Qt 1	5.0
Qt 2	5.0
BSAI Yellowfin sole	.....
Qt 1	5.0
Qt 2	5.0
BSAI Other trawl	.....
Qt 1	30.0
Qt 2	30.0
GOA Midwater pollock	.....
Qt 1	1.0
Qt 2	1.0
GOA Other trawl	.....
Qt 1	40.0
Qt 2	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole	
Qt 1	2.5
Qt 2	2.5
BSAI Other trawl	.....
Qt 1	2.5
Qt 2	2.5

Bycatch Rate Standards for Pacific Halibut

In 2001, BSAI pollock combined A/B season was January 20 through June 10. In 2001, the inshore and offshore component fisheries for pollock ended 6 to 10 weeks prior to June 10, depending on the processing component and area. Directed fishing for pollock by the inshore and offshore component fisheries reopened June 10, the start of the 2001 pollock combined C/D season. Also, the community development quota pollock fishery ended 7 weeks before the end of the combined A/B season and did not resume until mid-June. In 2002, the proposed A season allowance for Bering Sea pollock (60 percent of the directed fishing allowance) would be available January 20 through June 10, with the remainder available June 10 through November 1. As in past years, the directed fishing allowances specified for the first 2002 pollock season likely will be reached before June 10.

As in past years, the halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock

fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The average halibut bycatch rates for the BSAI 2001 first and second calendar quarter fisheries are equal to 0.13 and 0.15 kg halibut/mt groundfish, respectively, and the average halibut bycatch rates for the GOA 2001 first and second calendar quarter fisheries are equal to 0.36 and 0.17 kg halibut/mt groundfish, respectively. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations.

Since 1999, the use of nonpelagic trawl gear has been prohibited in the BSAI non-CDQ directed pollock fishery (§ 679.24 (b)(4)). Even with this prohibition, a vessel using pelagic trawl gear may be assigned to the BSAI bottom pollock fishery defined at § 679.21 (f)(2) because assignment to a fishery for purposes of the VIP is based on retained catch composition during a weekly period instead of gear type. If the majority of the catch is pollock, but pollock comprises less than 95 percent of the catch, then a haul is assigned to the BSAI bottom pollock fishery. The prohibition on the use of nonpelagic trawl gear has reduced the number of hauls assigned to the BSAI bottom pollock fishery. Since the prohibition became effective, the halibut bycatch rates for this fishery are low compared to the halibut bycatch rate standards established for this fishery with an average halibut bycatch rate for the 2001 first and second calendar quarter fisheries equal to 0.89 and 1.89 kg halibut/mt groundfish, respectively.

Other factors that could affect the spatial and temporal distribution of the directed pollock fishery include the allocations of pollock among the inshore and offshore fleets under the American Fisheries Act and the implementation of conservation measures that are necessary under the Endangered Species Act to mitigate pollock fishery impacts on Steller sea lions. At this time, the effects of these changes on halibut bycatch rates in the pollock fishery are unknown.

Data available on halibut bycatch rates in the BSAI yellowfin sole fishery during the first and second quarters of 2001 showed an average bycatch rate of 19.74 and 18.54 kg halibut/mt of groundfish, respectively. These rates are significantly higher than in past years. One explanation of relatively higher rates might include changes in the physical or biological conditions driving the rate of bycatch in the yellowfin sole fishery. A second explanation might be that vessels are using larger mesh gear to reduce discards and comply with increased retention/utilization standards for pollock and Pacific cod. A third explanation might be that with the decline of trawl Pacific cod catch, halibut mortality historically assigned to the trawl Pacific cod target has not been used by that fishery and instead has been made available to the flatfish fisheries. The availability of ''extra'' halibut mortality could allow vessels catching flatfish to be less concerned about avoiding halibut bycatch. Thus, although the amount of groundfish catch may be decreased in a haul, the amount of halibut retained in the net may remain the same and result in an increase in the bycatch rate of halibut. The Council's recommendation to use the same bycatch rates in 2002 as was used in 2001 should work as a deterrent to these higher rates given the explanation that increased bycatch rates caused by the perception of ''extra'' halibut and is consistent with the intent of the VIP in that vessels should avoid halibut bycatch regardless of whether there is more halibut bycatch available to a fishery.

For the ''other trawl'' fisheries, the Council supported a 30 kg halibut/mt of groundfish bycatch rate standard for the BSAI and a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA. Observer data collected from the 2001 BSAI ''other trawl'' fishery show first and second quarter halibut bycatch rates of 11.02 and 23.79 kg halibut/mt of groundfish, respectively. Observer data collected from the 2001 GOA ''other trawl'' fishery show first and second quarter halibut bycatch rates of 10.89 and 56.84 kg halibut/mt of groundfish, respectively.

Since 1997, with the exception of the GOA second quarter ''other trawl'' fishery, the average bycatch rates experienced by vessels participating in the GOA and BSAI ''other trawl'' fisheries have been lower than the specified bycatch rate standards for these fisheries. The Council and NMFS have determined that the recommended halibut bycatch rate standards for the ''other trawl'' fisheries, including the second quarter GOA fishery, would continue bycatch rate standards that represent an acceptable level of halibut bycatch in these fisheries and will encourage vessel operators to avoid high halibut bycatch rates while participating in these fisheries. Furthermore, these standards will provide some leniency to those vessel operators who choose to use large mesh trawl gear or other device as a means to reduce groundfish discard amounts or are forced to fish in different seasons or fishing grounds under measures implemented to mitigate fishing impacts on Steller sea lions and their critical habitat.

Bycatch Rate Standards for Red King Crab

For the BSAI yellowfin sole and ''other trawl'' fisheries in Zone 1 of the Bering Sea subarea, the Council's recommended red king crab bycatch rate standard is 2.5 crab/mt of groundfish. This standard is unchanged since 1992. The red king crab bycatch rates experienced by the BSAI yellowfin sole fishery in Zone 1 during the first and second quarters of 2001 averaged 0.57 and 0.08 crab/mt of groundfish, respectively. Although these rates are lower than the standards, the first quarter's rate is higher than bycatch rates experienced in previous years. The average bycatch rates of red king crab experienced in the BSAI ''other trawl'' fishery during the first and second quarters of 2001 were 0.09 and 0.00 crab/mt groundfish, respectively. The low 2001 red king crab bycatch rates primarily were due to trawl closures in Zone 1 that were implemented to reduce red king crab bycatch.

For the period January through October 2001, the total bycatch of red king crab by trawl vessels fishing in Zone 1 is estimated at 32,856 crab, considerably less than the 97,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 2002 red king crab bycatch in Zone 1 will be similar to 2001 because the crab bycatch reduction measures will remain the same.

In spite of anticipated 2001 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended the red king crab bycatch rate standards be maintained at these levels. These levels continue to provide protection against unacceptably high rates of bycatch in these fisheries while providing some leniency to those vessel operators who choose to use large mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that the recommended bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21 (f). Therefore, the Regional Administrator establishes the halibut and red king crab bycatch rate standards for the first half of 2002 as set forth in Table 1. These bycatch rate standards may be revised and these revisions published in the Federal Register when deemed appropriate by the Regional Administrator pending his

consideration of the information set forth at § 679.21 (f)(4).

As required in regulations at §§ 679.2 and 679.21 (f)(5), the 2002 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through February 2;

Month 2: February 3 through March 2;

Month 3: March 3 through March 30;

Month 4: March 31 through April 27;

Month 5: April 28 through June 1;

Month 6: June 2 through June 29;

Month 7: June 30 through August 3;

Month 8: August 4 through August 31;

Month 9: September 1 through September 28;

Month 10: September 29 through November 2;

Month 11: November 3 through November 30; and

Month 12: December 1 through December 31.

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under Executive Order 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: January 3, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–552 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 091301C]

RIN 00648–AL98

Fisheries of the Exclusive Economic Zone Off Alaska; Revision of Overfishing Definitions for the Salmon Fishery

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

ACTION: Approval of fishery management plan amendment.

SUMMARY: NMFS announces the approval of Amendment 6 to the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone Off the Coast of Alaska (salmon FMP). This amendment is necessary to implement overfishing definitions for the salmon fishery authorized under the salmon FMP. This action is intended to ensure that conservation and management measures continue to be based on the best scientific information available and to advance the Council's ability to achieve, on a continuing basis, the optimum yield from fisheries under its jurisdiction.

DATES: The amendment was approved on January 2, 2002.

ADDRESSES: Copies of Amendment 6 to the salmon FMP, and the Environmental Assessment (EA) prepared for the amendment are available from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS published a notice of availability for Amendment 6, which described the proposed amendment and invited comments from the public, in the Federal Register on October 5, 2001 (66 FR 51001). Comments were invited until December 4, 2001. NMFS received no public comments.

The Council and NMFS prepared an EA for Amendment 6 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and the socio-economic impacts of the alternatives. A copy of the EA can be obtained from NMFS (see **ADDRESSES**).

Amendment 6 to the salmon FMP implements overfishing definitions in compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act defines the terms ''overfishing'' and ''overfished'' to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield (MSY) on a continuing basis, and requires that all fishery management plans:

> specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery (Section 303 (a)(10)).

Section 301 (a) of the Magnuson-Stevens Act establishes national standards for fishery conservation and management, and requires that all fishery management plans contain management measures consistent with those standards. National standard 1 requires that conservation and management measures shall ''prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.'' Pursuant to section 301(b) of the Magnuson-Stevens Act, NMFS issued national standard guidelines to provide comprehensive guidance for the development of fishery management plans and amendments that comply with the national standards (May 1, 1998, 63 FR 24212). These guidelines are codified in Title 50, Code of Federal Regulations, part 600 (50 CFR 600.305–600.355).

The salmon FMP allows a commercial troll fishery in the exclusive economic zone (EEZ) off southeast Alaska (SEAK EEZ), and closes the remaining EEZ in central and western Alaska to commercial salmon fishing. All other salmon fishing occurs either in waters of the State of Alaska (State) or in one of three historical State-managed net fishing areas that extend into the EEZ. The fisheries in these three historical fishing areas are not covered by the salmon FMP. The salmon FMP defers management of the commercial troll fishery to the State and the U.S.-Canada Pacific Salmon Commission (PSC).

Through the salmon FMP, the Council intends to conserve and manage the salmon resources in the North Pacific Ocean and to allow the fisheries in State and EEZ waters to be managed as one fishery. Regulations for the Alaska salmon fishery are made by the Alaska Board of Fisheries (Board) consistent with State and Federal laws and with negotiated agreements of the PSC. The State manages the fishery inseason and issues emergency regulations to achieve conservation objectives and to implement allocation policies established by the Board.

The SEAK troll fishery is a mixed-stock, mixed-species fishery that primarily targets chinook salmon (*Oncorhynchus tshawytscha*) and coho salmon (*O. kisutch*), with pink salmon (*O. gorbuscha*), chum salmon (*O. keta*), and sockeye salmon (*O. nerka*) taken incidentally. The catch in this fishery represents approximately 6 percent of the total chinook and coho salmon landed by all salmon fisheries in Southeast Alaska (1991-1996 average). This fishery harvests less than 1 percent of the total harvest of pink, chum, and sockeye salmon occurring in Southeast waters. The chinook salmon originate in the waters of British Columbia and the coho salmon originate mainly in Alaska waters. The chinook salmon stocks that originate in Canada or pass through U.S-

Canada boundaries are managed by the PSC under the Pacific Salmon Treaty.

In June 1998, the Council adopted Amendment 6 to the salmon FMP. In October 1998, the NMFS Alaska Fisheries Science Center (AFSC) stated it could not certify that the overfishing definitions comply with the national standard guidelines (50 CFR 600.310) without a considerably more explicit analysis. NMFS worked with scientists from the State to analyze how the State's policies comport with the national standard guidelines.

In consultation with the Council and the State, NMFS revised the preferred alternative to include the status determination criteria recommended by the national standard guidelines. Using the State's sustainable salmon fisheries policy and salmon escapement goal policy and the June 1999 Amendment to the Pacific Salmon Treaty, NMFS developed an MSY control rule, fishing mortality rate, maximum fishing mortality threshold, and minimum stock size threshold for the chinook salmon and coho salmon stocks caught in the troll fishery in the SEAK EEZ. The chinook and coho stocks serve as indicator stocks for the stock complex of salmon caught in this fishery. These status determination criteria specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished or when overfishing is occurring. This analysis is presented in the EA for Amendment 6 (see **ADDRESSES**).

In June 2001, the Council and its Scientific and Statistical Committee reviewed the revised preferred alternative. The Council concurred that the revised preferred alternative is consistent with the alternative recommended by the Council in June 1998 in that it is consistent with State policies.

Amendment 6 amends the salmon FMP by providing overfishing definitions, consistent with the national standard guidelines and the salmon FMP's policy of Federal/State coordination. The overfishing definitions are based on State salmon management and the Pacific Salmon Treaty. The State's policy for management of mixed-stock salmon fisheries is consistent with sustained yield of wild fish stocks and is sufficiently conservative to satisfy the Magnuson-Stevens Act.

The Director of the AFSC, NMFS, has certified without reservations that the proposed definitions of overfishing: (1) have sufficient scientific merit, (2) contain the criteria for stock determination specified in 50 CFR 600.305 (d)(2), (3) provide a basis for objective measurement of the status of the stock against the criteria, and (4) are operationally feasible.

NMFS determined that Amendment 6 to the salmon FMP is consistent with the Magnuson-Stevens Act and other applicable laws and, therefore, approved Amendment 6 on January 2, 2002. Additional information is contained in the October 5, 2001, notice of availability (66 FR 51001). No regulatory changes are necessary to implement this FMP amendment.

Dated: January 3, 2002.

Jonathan M. Kurland,

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

[FR Doc. 02–554 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register

Vol. 67, No. 6

Wednesday, January 9, 2002

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–081–1]

Imported Fire Ant; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations by designating as quarantined areas all or portions of five counties in Arkansas, three counties in Georgia, eight counties in North Carolina, and four counties in Tennessee. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

DATES: This interim rule was effective January 2, 2002. We invite you to comment on this docket. We will consider all comments we receive that are postmarked, delivered, or e-mailed by March 11, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–081–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–081–1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–081–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4838.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant, which is not native to the United States, feeds on crops and builds large, hard mounds that damage farm and field machinery. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In § 301.81–3, paragraph (e) lists quarantined areas. We are amending § 301.81–3(e) by:

- Adding portions of Faulkner and Polk Counties, AR, to the list of quarantined areas and changing the status of Grant, Hempstead, and Nevada Counties, AR, from partially to completely infested;
- Adding Rabun, Towns, and Union Counties, GA, to the list of quarantined areas (these three counties were the last remaining uninfested counties in Georgia, thus the entire State is now designated as a quarantined area);
- Adding portions of Harnett, Hertford, Johnston and Nash Counties, NC, and all of Lee County, NC, to the list of quarantined areas, changing the status of Moore and Sampson Counties, NC, from partially to completely infested, and revising the quarantine boundaries in Wake County, NC, to incorporate additional infested areas; and
- Changing the status of Henderson County, TN, from partially to completely infested and revising the quarantine boundaries in Franklin, Maury, and Moore Counties, TN, to incorporate additional infested areas.

We are taking these actions because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new and revised quarantined areas.

In addition to the changes to the quarantined areas described above, we are correcting the listing for Hot Spring County, AR, in § 301.81–3(e). That county is currently listed incorrectly as Hot Springs County.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of imported fire ant into noninfested areas of the United States. Under these circumstances, the Administrator has

determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

This interim rule is necessary because infestations of imported fire ant have been discovered in additional areas of Arkansas, Georgia, North Carolina, and Tennessee. This action will establish quarantined areas in 10 new counties and revise the boundaries of the quarantined areas in 10 other counties in those States. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the imported fire ant into noninfested areas of the United States.

The following analysis addresses the economic effects of this rule and the impact on small entities as required by the Regulatory Flexibility Act.

According to the 1997 Census of Agriculture, the market value of agricultural products sold in the 20 counties that are subject of this rule was more than $2.171 billion. During 1997, the value of sales from nursery and greenhouse crops in these 20 counties was at least $36.5 million. The five counties in Arkansas had $300.35 million in agricultural product sales, the three counties in Georgia had $30.96 million in agricultural product sales, the eight counties in North Carolina had $1.44 billion in agricultural product sales, and the four counties in Tennessee had $117.45 million in agricultural product sales. In 1997, the eight counties in North Carolina had 51 percent of the value of their agricultural sales attributed to crops (including nursery and greenhouse crops), with the remaining 49 percent attributed to livestock. The four counties in Tennessee had 28 percent of the value of their agricultural sales attributed to crops (including nursery and greenhouse crops), with the remaining 72 percent attributed to livestock. In two of the three Georgia counties, 17 percent of the value of agricultural sales was attributed to crops (including nursery and greenhouse crops), with the remaining 83 percent of that value attributed to livestock. (The relative contributions of crops and livestock to the value of agricultural sales in the third Georgia county could not be determined, as those figures were withheld from the 1997 Census of Agriculture to avoid disclosing data for individual farms.) The five counties in Arkansas had only 5 percent of the value of their agricultural sales attributed to crops, with the remaining 95 percent of the value attributed to livestock. These data indicate that there is a large agricultural economy at risk due to the potential for the imported fire ant to damage crops and injure or kill livestock.

Small entities potentially affected by this rule include nurseries, greenhouses, farm equipment dealers, construction companies, and companies that sell, process, or move regulated articles interstate from and through the quarantined areas. According to the Small Business Administration (SBA), Office of Advocacy, regulations create economic disparities when they have a significant economic impact on a substantial number of small entities. The SBA defines a small agricultural producer as one that generates less than $750,000 of annual sales; to be considered small by the SBA definition, an equipment dealer or agricultural service company must generate less than $5 million of annual sales.

In the four Tennessee counties, there were at least 94 entities that could be potentially affected by the changes in regulations. In 1997, these four counties received $32.5 million from crop sales, including greenhouse and nursery sales. In the three Georgia counties, there were at least 27 entities that could be potentially affected by the changes in regulations. In 1997, these three counties received at least $2.5 million from crop sales, including greenhouse and nursery sales. In the five Arkansas counties, there were at least 22 entities that could be potentially affected by the changes in regulations. In 1997, these five counties received $8.2 million from crop sales, including greenhouse and nursery sales. In the eight North Carolina counties, there were at least 265 entities that could be potentially affected by the changes in regulations. In 1997, these eight counties received $446.5 million from crop sales, including greenhouse and nursery sales. In summary, there are at least 408 small entities potentially affected by the imported fire ant quarantine in the 20 counties. However, the number of these small entities that will be affected by this rule and the extent to which they are affected depend on the proportion of their sales outside the imported fire ant quarantined areas.

The adverse economic effects on these entities can be substantially minimized by the availability of various treatments that will permit the movement of regulated articles with only a small additional cost. The estimated annual cost of imposing a quarantine on these counties is very small in comparison to the benefit gained through agricultural sales. For example, the value of a ''standard'' sized tractor-trailer load of nursery plants ranges from $10,000 to $250,000. The treatment cost for this ''standard'' shipment of plants is only around $200. An average treatment cost, then, is between 2 percent and 0.8 percent per standard plant shipment. In contrast to the potential losses associated with an imported fire ant infestation, these treatment costs are not significant.

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

Executive Order 12372

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

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform.

This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this program. The assessment provides a basis for the conclusion that the methods employed to prevent the spread of the imported fire ant will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of

the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

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

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

2. In § 301.81–3, paragraph (e) is amended as follows:

a. Under the heading Arkansas, by adding, in alphabetical order, new entries for Faulkner and Polk Counties; by revising the entries for Grant, Hempstead, and Nevada Counties; and, in the entry for Hot Springs County, by removing the word ''Springs'' and adding the word ''Spring'' in its place.

b. Under the heading Georgia, by removing the individual county entries and adding a single entry for the entire State.

c. Under the heading North Carolina, by adding, in alphabetical order, new entries for Harnett, Hertford, Johnston, Lee, and Nash Counties and by revising the entries for Moore, Sampson, and Wake Counties.

d. Under the heading Tennessee, by revising the entries for Franklin, Henderson, Maury, and Moore Counties.

§ 301.81–3 Quarantined areas.

* * * * *

(e) * * *

Arkansas

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Faulkner County. That portion of the county lying south of a line beginning at the intersection of Interstate 40 and the Faulkner/Conway County line; then southeast on Interstate 40 to U.S. Highway 64; then east on U.S. Highway 64 to the Faulkner/White County line.

* * * * *

Grant County. The entire county.

Hempstead County. The entire county.

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Nevada County. The entire county.

* * * * *

Polk County. That portion of the county lying south of a line beginning at the intersection of State Highway 4 and the Oklahoma/Arkansas border; then east on State Highway 4 to U.S. Highway 71; then south on U.S. Highway 71 to State Highway 246; then east on State Highway 246 to the Polk/Howard County line.

* * * * *

Georgia

The entire State.

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North Carolina

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Harnett County. That portion of the county lying south of a line beginning at the intersection of U.S. Highway 421 and the Harnett/Lee County line; then east and southeast on U.S. Highway 421 to Interstate 95; then northeast on Interstate 95 to the Harnett/Johnston County line.

Hertford County. That portion of the county lying east of a line beginning at the intersection of U.S. Highway 13 and the Hertford/Bertie County line; then north on U.S. Highway 13 to County Route 1419 (Newsome Grove Road); then north on County Route 1419 to County Route 1415 (Catherine Creek Road); then northeast on County Route 1415 to County Route 1409 (Hall Siding Road); then northwest on County Route 1409 to County Route 1403 (Ahoskie-Cofield Road); then northeast on County Route 1403 to County Route 1400 (River Road); then northwest on County Route 1400 to County Route 1402 (Tunis Road); then northeast on County Route 1402 to the Chowan River and the Hertford/Gates County line.

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Johnston County. That portion of the county lying south and east of Interstate 95.

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Lee County. The entire county.

* * * * *

Moore County. The entire county.

Nash County. That portion of the county bounded by Interstate 95 on the west, the old Seaboard Railroad tracks on the south, the Nash/Edgecombe County line on the east, and on the north by State Highway 4 to its junction with U.S. Highway 301, then following a straight line east to the Nash/Edgecombe County line.

* * * * *

Sampson County. The entire county.

* * * * *

Wake County. That portion of the county lying south of a line beginning at the intersection of U.S. Highway 70 and the Wake/Durham County line; then south and east on U.S. Highway 70 to Interstate Highway 440; then east on Interstate 440 to Wake Forest Road; then north on Wake Forest Road to Spring Forest Road; then east on Spring Forest Road to State Highway 401; then north on State Highway 401 to the Neuse River; and then south along the Neuse River to the Wake/Johnston County line.

* * * * *

Tennessee

* * * * *

Franklin County. That portion of the county lying south a line beginning at the intersection of State Highway 50 and the Moore/Franklin County line; then east on State Highway 50 to U.S. Highway 64; then east on U.S. Highway 64 to U.S. Highway Alt 41; then east on U.S. Highway Alt 41 to the Grundy/Marion County line; also the entire city limits of Winchester, Decherd, and Estill Springs.

* * * * *

Henderson County. The entire county.

* * * * *

Maury County. That portion of the county lying south and west of a line beginning at the intersection of U.S. Highway 412 and the Maury/Lewis

County line; then east on U.S. Highway 412 to State Highway 166; then southeast on State Highway 166 to Dry Creek Road; then south on Dry Creek Road to the Maury/Lawrence County line.

* * * * *

Moore County. That portion of the county lying south of a line beginning at the intersection of State Highway 82 and the Moore/Bedford County line; then southeast on State Highway 82 to State Highway 55; then northeast on State Highway 55 to Cobb Hollow Road; then east on Cobb Hollow Road to the Moore/Coffee County line.

* * * * *

Done in Washington, DC, this 2nd day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–455 Filed 1–8–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 01–111–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by revising commuted traveltime allowances for travel between various locations in the State of Washington. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

EFFECTIVE DATE: January 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Roger F. West, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8891.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into or exportation from the United States.

When an employee of the Animal and Plant Health Inspection Service's Plant Protection and Quarantine (PPQ) program must provide these services on a Sunday, holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services according to 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duties.

We are amending § 354.2 of the regulations by revising the commuted traveltime allowances for travel between various locations in the State of Washington. The revised allowances are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry and the features of the reimbursement plan for recovering the cost of furnishing port of entry services depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedures with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

The number of requests for overtime services of a PPQ employee at the locations affected by this rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform.

This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, we are amending 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.3.

2. In § 354.2, the table is amended by revising the entry for the State of Washington to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
* * *	* *	*	*
Washington:			
Aberdeen	Seattle, maritime port		4
Anacortes	Blaine		3
Ault Field	Blaine		4
Bangor NSO	Seattle, maritime port		4
Bellingham	Blaine		2
Blaine		1	
Brewster	Ellensberg		6
Brewster	Spokane		6
Brewster	Wenatchee		4
Cherry Point	Blaine		1
Edmonds	Seattle, maritime port		2
Ellensburg		1	
Everett	Seattle, maritime port		3
Ferndale	Blaine		2
Fort Lewis	Tacoma		2
Grays Harbor	Seattle, maritime port		6
Grays Harbor	Tacoma		4
Hood River	Ellensburg		6
Lynden	Blaine		2
McChord AFB	Seattle, maritime port		3
McChord AFB	Tacoma		2
Moses Lake	Ellensburg		3
Moses Lake	Wenatchee		3
Olympia	Seattle, maritime port		3
Olympia	Tacoma		2
Oroville		1	
Paine Field	Seattle, maritime port		3
Pasco	Ellensburg		5
Pasco	Spokane		6
Pasco	Wenatchee		6
Point Wells	Seattle, maritime port		2
Port Angeles	Seattle, maritime port		6
Port Angeles	Tacoma		6
Port Townsend	Seattle, maritime port		4
Sawyer	Ellensburg		3
Sawyer	Wenatchee		5
SEA TAC Airport		2	
Seattle, maritime port		2	
Sumas	Blaine		2
Tacoma		2	
Wenatchee		1	
Wenatchee	Ellensburg		4
Wenatchee	Spokane		6
Yakima		1	
Yakima	Ellensburg		3
Yakima	Wenatchee		6
* * *	* *	*	*

Done in Washington, DC, this 2nd day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–00453 Filed 1–8–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–031–3]

Change in Disease Status of The Netherlands and Northern Ireland With Regard to Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding The Netherlands and Northern Ireland to the list of regions considered free of rinderpest and foot-and-mouth disease (FMD) and to the list of regions subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This final rule follows interim rules that removed France, Great Britain, Ireland, The Netherlands, and Northern Ireland from those lists due to detection of FMD in those regions. Based on the results of an evaluation of the current FMD situation in The Netherlands and Northern Ireland, we have determined that The Netherlands and Northern Ireland meet the standards of the Office International des Epizooties for being considered free of FMD. This rule relieves certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from The Netherlands and Northern Ireland.

EFFECTIVE DATE: January 9, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Goodman, Senior Staff Microbiologist, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera (also known as classical swine fever), and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all parts of the world not listed. Section 94.11 of the regulations lists regions of the world that the Animal and Plant Health Inspection Service (APHIS) has determined to be free of rinderpest and FMD, but from which importation of meat and animal products into the United States is restricted because of the regions' proximity to or trading relationships with rinderpest-or FMD-affected regions.

In an interim rule effective January 15, 2001, and published in the **Federal Register** on March 14, 2001 (66 FR 14825–14826, Docket No. 01–018–1), we amended the regulations by removing Great Britain and Northern Ireland from the list of regions considered to be free of rinderpest and FMD. (The **Federal Register** published a correction (66 FR 18357) to the interim rule on April 6, 2001.) In an interim rule effective February 19, 2001, and published in the **Federal Register** on June 1, 2001 (66 FR 29686–29689, Docket No. 01–031–1), we amended the regulations by removing France, Ireland, and The Netherlands from the list of regions considered to be free of rinderpest and FMD. These actions were necessary because FMD had been confirmed in each of those regions. The effect of the interim rules was to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Great Britain, Northern Ireland, France, Ireland, and The Netherlands.

In those interim rules, we recognized that the appropriate authorities had responded to the detection of FMD by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from FMD-affected areas; by conducting heightened surveillance activities; and by initiating measures to eradicate the disease. We stated that we intended to reassess the situations at a future date in accordance with Office International des Epizooties (OIE) standards, and that as part of that reassessment process, we would consider all comments received regarding the interim rules. Additionally, we stated that the future reassessments would enable us to determine whether it was necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Great Britain, Northern Ireland, France, Ireland, and The Netherlands, or whether we could restore some or all of those regions to the list of regions in which FMD is not known to exist or, alternatively, regionalize portions of those regions as FMD-free.

We solicited comments concerning Docket No. 01–018–1 for 60 days ending May 14, 2001, and received one comment by that date, submitted by a medical product manufacturer, requesting permission to import a specific medical product for human use that would otherwise be prohibited importation from regions not listed as free of FMD. As a result of this request, we determined that the product could be imported with negligible risk of FMD, and allowed the product to be imported in accordance with § 94.3, which allows certain types of products to be imported from FMD-affected regions for pharmaceutical or biological purposes.

We solicited comments concerning Docket No. 01–031–1 for 60 days ending July 31, 2001, and received four comments by that date. They were from businesses, a livestock association, and a Member State of the European Union. We addressed those comments in a final rule (66 FR 55872–55876, Docket No. 01–031–2), published in the **Federal Register** and effective November 5, 2001, in which we restored France and Ireland to both the list of regions considered to be free of rinderpest and FMD and the list of regions subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest-or FMD-affected regions.

One of the four comments we received suggested that The Netherlands be recognized as FMD free, claiming that the Netherlands would be free of the disease by August 25, 2001. We made no changes to the FMD status of the Netherlands in the November 5 final rule, but responded that we were continuing to monitor that country's progress with respect to the disease and were reevaluating its FMD status. We stated that we would publish a separate document in the **Federal Register** with respect to the FMD status of The Netherlands when our evaluation was complete.

Status of The Netherlands and Northern Ireland

In this final rule, we are restoring The Netherlands and Northern Ireland to the list in § 94.1(a) of regions that are considered to be free of rinderpest and FMD. Our reasons follow.

According to the OIE, when FMD occurs in an FMD-free country or zone where vaccination is not practiced before the outbreak, the following waiting periods are required to regain FMD-free status:

- In cases where stamping-out and serological surveillance are applied, 3 months after the last case; or
- In cases where emergency vaccination, stamping out, and serological surveillance are applied, 3 months after the slaughter of the last vaccinated animal.

Neither Northern Ireland nor The Netherlands vaccinated animals against FMD before the initial outbreaks that were confirmed in Northern Ireland on February 28, 2001, and in The Netherlands on March 21, 2001. Both countries initiated immediate destruction of affected animals and conducted clinical and serological surveillance. Additionally, The Netherlands adopted a policy of emergency vaccination.

The last case of FMD in Northern Ireland occurred on April 20, 2001, and the last case of FMD in The Netherlands occurred on April 22, 2001. The last vaccinated animal in The Netherlands was slaughtered on May 25, 2001. We find that Northern Ireland as well as The Netherlands meet the OIE standards for regaining FMD-free status.

We have evaluated the FMD eradication efforts in The Netherlands and Northern Ireland based on information provided to us by those regions and our own site visits. Our findings and site visit reports may be viewed on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html.* You may also request paper copies of these documents by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. 01–031–3 when requesting copies. These documents are also available in our reading room. (The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.)

Based on our findings and after reviewing comments submitted to us on the interim rules, we are amending the regulations by restoring The Netherlands and Northern Ireland to the list in § 94.1(a)(2) of regions that are declared free of both rinderpest and FMD. We are also restoring The Netherlands and Northern Ireland to the list in § 94.11(a) of regions that are declared free of rinderpest and FMD but that are subject to special restrictions on the importation of their meat and other animal products into the United States. The regions listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh (chilled or frozen) meat of ruminants or swine from regions that are designated in § 94.1(a) as regions where rinderpest or FMD exists; (2) have a common land border with regions where rinderpest or FMD exists; or (3) import ruminants or swine from regions where rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

This action relieves certain restrictions due to FMD and rinderpest on the importation into the United States of certain live animals and animal products from The Netherlands and Northern Ireland. However, because The Netherlands and Northern Ireland have certain trade practices regarding animals and animal products that are less restrictive than are acceptable for importation into the United States, the importation of meat and other products from ruminants and swine into the United States from The Netherlands and Northern Ireland continues to be subject to certain restrictions.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule restores The Netherlands and Northern Ireland to the list of regions considered free of FMD. Immediate action is necessary to remove restrictions on the importation of animals, meat, and other animal products that are no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding The Netherlands and Northern Ireland to the list of regions considered to be free of rinderpest and FMD and to the list of regions that are subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This final rule follows interim rules that removed Great Britain, Northern Ireland, France, Ireland, and The Netherlands from those lists due to detection of FMD in those regions. Based on the results of an evaluation of the current FMD situation in The Netherlands and Northern Ireland, we have determined that The Netherlands and Northern Ireland meet the standards of OIE for being considered free of FMD. This rule relieves certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from The Netherlands and Northern Ireland.

The Netherlands and Northern Ireland have not generally been major sources of U.S. imports of the products covered by the interim rule and this final rule, which include live ruminants, live swine, fresh (chilled or frozen) meat of ruminants and swine, processed ruminant and swine meat, some dairy products, animal feeds, and other ruminant and swine products such as semen, embryos, untanned hides and skins, unwashed wool, hair, bones, blood, and some other byproducts. Also, past imports of these products from The Netherlands and Northern Ireland represent a small fraction of the total U.S. imports or total U.S. production of these products. This final rule is not expected to alter these past trade patterns.

The majority of entities potentially affected by this final rule are considered small. For example, in 1997, approximately 97 percent (2,919 of 2,992) of meat and meat product wholesalers, 99 percent (1,490 of 1,503) of livestock wholesalers,[1] 92 percent (79,155 of 86,022) of dairy farms, 99.3 percent (651,542 of 656,181) of cattle farms, 87 percent (40,185 of 46,353) of hog and pig farms, 99.5 percent (29,790 of 29,938) of sheep and goat farms,[2] 98 percent (1,272 of 1,297) of slaughtering establishments, and 95 percent (1,324 of

[1] 1997 Economic Census, Department of Commerce, Bureau of the Census.

[2] 1997 Census of Agriculture, USDA, National Agricultural Statistics Service.

1,393) of meat processing establishments[3] would be considered small entities under the criteria set by the Small Business Administration. However, these entities should be little affected by this rulemaking because of the negligible effect on imports.

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713,7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding, in alphabetical order, the words ''The Netherlands,'' and ''Northern Ireland,''.

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) is amended by adding, in alphabetical order, the words ''The Netherlands,'' and ''Northern Ireland,''.

Done in Washington, DC, this 2nd day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–454 Filed 1–8–02; 8:45 am]

BILLING CODE 3410–34–U

[3] 1997 Economic Census, Department of Commerce, Bureau of the Census.

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 3864]

Amendment to the List of Proscribed Destinations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by removing Tajikistan and the Federal Republic of Yugoslavia (Serbia and Montenegro) from the list of proscribed destinations and makes additional clarifications to the ITAR.

EFFECTIVE DATE: January 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Tajikistan was added to the list of proscribed destinations at section 126.1(a) of the ITAR in the **Federal Register** publication of July 22, 1993 (58 FR 39312). The Department of State is amending the ITAR to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Tajikistan. This action is being taken in the interests of foreign policy and national security pursuant to section 38 of the Arms Export Control Act. Requests for licenses or other approvals for Tajikistan involving items covered by the U.S. Munitions List (22 CFR part 121) will be reviewed on a case-by-case basis.

Licenses and other approvals for Yugoslavia were suspended by the **Federal Register** notice of July 19, 1991 (58 FR 33322) and a denial policy was instituted for any new license applications and other requests for approval. The Federal Republic of Yugoslavia (Serbia and Montenegro) was added to the list of proscribed destinations at section 126.1 of the ITAR in the **Federal Register** publication of July 12, 1996 (61 FR 36625). The United Nations Security Council instituted a comprehensive arms embargo on the Federal Republic of Yugoslavia on March 31, 1998 pursuant to U.N. Security Council Resolution No. 1160. The U.N. Security Council terminated that embargo in Resolution No. 1367 (September 10, 2001).

The Department of State is amending the ITAR to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in the Federal Republic of Yugoslavia (Serbia and Montenegro). This action is being taken in the interests of foreign policy and national security pursuant to section 38 of the Arms Export Control Act. Requests for licenses or other approvals for the Federal Republic of Yugoslavia involving items covered by the U.S. Munitions List (22 CFR part 121) will be reviewed on a case-by-case basis.

The Department of State is also taking this opportunity to clarify two outdated references contained in section 126.1(a) of the ITAR. ''Zaire'' is currently listed as a proscribed country and is amended to ''the Democratic Republic of the Congo (formerly Zaire).'' Also, the Department is deleting the last sentence of 126.1(a) which refers to a license exemption that was formerly contained in section 123.27. That exemption was removed from 123.27 effective July 1, 2000, and the last sentence of 126.1(a) should have been deleted at that time.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, 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 application of Executive Order Nos. 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory

Change, removal of Tajikistan, 2401 E. Street, NW., 13th Floor, H1304, 2401 E Street, NW., Washington, DC 20037. Such persons must be so registered with the Department's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 126, is being amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

1. The authority citation for Part 126 reads as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

2. Section 126.1(a) is revised to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Afghanistan, Armenia, Azerbaijan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g. Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan and Democratic Republic of the Congo (formerly Zaire)) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register**. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries or areas.

* * * * *

Dated: December 3, 2001.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 02–115 Filed 1–8–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8976]

RIN 1545–AX20

Dollar-Value LIFO Regulations; Inventory Price Index Computation Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 472 of the Internal Revenue Code that relate to accounting for inventories under the last-in, first-out (LIFO) method. The final regulations provide guidance regarding methods of valuing dollar-value LIFO pools and affect persons who elect to use the dollar-value LIFO and inventory price index computation (IPIC) methods or who receive dollar-value LIFO inventories in certain nonrecognition transactions.

DATES: *Effective Date:* These regulations are effective on December 31, 2001.

Applicability Date: For dates of applicability, see §§ 1.472–8(e)(3)(v) and 1.472–8(h)(4).

FOR FURTHER INFORMATION CONTACT: Leo F. Nolan II at (202) 622–4970 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information in this final rule have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1767. The collections of information in this regulation are in § 1.472–8(e)(3)(iii)(B)(*3*) and (e)(3)(iv). To elect the IPIC method, a taxpayer must file Form 970, ''Application to Use LIFO Inventory Method.'' This information is required to inform the Commissioner regarding the taxpayer's elections under the IPIC method. This information will be used to determine whether the taxpayer is properly accounting for its dollar-value pools under the IPIC method. The collections of information are required if the taxpayer wants to obtain the tax benefits of the LIFO method. The likely respondents are business or other for-profit institutions, and/or small businesses or organizations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The reporting burden contained in § 1.472–8(e)(3)(iii)(B)(*3*) and (e)(3)(iv) is reflected in the burden of Form 970.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224.

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.

Background

Section 472 of the Internal Revenue Code (Code) permits a taxpayer to account for inventories using a last-in, first-out (LIFO) method of accounting. Section 472(f) directs the Secretary to prescribe regulations that permit the use of suitable published governmental price indexes for purposes of the LIFO method. The IRS and Treasury Department prescribed the inventory price index computation (IPIC) method in § 1.472–8(e)(3) (TD 7814, 47 FR 11271, 1982–1 C.B. 84) (the current regulations), under the authority contained in sections 472 and 7805. A taxpayer using the IPIC method must base its inventory price indexes on the consumer price indexes or producer price indexes published by the United States Bureau of Labor Statistics (BLS). The IPIC method was intended to simplify the use of the dollar-value LIFO method, so that the LIFO method could be used by more taxpayers and so that taxpayers already using the dollar-value LIFO method would have a simpler alternative method of computing an index for their dollar-value pool.

On May 19, 2000, the IRS and Treasury Department published a notice of proposed rulemaking (REG–107644–98, 65 FR 31841, 2000–23 I.R.B. 1229) (the proposed regulations) intended to simplify and clarify certain aspects of the IPIC method. In addition, the proposed regulations provided rules for computing the LIFO value of a dollar-value pool when a taxpayer receives LIFO inventories in certain nonrecognition transactions. Comments responding to the notice were received,

and a public hearing was held on September 15, 2000.

The IRS and Treasury Department received 16 comment letters concerning the proposed regulations. After considering the comments contained in these letters, the IRS and Treasury Department adopt the proposed regulations as revised by this Treasury decision. The comments and revisions are discussed below.

Explanation of Provisions and Summary of Comments

1. Overview

Under the last-in, first-out (LIFO) method, inventory on hand at the end of the year is treated as consisting of ''layers,'' first of inventory on hand at the beginning of the year (in the order of acquisition), and then of any inventory acquired during the current year. Section 1.472–8 permits a taxpayer to use the dollar-value LIFO method, which accounts for all items in an inventory ''pool'' (dollar-value pool) in terms of dollars of cost rather than in terms of quantities and prices of specific goods. Specifically, the taxpayer annually determines the existence of an increase (increment) or decrease (liquidation) in a dollar-value pool by comparing inventory quantities measured in terms of equivalent-value dollars (base-year cost). The current-year cost of beginning and ending inventory is converted into base-year cost using an inflation index, which is the ratio of the dollar-value pool's total current-year cost to its total base-year cost. By subtracting the base-year cost of the dollar-value pool at the beginning of the taxable year from the base-year cost of the dollar-value pool at the end of the taxable year, the taxpayer determines the amount of any resulting increment or liquidation. Finally, the taxpayer computes the LIFO value of an increment (layer) by multiplying that increment's base-year cost by an inflation index.

The current regulations provide an alternative method for a taxpayer to determine an inflation index. Under the inventory price index computation (IPIC) method, the taxpayer computes an inventory price index (IPI) based on the consumer price indexes (CPI) or producer price indexes (PPI) published monthly by the United States Bureau of Labor Statistics (BLS) in the ''CPI Detailed Report'' and ''PPI Detailed Report,'' respectively. See also *http://www.bls.gov.*

To facilitate a taxpayer's use of the IPIC method, the final regulations use new, more-descriptive terms for some IPIC method concepts. For example, *pool index* has been replaced with *IPI, appropriate index* has been replaced with *category inflation index,* and *index category* has been replaced with *BLS index category.* Within this preamble, the discussion of the current and proposed regulations uses both old and new terms, and the discussion of the final regulations generally uses the new terms.

2. Inventory Price Index—20 Percent Reduction

The current regulations state that ''[a]n inventory price index computed [under the IPIC method] shall be a stated percentage of the percent change in the selected consumer or producer price index or indexes for a specific category or categories of goods.'' For this purpose, ''stated percentage'' means ''100 percent'' in the case of an eligible small business, as defined in section 474 (i.e., average annual gross receipts for the three preceding taxable years do not exceed $5,000,000), and ''80 percent'' in all other cases. The proposed regulations retained this 20 percent reduction for large taxpayers.

Several commentators objected to the continuing requirement that large taxpayers reduce the IPI by 20 percent. Some of these commentators opined that the IPIC method is effectively a safe harbor method that significantly simplifies the LIFO computation and reduces IRS and taxpayer controversy; however, the 20 percent reduction is a major deterrent to its use by large taxpayers. Others argued that the CPI and PPI are representative of true inflation and, therefore, the 20 percent reduction decreases the accuracy of the IPIC method. Other commentators recommended that the stated percentage not be decreased by 20 percent until the taxpayer's gross receipts exceed $10,000,000. In their view, a taxpayer's gross receipts are likely to exceed $5,000,000 by the time the taxpayer's business is profitable enough to benefit by changing to the LIFO method.

The 20 percent reduction contained in the current regulations represents a balance between two competing tax policies—simplification and prevention of adverse selection. The IPIC method was developed originally to simplify the LIFO rules so that small businesses that could not compute an internal inflation index could use the LIFO method. Nonetheless, availability of the method was provided to all taxpayers because it was believed to be too difficult to define the class of taxpayers for which the LIFO rules were unduly burdensome and inappropriate to prevent large taxpayers from using the simplified method. Allowing all taxpayers to use the CPI or PPI regardless of the rate of inflation they actually experienced, however, provided an opportunity for adverse selection whereby a sophisticated taxpayer would adopt the IPIC method only when the inflation reflected in the CPI or PPI exceeded the taxpayer's internal rate of inflation. The 20 percent reduction of the IPI was incorporated into the current regulations to reduce this potential for adverse selection.

The IRS and Treasury Department now believe that the benefits of simplification (and reduced controversy) obtained from the IPIC method outweigh the need to prevent adverse selection. Consequently, the final regulations eliminate the requirement to reduce the IPI by 20 percent. All taxpayers electing to use the IPIC method may use 100 percent of the IPI to compute the LIFO value of a dollar-value pool.

3. Use of 10 Percent Categories and BLS Weights

The current regulations provide rules for assigning the items in a dollar-value pool to the applicable categories listed in the ''CPI Detailed Report'' or the ''PPI Detailed Report'' for which the BLS publishes corresponding cumulative price indexes (BLS categories and BLS price indexes, respectively) for purposes of computing the IPI for a dollar-value pool. In very simple terms, taxpayers use a process of elimination to assign all the items in a dollar-value pool to BLS categories that include at least 10 percent of the total inventory value (10 percent BLS categories) and then use the corresponding BLS weights to compute a weighted-average appropriate index for the items assigned to those 10 percent BLS categories.

The proposed regulations eliminate the requirements to use the 10 percent BLS categories and BLS weights to compute an appropriate index because it was believed that these requirements did not provide the intended simplicity but rather added unnecessary complexity to the IPIC method. Instead, the proposed regulations require the taxpayer to assign items in a dollar-value pool to the most-detailed BLS categories listed in the ''CPI Detailed Report'' or the ''PPI Detailed Report,'' whichever is applicable, and to weight the BLS price indexes based on the relative current-year cost of the items assigned to those BLS categories.

Several commentators objected to the elimination of the requirement to use the 10 percent BLS categories and BLS weights to compute an appropriate index. They suggested that this regime does in fact provide simplification for

some taxpayers and consequently should be retained as an option, particularly for retail grocers that would have to incur substantial administrative costs to have the items contained in their dollar-value pools assigned to numerous, most-detailed BLS categories. Other commentators supported the elimination of the requirement to use BLS weights, arguing that this will reduce both the complexity of the IPIC method and the potential for distortion caused by the use of the BLS weights. However, these commentators generally recommended retention of the 10 percent categories or, alternatively, modification of the proposed rule to permit a taxpayer to assign items in a dollar-value pool to less-detailed BLS categories (e.g., using 6-digit or 4-digit commodity codes in the PPI). Another commentator suggested lowering the testing threshold from 10 percent to 8 percent.

The IRS and Treasury Department now understand that the requirement to use 10 percent BLS categories and BLS weights provides simplicity for some taxpayers but complexity for others. Accordingly, the final regulations retain the 10 percent BLS categories and BLS weights as an elective method (10 percent method) of determining the category inflation index of a 10 percent BLS category. The final regulations clarify, however, that to determine whether a BLS category may be selected under the 10 percent method, a taxpayer must compare the current-year cost of the items in that category to the total current-year cost of the items in the dollar-value pool, not to the total current-year cost of the items in the taxpayer's entire inventory.

4. Weighted Harmonic Mean for Computing Inventory Price Index

A pool index computed using the dollar-value LIFO method should reflect a weighted average of the inflation rates of the items contained in the ending inventory of the dollar-value pool. The current regulations state that the appropriate indexes are weighted according to the relative current-year costs of the items in each selected BLS category. However, the regulations do not state how a taxpayer computes a weighted average of the appropriate indexes using the amount of relative current-year costs in each selected BLS category. An example of IPIC weighting methodology is found in Rev. Proc. 84–57 (1984–2 C.B. 496), which shows the computation of an IPI based on a weighted arithmetic mean of the appropriate indexes. (Weighted Arithmetic Mean = [Sum of (Weight x Appropriate Index)] / Sum of Weights). In addition, an example found in Rev. Proc. 98–49 (1998–2 C.B. 321) uses a weighted arithmetic mean to compute a weighted-average percent change for a selected BLS category.

The proposed regulations provide that the pool index must be computed using a weighted harmonic mean, instead of a weighted arithmetic mean, based on the relative current-year costs in the dollar-value pool. (Weighted Harmonic Mean = Sum of Weights / Sum of (Weight / Appropriate Index)).

Using a weighted arithmetic mean of the category inflation indexes of the BLS categories represented in a dollar-value pool is not a mathematically correct method of computing the IPI for the pool when the corresponding weights are the relative current-year costs at the end of the taxable year. If a taxpayer's dollar-value pool has the same quantity of two items with identical base-year costs, the IPI should reflect the inflation rates of the two items equally. However, a weighted arithmetic mean of the category inflation indexes will assign more weight to the inflation rate of the item that has the higher current-year cost. Thus, the mean will be skewed in favor of BLS categories that experience higher rates of inflation, and the IPI will be overstated. This result also will occur when the items in the dollar-value pool experience deflation because too much weight will be assigned to the BLS categories that experience less deflation.

Several commentators objected to the mandatory use of the weighted harmonic mean when computing an IPI. Acknowledging that an IPI based on a weighted harmonic mean is mathematically correct, these commentators stated that the inaccuracy built into a weighted arithmetic mean is offset (in the case of larger taxpayers) by the 20 percent reduction of the ''stated percentage.'' Thus, they recommended that taxpayers be permitted to continue computing IPIs based on a weighted arithmetic mean rather than be required to incur additional administrative costs to begin computing IPIs based on a weighted harmonic mean.

The IRS and Treasury Department did not adopt these suggestions because a weighted arithmetic mean based on relative current-year costs at the end of the period is not mathematically correct and the conversion from a weighted arithmetic mean to a weighted harmonic mean is not unduly burdensome. To assist taxpayers that need to change to a weighted harmonic mean, the final regulations include the formula for, and examples of, computing a weighted harmonic mean.

On the other hand, the use of a weighted arithmetic mean is mathematically correct when computing a weighted-average category inflation index based on relative costs at the beginning of the taxable year. The published BLS weights applicable for a taxable year are essentially based on relative costs at the beginning of the period. Therefore, whenever it is necessary to compute the category inflation index of a 10 percent BLS category using BLS weights, taxpayers must compute a weighted arithmetic mean. When computing the IPI for a dollar-value pool, however, even taxpayers electing to use the 10 percent method must use the weighted harmonic mean based on the current-year cost of the items assigned to each 10 percent BLS category.

5. Selecting an Appropriate Month

The current regulations state that a taxpayer not using the retail method must select price indexes ''as of the month or months'' most appropriate to its method of determining current-year cost (appropriate month), or make a one-time binding election of an appropriate representative month (representative month). In the case of a retailer using the retail method, the appropriate month is the last month of the retailer's taxable year. The IRS has ruled that a month is a representative month if a nexus exists between the selected month, the taxpayer's method of determining current-year cost, and the taxpayer's historic experience of inventory purchases. Rev. Rul. 89–29 (1989–1 C.B. 168). In practice, many taxpayers have been confused about the meaning of ''month or months most appropriate to the taxpayer's method of determining current-year cost.''

The proposed regulations clarify that for each dollar-value pool, a taxpayer not using the retail method either must annually select an appropriate month or must make an election to use a representative month. The principles of Rev. Rul. 89–29, which have been incorporated into the final regulations, continue to apply for the purpose of determining whether a particular month is appropriate or representative.

Several commentators stated that taxpayers should be permitted to use two IPIs for each taxable year (dual indexes), so that they will not be denied the right to use the earliest acquisitions method of determining current-year costs. These commentators suggest that a taxpayer whose accounting system determines the current-year cost of ending inventory using a first-in, first-out (FIFO) method (i.e., most recent purchases) could compute an IPI based on indexes selected from the CPI or PPI applicable to a month late in the taxable

year to deflate the current-year cost of items in ending inventory for the purpose of determining whether an increment or liquidation has occurred during the taxable year. If there is an increment, the taxpayer would compute a second IPI based on indexes selected from the CPI or PPI applicable to a month early in the taxable year to inflate the base-year cost of the increment to its LIFO value based on its ''pricing election'' (i.e., earliest acquisitions).

The IRS and Treasury Department did not adopt this suggestion for several reasons. First, the IPIC method and the earliest acquisitions method are not mutually exclusive. In fact, the current and proposed IPIC regulations clearly permit an electing taxpayer to use any method of determining current-year cost permitted under § 1.472–8(e)(2)(ii), including the earliest acquisitions method. A dual index IPIC method is not needed to ensure that an electing taxpayer will be able to use the earliest acquisitions method. However, the earliest acquisitions method is available under the IPIC method only to a taxpayer that actually computes the current-year cost of its ending inventory using the earliest acquisitions method because use of a dual index is inconsistent with the IPIC method's concept of an appropriate month. The appropriate month concept requires a taxpayer to select a month that correlates with its actual method of computing current-year cost and its experience with inventory purchases. As explained in Rev. Rul. 89–29, ''[t]he timing of the index (and the month selected) must relate to the timing of the determination of current-year cost, otherwise distortion would occur.'' The determination of an appropriate month is not a choice between equally acceptable methods of determining current-year cost, but depends on the taxpayer's actual method of determining current-year cost and actual purchases. Thus, a taxpayer using a calendar tax year may select January as the appropriate month only if items represented in the ending inventory were purchased in January and the taxpayer determines the current-year cost of the ending inventory based on the cost of those January purchases.

Moreover, though a dual index IPIC method would eliminate the requirement to determine the actual earliest acquisitions cost of the items in a dollar-value pool, the method would not simplify a taxpayer's use of the dollar-value LIFO method. A dual index IPIC method will require an electing taxpayer to compute (and the IRS to examine) twice as many category inflation indexes because the taxpayer would need BLS price indexes that reflect its inflation experience under the most recent purchases method as well as under the earliest acquisitions method. Similarly, a dual index IPIC method would require a taxpayer to select twice as many appropriate or representative months for each taxable year. Not only does the requirement to select two appropriate months increase the complexity of the IPIC method, it also decreases the accuracy of the method as some accuracy is lost as a result of determining the appropriate month for the entire pool rather than for each inventory item or each BLS category.

In summary, the IPIC method was intended to simplify the dollar-value LIFO method, primarily so it could be used by taxpayers that were otherwise unable to use the method. The IPIC method was neither intended nor designed to serve as a surrogate for determining the earliest acquisitions cost of the items in a dollar-value pool. The prohibition on the use of dual indexes in connection with the IPIC method, however, does not necessarily mean that the use of dual indexes will be prohibited in the context of other LIFO methods.

Several commentators objected to the rule that requires a taxpayer using both the retail method and LIFO method to use the last month of the taxable year as its appropriate month. In their view, a month in the middle of the year would be more representative because the retail method produces an average cost for a group of goods based on purchases for an entire year.

The IRS and Treasury Department did not adopt this suggestion because they believe that the appropriate month for a taxpayer using the retail method is the last month of the taxable year. Section 1.471–8 generally requires that a taxpayer adjust retail selling prices of the goods on hand at the end of the year to cost based on the ratio of goods available for sale at cost to goods available for sale at retail (the cost complement percentage). While this ratio may reflect an average cost complement percentage for the year, it is applied to retail selling prices of the goods on hand at the end of the taxable year rather than the average retail selling price of these goods during the year. Consequently, the approximate cost determined under the retail method is not necessarily equal to the average cost of the inventory.

One commentator suggested that the final regulations should include factors for determining an appropriate month. Other commentators requested an example showing how to determine an appropriate month when a short taxable year follows the first taxable year that a taxpayer uses the IPIC method. In response to these comments, the final regulations incorporate the guidance on an appropriate representative month (including three of the examples) found in Rev. Rul. 89–29.

6. Calculation of a Category Inflation Index

The proposed regulations generally provide that in the case of a taxpayer using the double-extension IPIC method, the inflation index for a selected BLS category is equal to the quotient of the BLS price index for the appropriate or representative month of the current taxable year and the month preceding the first day of the base year. In the case of a taxpayer using the link-chain IPIC method, the inflation index for a selected BLS category is equal to the BLS price index for the appropriate or representative month of the current taxable year divided by the appropriate or representative month used for the immediately preceding taxable year. However, if the first taxable year the taxpayer uses the IPIC method also is the first taxable year the taxpayer uses the dollar-value LIFO method, the inflation index is equal to the quotient of the published cumulative index for the appropriate or representative month for the current taxable year divided by the published cumulative index for the month immediately preceding the first day of the taxable year.

Several commentators argued that the prescribed calculation for the first taxable year a taxpayer uses both the dollar-value LIFO and IPIC methods is likely to overstate or understate inflation if the taxpayer has opening inventories, unless the opening inventories were purchased during the last month of the preceding taxable year. To address this concern, the commentators suggested that a taxpayer be permitted to compare the BLS price index for the appropriate month of the first LIFO taxable year with the BLS price index for the appropriate month of the taxpayer's last non-LIFO taxable year. Another commentator suggested that the denominator in this formula should be the BLS price index that reflects prices during the last inventory turn of the immediately preceding taxable year.

The IRS and Treasury Department agree with the commentators' concerns. In addition, the IRS and Treasury Department recognize that the same problem exists under the proposed regulations as a result of the requirement to use the month preceding the first day of the base year to compute

an appropriate index under the double-extension IPIC method. Accordingly, the final regulations generally provide that a category inflation index should be computed with reference to the BLS price indexes for an appropriate month of the year preceding its LIFO election (in the case of the double-extension IPIC method) or of the preceding year (in the case of the link-chain IPIC method). In addition, the final regulations incorporate the general guidance of Rev. Proc. 98–49 concerning the computation of a category inflation index when a selected BLS category is revised for the taxable year.

7. Scope of an IPIC Method Election

The current regulations generally require a taxpayer using the IPIC method to use that method to account for all items accounted for using the LIFO method (LIFO inventory items). The current regulations also prohibit the use of the IPIC method by a taxpayer that is eligible to use BLS price indexes prepared for the purpose of valuing the LIFO inventory items of a specific industry. For example, a taxpayer eligible to use the BLS retail price indexes published in ''Department Store Inventory Price Indexes'' (DSIP indexes) may not use the IPIC method.

The proposed regulations liberalize the eligibility restrictions applicable to the IPIC method in two respects. First, a taxpayer must use the IPIC method for all items accounted for under the dollar-value LIFO method, but not for all items accounted for under the LIFO method. Second, a taxpayer eligible to use DSIP indexes may elect to use the IPIC method for all its LIFO inventory items or for those LIFO inventory items that do not fall within any of the 23 major groups listed in ''Department Store Inventory Price Indexes.''

Several commentators objected to the proposed general requirement that an electing taxpayer use the IPIC method for all its LIFO inventory items. In their view, section 446(d) permits a taxpayer to elect the IPIC method for each trade or business. The requirement to use the IPIC method for all LIFO inventory items, as originally promulgated, was designed to prevent adverse selection. The IRS and Treasury Department understand, however, that taxpayers often have valid business reasons for using the IPIC method in some businesses but not in others. For example, a taxpayer may have difficulty using the double-extension method in one of its trades or businesses but not in another. Accordingly, the final regulations permit a taxpayer to limit its IPIC election to one or more specific trades or businesses.

8. Selection of ''CPI Detailed Report'' or ''PPI Detailed Report''

The current regulations state that a retailer may select price indexes from the ''CPI Detailed Report'' or the ''PPI Detailed Report,'' but if equally appropriate price indexes may be selected from either, a retailer using the retail method must select from the ''CPI Detailed Report,'' and a retailer not using the retail method must select from the ''PPI Detailed Report.''

The proposed regulations eliminate the requirement that retailers determine whether the ''CPI Detailed Report'' and ''PPI Detailed Report'' contain equally appropriate price indexes. Instead, the proposed regulations require retailers using the retail method to select price indexes from the ''CPI Detailed Report'' and require all other taxpayers using the IPIC method to select price indexes from the ''PPI Detailed Report.''

Several commentators suggested that the IRS and Treasury Department permit all retailers using the IPIC method to select price indexes from either the ''CPI Detailed Report'' or the ''PPI Detailed Report.'' These commentators argue that many retailers selecting price indexes from the CPI do not use the retail method and would be forced to change. This change would be particularly burdensome because the categories listed in the ''PPI Detailed Report'' are far more detailed (and less correlated) than those listed in the ''CPI Detailed Report.'' In addition, these commentators argue that the proposed rule fails to recognize that the PPI does not necessarily reflect cost for retailers not using the retail method because the majority of retailers purchase their goods from wholesalers not producers. Finally, the commentators expressed concern that the proposed rule would preclude retailers that use the retail method at their stores and a cost method at their warehouses from using the price indexes listed in the ''CPI Detailed Report'' when retail price information is not ascertained or readily available for goods in warehouses.

The IRS and Treasury Department generally agree with the commentators' concerns. Accordingly, the final regulations permit all retailers using the IPIC method to assign items in dollar-value pools to the BLS categories listed in either the ''CPI Detailed Report'' or the ''PPI Detailed Report,'' whichever is selected.

9. BLS Category for Work-in-Process

The proposed regulations provide that manufacturers and processors must assign all work-in-process (WIP) items in a dollar-value pool to the most-detailed index categories that include the finished goods into which the WIP item will be manufactured or processed. For this purpose, *finished good* means any good that is in a salable state.

Several commentators objected to the proposed requirement that a taxpayer compute a separate inflation index for a WIP item that is in a salable state but not regularly sold by the taxpayer.

The IRS and Treasury Department agree with the commentators' objection to the extent that the taxpayer's WIP items are merely salable. Accordingly, the final regulations provide that a taxpayer is not required to compute a separate category inflation index for a salable WIP item, unless the taxpayer regularly sells that WIP item.

10. Relocation and Clarification of Special Pooling Rules

The current regulations provide special, elective pooling rules for retailers, wholesalers, jobbers, and distributors that use the IPIC method. These taxpayers are permitted to establish a dollar-value pool for any group of goods included in one of the 11 general categories of consumer goods described in the ''CPI Detailed Report.'' In addition, Rev. Proc. 84–57 provides that inventory pools may be established for any group of goods included within one of the 15 general categories of producer goods described in Table 6 of the ''PPI Detailed Report.'' Finally, the regulations provide that dollar-value pools that comprise less than 5 percent of inventory value may be combined to form a single miscellaneous dollar-value pool. If the resulting miscellaneous dollar-value pool itself comprises less than 5 percent of inventory value, that pool may be combined with the largest dollar-value pool.

The proposed regulations retain the special, elective pooling rules for inventory items accounted for under the IPIC method contained in the current regulations and incorporate the special, elective pooling rules contained in Rev. Proc. 84–57.

Several commentators asked whether taxpayers must apply the 5 percent rules to a dollar-value pool annually and, if so, how they are to account for dollar-value pools that no longer satisfy the 5 percent threshold. One commentator suggested that the IRS and Treasury Department make these 5 percent rules optional, state whether these rules are methods of accounting, and require taxpayers to apply the principles of § 1.472–8(g)(2) when changing dollar-value pools because of these 5 percent rules. Another commentator recommended that taxpayers be permitted to include inventories not

accounted for under the LIFO method in ''inventory value'' when determining whether the 5 percent rules apply.

The IRS and Treasury Department believe that both of the 5 percent rules for dollar-value pools have been, and remain, optional. Under the current and proposed regulations, a taxpayer may, but is not required to, combine two or more specific dollar-value pools into a single miscellaneous dollar-value pool when the cost of each specific dollar-value pool does not exceed 5 percent of the total cost of the taxpayer's LIFO inventory. In addition, a taxpayer may, but is not required to, combine the single miscellaneous dollar-value pool and the largest specific dollar-value pool when cost of the miscellaneous dollar-value pool does not exceed 5 percent of the total cost of the taxpayer's LIFO inventory. Furthermore, the IRS and Treasury Department believe that both of the 5 percent rules are methods of accounting within the broader IPIC pooling method, so a taxpayer may not change to, or cease using, either of the 5 percent rules without obtaining the Commissioner's prior consent. In addition, any change in pooling required by the taxpayer's proper use of the 5 percent rule(s) is a change in method of accounting. Thus, the final regulations require a taxpayer in these circumstances to combine and separate its dollar-value pools in accordance with § 1.472–8(g). Moreover, the final regulations require a taxpayer to determine whether to separate or combine the 5 percent pools every third taxable year based on current-year data rather than on average data.

11. New Base Year for IPIC Method Changes

The current regulations require a taxpayer that changes to the IPIC method from another dollar-value LIFO method to treat the year of change as the base year in determining the LIFO value of the dollar-value pool(s) for the year of change and later taxable years. The taxpayer is required to restate the base-year cost of the existing increments in terms of new base-year cost, which also requires the restatement of the IPI of each of the layers. This procedure is referred to alternatively as updating the base year or establishing a new base year.

One commentator suggested eliminating the reference to § 1.472–8(f)(2) in the case of a voluntary change from the specific goods LIFO method to the dollar-value LIFO method because taxpayers and tax practitioners have long questioned how to implement this change without updating the base year. The final regulations adopt this suggestion and require a taxpayer changing from the specific goods LIFO method to the IPIC method to establish a new base year. Although guidance addressing taxpayers changing from the specific goods LIFO method to a dollar-value LIFO method other than the IPIC method is outside the scope of these regulations, the IRS and Treasury Department are considering whether to issue additional guidance to address the commentator's concerns regarding changes from the specific goods method to a dollar-value LIFO method.

The proposed regulations clarify that the base-year-updating procedure is mandatory for voluntary changes to the IPIC method. However, the proposed regulations authorized examining agents to require a change to the IPIC method in circumstances where the taxpayer's prior method does not clearly reflect income and to implement the change using a cutoff method in circumstances where the taxpayer's books and records lacked the information necessary to compute a section 481(a) adjustment. The latter provision was intended to provide examining agents with an alternative to LIFO termination in appropriate circumstances.

One commentator objected to giving examining agents the authority to require a taxpayer using a LIFO method to change to the double-extension IPIC method even when the taxpayer produces records that will allow the agent to calculate the effect of changing to a correct method other than the IPIC method. This commentator requested ''clear-cut'' published guidance on the types of records that taxpayers using a LIFO method must retain and the length of time that they must retain them. In addition, because of the administrative burden associated with record retention (particularly those records needed for LIFO methods not used by the taxpayer), this commentator requested that the IRS and Treasury Department create a shortcut procedure, similar to the three-year transition rule under § 1.263A–7(c)(2)(iv), to calculate the effect of changing the taxpayer's LIFO method. Finally, this commentator suggested that the IRS and Treasury Department, as a matter of fairness, permit a taxpayer to recompute each year's layer using the IPI for that year.

Several commentators urged the IRS and Treasury Department to withdraw the involuntary change provisions entirely or, alternatively, to modify them to give examining agents discretion to impose a change to the double-extension IPIC method with or without establishing a new base year. One of these commentators also urged the IRS and Treasury Department to give these examining agents discretion to impose a change to either the double-extension IPIC method or the link-chain IPIC method.

In response to these comments, the final regulations provide that an examining agent may change a taxpayer from a LIFO method that does not clearly reflect income to the IPIC method. If the agent decides to change the taxpayer to the IPIC method, and the taxpayer does not provide sufficient information from its books and records to compute an adjustment under section 481, the agent may implement the change using the simplified transition method. Under the simplified transition method, the agent makes certain assumptions regarding the composition of ending inventory in prior taxable years and recomputes the LIFO value of each dollar-value pool as of the beginning of the year of change using the IPIC method. The section 481(a) adjustment arising from the accounting method change is equal to the difference between that recomputed LIFO value and the LIFO value of the dollar-value pool determined under the taxpayer's former method. The IRS and Treasury Department are considering other simplified methods of computing a section 481(a) adjustment arising from a change from one LIFO method to another and may publish additional guidance in the future. The suggestion regarding the issuance of guidance on a taxpayer's record keeping requirement is beyond the scope of this project, but will be considered for possible future guidance.

12. Inventories Received in Certain Nonrecognition Transactions

An election to use the dollar-value LIFO method for LIFO inventories received in a nonrecognition transaction to which section 381 does not apply (non-section 381 transfer) may not continue the LIFO reserve of the transferor. If the mix of goods in the inventory changes significantly after the transfer, the mechanics of the dollar-value LIFO method may produce an artificial increment in the year the inventories are received that effectively eliminates the LIFO reserve established by the transferor. This artificial increment occurs because the base-year cost of new items are reconstructed to the transferee's base year (i.e., the year it elects LIFO) and not to the transferor's base year. When a transferee elects the LIFO and IPIC methods for LIFO inventories received in a non-section 381 transfer, the transferee will have an artificial increment in the year the inventories are received even without a significant change in the mix of goods

in its ending inventory. The IPIC method invariably produces an increment because the difference between the current-year cost and the carryover basis of the transferred inventories (i.e., the base-year cost) reflects more than one year's inflation and the IPI used to convert the current-year cost of the dollar-value pool at the end of the taxable year to base-year cost will reflect only one year's inflation.

To prevent the recapture of a transferor's LIFO reserve in a non-section 381 transfer, the proposed regulations require the transferee to update its base-year cost if a transferee uses the dollar-value LIFO method for inventories received in a non-section 381 transfer and the transferor accounted for those inventories using the dollar-value LIFO method as follows. First, the transferee's base year for the inventories received from the transferor is the year of transfer. Second, the transferee's base-year cost for the inventories received from the transferor is equal to the transferor's current-year cost for those inventories. Finally, if the transferee owned inventories prior to the transfer, the new base-year cost of those inventories will be equal to their current-year cost. The proposed regulations do not affect either the ability of a newly formed transferee to elect new accounting methods or the holdings of Rev. Rul. 70–564 (1970–2 C.B. 109) and Rev. Rul. 70–565 (1970–2 C.B. 110). However, the proposed regulations do not apply to a non-section 381 transfer if its principal purpose is to avail the transferee of a method of accounting that is unavailable to the transferor (or is unavailable to the transferor without the Commissioner's consent).

One commentator asserted that when a taxpayer described in Rev. Rul. 70–564 (i.e., no beginning LIFO inventories) applies the proposed rule to transferred inventories, the resulting IPI of the collapsed base-year layer will not equal 1. Because this result may cause some confusion, the commentator suggested including an example in the final regulations. The final regulations include an example demonstrating the computation of increments and liquidations after a new base year is established.

Several commentators asserted that the proposed rule may result in the creation of an artificial increment or liquidation when a transferee and transferor use different methods of determining current-year costs. Thus, the regulations should be changed to permit a transferee to establish (or reconstruct) the new base-year cost of the transferred inventories equal to the transferor's first-in, first-out cost for the year immediately preceding the year of transfer, or alternatively, if the final regulations continue to require the use of the transferor's current-year cost and current-year cost method, the regulations should be changed to provide that the period for measuring inflation for the base year is between the appropriate month for determining base-year cost and the appropriate month for determining current-year cost. In addition, one commentator suggested that the final regulations be changed to clarify that ''beginning inventory, if any'' refers only to inventory that the transferee actually owned before the nonrecognition transaction.

The IRS and Treasury Department agree with these commentator's concerns. Accordingly, the final regulations permit the transferee to compute the base-year cost of transferred inventories using its current-year cost and its method of determining current-year cost. The final regulations also clarify the meaning of beginning inventory.

Another commentator contended that the holding of Rev. Rul. 70–564 is incorrect and, thus, the average cost rule of section 472(b)(3) should not be applied to inventories received by a transferee without an existing LIFO election in a non-section 381 transfer. In addition, this commentator noted that the holding of Rev. Rul. 70–564 is inconsistent with § 1.1502–13 (concerning intercompany transactions), which generally provides that an intercompany transaction may not change the timing of the recognition of income or deductions. This commentator suggested that the holding of Rev. Rul. 70–565, which provides for a carryover of a transferor's LIFO layer history in a section 351 transfer to a transferee with an existing LIFO election, should be applied in all non-section 381 transfers.

The IRS and Treasury Department believe this comment is outside the scope of these final regulations. However, in response to this comment, the IRS and Treasury Department are reconsidering whether to continue to require different results upon the transfer of LIFO inventories in a non-section 381 transfer (as currently required by Rev. Rul. 70–564 and Rev. Rul. 70–565) depending upon whether the transferee has an existing LIFO election.

13. Effective Date of Final Regulations

The proposed regulations provide that proposed §§ 1.472–8(b)(4), (c)(2), and (e)(3) will apply to taxable years beginning on or after the date they are published in the **Federal Register** as final regulations. In addition, the proposed regulations provide that proposed § 1.472–8(h) will apply to transfers occurring on or after the date it is published in the **Federal Register** as a final regulation.

One commentator suggested that taxpayers be permitted, but not required, to apply §§ 1.472–8(b)(4), (c)(2), and (e)(3) for taxable years *ending* on or after the date the regulations are published in the **Federal Register** as final regulations. This commentator also suggested that taxpayers be permitted to apply § 1.472–8(h) to transfers occurring during the taxable year *ending* on or after the date the regulations are published in the **Federal Register** as final regulations. In addition, several commentators suggested that the transition period for an automatic change in method of accounting to comply with §§ 1.472–8(b)(4), (c)(2), and (e)(3) be extended to include the *second* taxable year ending on or after the date the regulations are published in the **Federal Register** as final regulations.

The IRS and Treasury Department agree with these suggestions. However, in order to ensure that taxpayers may implement these changes for taxable years ending December 31, 2001, as requested by the commentators, the final regulations are effective for taxable years ending on or after December 31, 2001.

Effect on Other Documents

Rev. Proc. 84–57, Rev. Rul. 89–29, and Rev. Proc. 98–49 are obsolete on January 9, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Code, the proposed regulations preceding this Treasury decision was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. It is hereby certified that the collections of information in this Treasury decision will not have a significant economic impact on a substantial number of small entities. First, only taxpayers that adopt, or change to, the IPIC method will be affected by the collections of information. Second, relatively few small entities are expected to adopt, or change to, the IPIC method. Third, the

burden of the collections of information is not significant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Drafting Information

The principal author of these regulations is Leo F. Nolan II of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
§ 1.472–8 also issued under 26 U.S.C. 472. * * *

Par. 2. Section 1.472–8 is amended as follows:

1. Paragraph (b)(4) is added.
2. The text of paragraph (c) following the paragraph heading is redesignated as paragraph (c)(1) and a paragraph heading for newly designated (c)(1) is added.
3. Paragraph (c)(2) is added.
4. Paragraph (e)(3) and (h) are revised.
5. The undesignated paragraph following paragraph (h) is removed.

The revisions and additions read as follows:

§ 1.472–8 Dollar-value method of pricing LIFO inventories.

* * * * *

(b) * * *

(4) *IPIC method pools.* A manufacturer or processor that elects to use the inventory price index computation method described in paragraph (e)(3) of this section (IPIC method) for a trade or business may elect to establish dollar-value pools for those items accounted for using the IPIC method based on the 2-digit commodity codes (i.e., major commodity groups) in Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the ''PPI Detailed Report'' published monthly by the United States Bureau of Labor Statistics (available from New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954). A taxpayer electing to establish dollar-value pools under this paragraph (b)(4) may combine IPIC pools that comprise less than 5 percent of the total current-year cost of all dollar-value pools to form a single miscellaneous IPIC pool. A taxpayer electing to establish dollar-value pools under this paragraph (b)(4) may combine a miscellaneous IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools with the largest IPIC pool. Each of these 5 percent rules is a method of accounting. A taxpayer may not change to, or cease using, either 5 percent rule without obtaining the Commissioner's prior consent. Whether a specific IPIC pool or the miscellaneous IPIC pool satisfies the applicable 5 percent rule must be determined in the year of adoption or year of change (whichever is applicable) and redetermined every third taxable year. Any change in pooling required or permitted as a result of a 5 percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to § 1.446–1(e) before combining or separating pools and must combine or separate its IPIC pools in accordance with paragraph (g)(2) of this section.

(c) * * * (1) *In general.* * * *

(2) *IPIC method pools.* A retailer that elects to use the inventory price index computation method described in paragraph (e)(3) of this section (IPIC method) for a trade or business may elect to establish dollar-value pools for those items accounted for using the IPIC method based on either the general expenditure categories (i.e., major groups) in Table 3 (Consumer Price Index for all Urban Consumers (CPI–U): U.S. city average, detailed expenditure categories) of the ''CPI Detailed Report'' or the 2-digit commodity codes (i.e., major commodity groups) in Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the ''PPI Detailed Report.'' A wholesaler, jobber, or distributor that elects to use the IPIC method for a trade or business may elect to establish dollar-value pools for any group of goods accounted for using the IPIC method and included within one of the 2-digit commodity codes (i.e., major commodity groups) in Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the ''PPI Detailed Report.'' The ''CPI Detailed Report'' and the ''PPI Detailed Report'' are published monthly by the United States Bureau of Labor Statistics (BLS) (available from New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954). A taxpayer electing to establish dollar-value pools under this paragraph (c)(2) may combine IPIC pools that comprise less than 5 percent of the total current-year cost of all dollar-value pools to form a single miscellaneous IPIC pool. A taxpayer electing to establish pools under this paragraph (c)(2) may combine a miscellaneous IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools with the largest IPIC pool. Each of these 5 percent rules is a method of accounting. Thus, a taxpayer may not change to, or cease using, either 5 percent rule without obtaining the Commissioner's prior consent. Whether a specific IPIC pool or the miscellaneous IPIC pool satisfies the applicable 5 percent rule must be determined in the year of adoption or year of change (whichever is applicable) and redetermined every third taxable year. Any change in pooling required or permitted under a 5 percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to section 1.446–1(e) before combining or separating pools and must combine or separate its IPIC pools in accordance with paragraph (g)(2) of this section.

* * * * *

(e) * * *

(3) *Inventory price index computation (IPIC) method*—(i) *In general.* The inventory price index computation method provided by this paragraph (e)(3) (IPIC method) is an elective method of determining the LIFO value of a dollar-value pool using consumer or producer price indexes published by the United States Bureau of Labor Statistics (BLS). A taxpayer using the IPIC method must compute a separate inventory price index (IPI) for each dollar-value pool. This IPI is used to convert the total current-year cost of the items in a dollar-value pool to base-year cost in order to determine whether there is an increment or liquidation in terms of base-year cost and, if there is an increment, to determine the LIFO inventory value of the current year's layer of increment (layer). Using one IPI to compute the base-year cost of a dollar-value pool for the current taxable year and using a different IPI to compute the LIFO inventory value of

the current taxable year's layer is not permitted under the IPIC method. The IPIC method will be accepted by the Commissioner as an appropriate method of computing an index, and the use of that index to compute the LIFO value of a dollar-value pool will be accepted as accurate, reliable, and suitable. The appropriateness of a taxpayer's computation of an IPI, which includes all the steps described in paragraph (e)(3)(iii) of this section, will be determined in connection with an examination of the taxpayer's federal income tax return. A taxpayer using the IPIC method may elect to establish dollar-value pools according to the special rules in paragraphs (b)(4) and (c)(2) of this section or the general rules in paragraphs (b) and (c) of this section. Taxpayers eligible to use the IPIC method are described in paragraph (e)(3)(ii) of this section. The manner in which an IPI is computed is described in paragraph (e)(3)(iii) of this section. Rules relating to the adoption of, or change to, the IPIC method are in paragraph (e)(3)(iv) of this section.

(ii) *Eligibility.* Any taxpayer electing to use the dollar-value LIFO method may elect to use the IPIC method. Except as provided in this paragraph (e)(3)(ii) or in other published guidance, a taxpayer that elects to use the IPIC method for a specific trade or business must use that method to account for all items of dollar-value LIFO inventory. A taxpayer that uses the retail price indexes computed by the BLS and published in ''Department Store Inventory Price Indexes'' (available from the BLS by calling (202) 606–6325 and entering document code 2415) may elect to use the IPIC method for items that do not fall within any of the major groups listed in ''Department Store Inventory Price Indexes.''

(iii) *Computation of an inventory price index*—(A) *In general.* The computation of an IPI for a dollar-value pool requires the following four steps, which are described in more detail in this paragraph (e)(3)(iii): First, selection of a BLS table and an appropriate month; second, assignment of items in a dollar-value pool to BLS categories (selected BLS categories); third, computation of category inflation indexes for selected BLS categories; and fourth, computation of the IPI. A taxpayer may compute the IPI for each dollar-value pool using either the double-extension method (double-extension IPIC method) or the link-chain method (link-chain IPIC method), without regard to whether the use of a double-extension method is impractical or unsuitable. The use of either the double-extension IPIC method or the link-chain IPIC method is a method of accounting, and the adopted method must be applied consistently to all dollar-value pools within a trade or business accounted for under the IPIC method. A taxpayer that wants to change from the double-extension IPIC method to the link-chain IPIC method, or vice versa, must secure the consent of the Commissioner under § 1.446–1(e). This change must be made with a new base year as described in paragraph (e)(3)(iv)(B)(1).

(B) *Selection of BLS table and appropriate month—(1) In general.* Under the IPIC method, an IPI is computed using the consumer or producer price indexes for certain categories (BLS price indexes and BLS categories, respectively) listed in the selected BLS table of the ''CPI Detailed Report'' or the ''PPI Detailed Report'' for the appropriate month.

(2) BLS table selection. Manufacturers, processors, wholesalers, jobbers, and distributors must select BLS price indexes from Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the ''PPI Detailed Report'', unless the taxpayer can demonstrate that selecting BLS price indexes from another table of the ''PPI Detailed Report'' is more appropriate. Retailers may select BLS price indexes from either Table 3 (Consumer Price Index for all Urban Consumers (CPI–U): U.S. city average, detailed expenditure categories) of the ''CPI Detailed Report'' or from Table 6 (or another more appropriate table) of the ''PPI Detailed Report.'' The selection of a BLS table is a method of accounting and must be used for the taxable year of adoption and all subsequent years, unless the taxpayer obtains the Commissioner's consent under § 1.446–1(e) to change its table selection. A taxpayer that changes its BLS table must establish a new base year in the year of change as described in paragraph (e)(3)(iv)(B) of this section.

(3) Appropriate month. In the case of a retailer using the retail method, the appropriate month is the last month of the retailer's taxable year. In the case of all other taxpayers, the appropriate month is the month most consistent with the method used to determine the current-year cost of the dollar-value pool under paragraph (e)(2)(ii) of this section and the taxpayer's history of inventory production or purchases during the taxable year. A taxpayer not using the retail method may annually select an appropriate month for each dollar-value pool or make an election on Form 970, ''Application to Use LIFO Inventory Method,'' to use a representative appropriate month (representative month). An election to use a representative month is a method of accounting and the month elected must be used for the taxable year of the election and all subsequent taxable years, unless the taxpayer obtains the Commissioner's consent under § 1.446–1(e) to change or revoke its election.

(4) Examples. The following examples illustrate the rules of this paragraph (e)(3)(iii)(B)(*3*):

Example 1. Determining an appropriate month. A wholesaler of seasonal goods timely files a Form 970, ''Application to Use LIFO Inventory Method,'' for the taxable year ending December 31, 2001. The taxpayer indicates elections to use the dollar-value LIFO method, to determine the current-year cost using the earliest acquisitions method in accordance with paragraph (e)(2)(ii)(*b*) of this section, and to use the IPIC method under paragraph (e)(3) of this section. Although the taxpayer purchases inventory items regularly throughout the year, the items purchased vary according to the seasons. The seasonal items on hand at December 31, 2001, are purchased between October and December. Thus, based on the taxpayer's use of the earliest acquisitions method of determining current-year cost and its experience with inventory purchases, the appropriate month for the items represented in the ending inventory at December 31, 2001, is October.

Example 2. Electing a representative month. A retailer not using the retail method timely files a Form 970, ''Application to Use LIFO Inventory Method,'' for the taxable year ending December 31, 2001. The taxpayer indicates elections to use the dollar-value LIFO method, the most recent purchases method of determining current-year cost under paragraph (e)(2)(ii)(*a*) of this section, the IPIC method under paragraph (e)(3) of this section, and December as its representative month under paragraph (e)(3)(iii)(B)(*3*) of this section. The items in the taxpayer's ending inventory are purchased fairly uniformly throughout the year, with the first purchases normally occurring in January and the last purchases normally occurring in December. The taxpayer's election to use December as its representative month is permissible because the taxpayer elected to use the most recent purchases method and the taxpayer's last purchases of the taxable year normally occur during December, the last month of the taxpayer's taxable year.

Example 3. Changing representative month. The facts are the same as in *Example 2,* except the taxpayer files a Form 3115, ''Application for Change in Accounting Method,'' requesting permission to change to the earliest acquisitions method of determining current-year cost in accordance with paragraph (e)(2)(ii)(b) of this section and to change its representative month from December to January beginning with the taxable year ending December 31, 2003. If the Commissioner consents to the taxpayer's request to change to the earliest acquisitions method, December will no longer be a permissible representative month for this

taxpayer because of the absence of a nexus between the earliest acquisitions method, the month of December (the last month of the taxpayer's taxable year), and the taxpayer's experience with inventory purchases during the year. Thus, the Commissioner will permit the taxpayer to change its representative month to January, the first month of the taxpayer's taxable year.

Example 4. Changing representative month. The facts are the same as in *Example 2.* In 2002, the taxpayer changes its annual accounting period to a taxable year ending June 30, which requires the taxpayer to file a return for the short taxable year beginning January 1, 2002, and ending June 30, 2002. As a result, December is no longer a permissible representative month because of the absence of a nexus between the most recent purchases method, the month of December, and the taxpayer's experience with inventory purchases during the year. The taxpayer should file a Form 3115 requesting permission to change its representative month from December to June beginning with the short taxable year ending June 30, 2002. Because the taxpayer's last purchases of the taxable year now will occur in June, the Commissioner will consent to the taxpayer's request to change its representative month to June.

Example 5. Changing representative month. The facts are the same as *in Example 2,* except that the taxpayer elects to use January as its representative month. The taxpayer timely files a Form 3115 requesting permission to change its representative month from January to December beginning with the taxable year ending December 31, 2003. January is not a permissible representative month because of the absence of a nexus between the most recent purchases method, the taxpayer's history of inventory purchases, and the month of January, the first month in the taxpayer's taxable year. Because December is a permissible representative month, the Commissioner will permit the taxpayer to change its representative month to December.

(C) *Assignment of inventory items to BLS categories—(1) In general.* Except as provided in paragraph (e)(3)(iii)(C)(*2*) of this section, a taxpayer must assign each item in a dollar-value pool to the most-detailed BLS category of the selected BLS table that contains that item. For example, in Table 6 of the ''PPI Detailed Report'' for a given month, the commodity codes for the various BLS categories run from 2 to 8 digits, with the least-detailed BLS categories having a 2-digit code and the most-detailed BLS categories usually (but not always) having an 8-digit code. For purposes of assigning items to the most-detailed BLS category, manufacturers and processors must assign each raw material item to the most-detailed PPI category that includes that raw material and must assign each finished good item to the most-detailed PPI category that includes that finished good. In addition, manufacturers and processors must assign each work-in-process (WIP) item to the most-detailed PPI category that includes the finished good into which the item will be manufactured or processed. For this purpose, *finished good* means a salable item that the taxpayer regularly sells. For example, a gasoline-engine manufacturer that also manufactures the pistons used in those engines and regularly sells some of the pistons (e.g., to retailers of replacement parts) must assign both finished pistons that have not been affixed to an engine block and piston WIP items to the most-detailed PPI category that includes pistons. Finished pistons that have been affixed to an engine block must be assigned to the most-detailed PPI category that includes gasoline engines. In contrast, if sales of these pistons occur infrequently, the taxpayer must assign both finished pistons and piston WIP items to the most-detailed PPI category that includes gasoline engines.

(2) 10 percent method. Instead of assigning each item in a dollar-value pool to the most-detailed BLS categories, as described in paragraph (e)(3)(iii)(C)(*1*) of this section, a taxpayer may elect to use the 10 percent method described in this paragraph (e)(3)(iii)(C)(*2*). Under the 10 percent method, items are assigned to BLS categories using a three-step procedure. First, when the current-year cost of a specific item is 10 percent or more of the total current-year cost of the dollar-value pool, the taxpayer must assign that item to the most-detailed BLS category that includes that item (10 percent BLS category). Any other item that is includible in that 10 percent BLS category (other than an item that qualifies for its own 10 percent BLS category under the preceding sentence) must be assigned to that 10 percent BLS category. Second, if one or more items have not been assigned to BLS categories in the first step, the taxpayer must investigate successively less-detailed BLS categories and assign the unassigned item(s) to the first BLS category that contains unassigned items whose current-year cost, in the aggregate, is 10 percent or more of the total current-year cost of the dollar-value pool (also, 10 percent BLS categories). This step must be repeated until all the items in the dollar-value pool have been included in an appropriate 10 percent BLS category, the current-year cost of the unassigned items, in the aggregate, is less than 10 percent of the total current-year cost of the dollar-value pool, or the taxpayer determines that a single BLS category is not appropriate for the aggregate of the unassigned items. Third, if items in a dollar-value pool have not been assigned to a 10 percent BLS category because the current-year cost of those items, in the aggregate, is less than 10 percent of the total current-year cost of the dollar-value pool, the taxpayer must assign those items to the most-detailed BLS category that includes all those items (also, a 10 percent category). On the other hand, if items in a dollar-value pool have not been assigned to a 10 percent BLS category because the taxpayer determines that a single BLS category is not appropriate for the aggregate of those items, the taxpayer must assign each of those items to a single miscellaneous BLS category created by the taxpayer (also, a 10 percent category). In no event may a taxpayer assign items in a dollar-value pool to a BLS category that is less detailed than either the major groups of consumer goods described in Table 3 of the monthly ''CPI Detailed Report'' or the major commodity groups of producer goods described in Table 6 of the monthly ''PPI Detailed Report.'' Principles similar to those described in paragraph (e)(3)(iii)(C)(*1*) apply for purposes of assigning raw material, work-in-process, and finished good items to the most-detailed BLS category under the 10 percent method.

(3) Change in method of accounting. The 10 percent method of assigning items in a dollar-value pool to BLS categories is a method of accounting. In addition, a taxpayer's selection of a BLS category for a specific item is a method of accounting. However, the assignment of items to different BLS categories solely as a result of the application of the 10 percent method is a change in underlying facts and not a change in method of accounting. Likewise, the selection of a new BLS category for a specific item as a result of a revision to a BLS table is a change in underlying facts and not a change in method of accounting. A taxpayer that wants to change its method of selecting BLS categories (i.e., to or from the 10-percent method) or of selecting a BLS category for a specific item must secure the Commissioner's consent in accordance with § 1.446–1(e). A taxpayer that voluntarily changes its method of selecting BLS categories or of selecting a BLS category for a specific item must establish a new base year in the year of change as described in paragraph (e)(3)(iv)(B) of this section.

(D) Computation of a category inflation index—(1) In general. As described in more detail in this paragraph (e)(3)(iii)(D), a category inflation index reflects the inflation that occurs in the BLS price indexes for a selected BLS category (or, if applicable,

10 percent BLS category) during the relevant measurement period.

(2) BLS price indexes. The BLS price indexes are the cumulative indexes published in the selected BLS table for the appropriate month. A taxpayer may elect to use either preliminary or final BLS price indexes for the appropriate month, provided that the selected BLS price indexes are used consistently. However, a taxpayer that elects to use final BLS price indexes for the appropriate month must use preliminary BLS price indexes for any taxable year for which the taxpayer files its original federal income tax return before the BLS publishes final BLS price indexes for the appropriate month. If a BLS price index for a most-detailed or 10 percent BLS category is not otherwise available for the appropriate or representative month (but not because the BLS categories in the BLS table have been revised), the taxpayer must use the BLS price index for the next most-detailed BLS category that includes the specific item(s) in the most-detailed or 10 percent BLS category. If a BLS price index is not otherwise available for the appropriate or representative month because the BLS categories in the BLS table have been revised, the rules of paragraph (e)(3)(iii)(D)(*4*) of this section apply.

(3) Category inflation index. (i) In general. Except as provided in paragraph (e)(3)(iii)(D)(*4*) of this section (concerning compound category inflation indexes) or (e)(3)(iii)(D)(*5*) of this section (concerning category inflation indexes for certain 10 percent BLS categories), a category inflation index for a selected BLS category (or, if applicable, 10 percent BLS category) is computed under the rules of this paragraph (e)(3)(iii)(D)(*3*).

(ii) Double-extension IPIC method. In the case of a taxpayer using the double-extension IPIC method, the category inflation index for a BLS category is the quotient of the BLS price index for the appropriate or representative month of the current year divided by the BLS price index for the appropriate month of the taxable year preceding the base year (base month). However, if the taxpayer did not have an opening inventory in the year that its election to use the dollar-value LIFO method and double-extension IPIC method became effective, the category inflation index for a BLS category is the quotient of the BLS price index for the appropriate or representative month of the current year divided by the BLS price index for the month immediately preceding the month of the taxpayer's first inventory production or purchase.

(iii) Link-chain IPIC method. In the case of a taxpayer using the link-chain IPIC method, the category inflation index for a BLS category is the quotient of the BLS price index for the appropriate or representative month of the current year divided by the BLS price index for the appropriate month used for the immediately preceding taxable year. However, if the taxpayer did not have an opening inventory in the year that its election to use the dollar-value LIFO method and link-chain IPIC method became effective, the category inflation index for a BLS category for the year of election is the quotient of the BLS price index for the appropriate or representative month of the current year divided by the BLS price index for the month immediately preceding the month of the taxpayer's first inventory production or purchase.

(iv) Special rules concerning representative months. A taxpayer electing to use a representative month under paragraph (e)(3)(iii)(B)(*3*) of this section must use an appropriate month, rather than the representative month, to determine category inflation indexes in the circumstances described in this paragraph (e)(3)(iii)(D)(*3*)(*iv*) and in other similar circumstances. For example, in the case of a short taxable year, the category inflation index should reflect the inflation that occurs from the base month (in the case of the double-extension IPIC method), or the appropriate or representative month used for the preceding taxable year (in the case of the link-chain IPIC method), and the appropriate month for the short taxable year. Similarly, if a taxpayer using the link-chain IPIC method is granted consent to change both its method of determining the current-year cost of a dollar-value pool and its representative month, the category inflation index for the year of change should reflect the inflation that occurs between the old representative month used for the preceding taxable year and the new representative month used for the year of change.

(4) Compound category inflation index for revised BLS categories or price indexes—(i) In general. Periodically, the BLS revises a BLS table to add one or more new BLS categories, eliminate one or more previously reported BLS categories, or reset the base-year BLS price index of one or more BLS categories. If the BLS has revised the applicable BLS table for a taxable year, a taxpayer must compute the category inflation index for each BLS category for which the taxpayer cannot compute a category inflation index in accordance with paragraph (e)(3)(iii)(D)(*3*) of this section (affected BLS category) using a reasonable method, provided the method is used consistently for all affected BLS categories within a particular taxable year. For example, if the BLS revised the CPI by adding new BLS categories as of January 2001 and eliminating some previously reported BLS categories as of December 2000, January 2002 would be the first month for which it would be possible to compute a category inflation index for a 12-month period using the BLS price indexes for any affected category. The compound category inflation index described in paragraph (e)(3)(iii)(D)(*4*)(*ii*) of this section is a reasonable method of computing the category inflation index for an affected BLS category.

(ii) Computation of compound category inflation index. When the applicable BLS table is revised as described in paragraph (e)(3)(iii)(D)(*4*)(*i*) of this section, a taxpayer may use the procedure described in this paragraph (e)(3)(iii)(D)(*4*)(*ii*) to compute a compound category inflation index for each affected BLS category represented in the taxpayer's ending inventory. For this purpose, a compound category inflation index is the product of the category inflation index for the ''first portion'' multiplied by the corresponding category inflation index for the ''second portion.'' The category inflation index for the first portion must reflect the inflation that occurs between the end of the base month (in the case of the double-extension IPIC method), or the preceding year's appropriate or representative month (in the case of the link-chain IPIC method), and the end of the last month covered by the unrevised BLS table based on the old BLS category. The corresponding category inflation index for the second portion must reflect the inflation that occurs between the beginning of the first month covered by the revised BLS table based on the new BLS category and the end of the current year's appropriate or representative month. First, using the revised BLS table for the current-year's appropriate or representative month, the taxpayer assigns items in the dollar-value pool using its method of assigning items to BLS categories as described in paragraph (e)(3)(iii)(C) of this section. Second, for each affected BLS category represented in the ending inventory, the taxpayer computes the category inflation index for the second portion using this formula: [A/B], where A equals the BLS price index for the current year's appropriate or representative month and B equals the BLS price index for the last month covered by the unrevised BLS table (as

published for the first month of the revised BLS table). Third, using the unrevised BLS table for the base month (in the case of the double extension IPIC method) or the preceding year's appropriate or representative month (in the case of the link-chain IPIC method), the taxpayer assigns each of the items in the dollar-value pool using its method of assigning items to BLS categories. Fourth, for each affected BLS category represented in the ending inventory, the taxpayer computes the category inflation index for the first portion using this formula: [C/D], where C equals the BLS price index for the last month covered by the unrevised BLS table (as published for the last month of the unrevised BLS table) and D equals the BLS price index for the base month (in the case of the double-extension IPIC method) or the preceding year's appropriate or representative month (in the case of the link-chain IPIC method). Fifth, for each affected BLS category represented in the ending inventory, the taxpayer computes the compound category inflation index using this formula: [X*Y], where X equals the category inflation index for the second portion, and Y equals the corresponding category inflation index for the first portion. For the purpose of computing the compound category inflation index for each affected BLS category, the corresponding category inflation index for the first portion is the category inflation index for the unrevised BLS category that includes the specific inventory item(s) included in the revised BLS category. If items included in a single revised BLS category had been included in separate BLS categories before the revision of the BLS table, the corresponding category inflation index for the first portion is the weighted harmonic mean of the category inflation indexes for these unrevised BLS categories. See paragraph (e)(3)(iii)(E)(*1*) of this section for a formula of the weighted harmonic mean. When computing this weighted-average category inflation index, a taxpayer must use the current-year costs (or in the case of a retailer using the retail method, the retail selling prices) in ending inventory as the weights.

(*iii) New base year.* A taxpayer may establish a new base year in the year following the taxable year for which the taxpayer computed a compound category inflation index under this paragraph (e)(3)(iii)(D)(*4*) for one or more affected BLS categories in a dollar-value pool. See paragraph (e)(3)(iv)(B) of this section for the procedures and computations incident to establishing a new base year.

(*iv) Examples.* The following examples illustrate the rules of this paragraph (e)(3)(iii)(D)(*4*):

Example 1. BLS categories eliminated. (i) A retailer, whose taxable year ends January 31, elected to account for its inventories using the dollar-value LIFO method and double-extension IPIC method (based on the CPI), beginning with the taxable year ending January 31, 1997. The taxpayer does not use the retail method, but elected to use January as its representative month. On January 31, 1999, the taxpayer's only dollar-value pool contains only two items—lemons and peaches. The total current-year cost of these items is as follows: lemons, $40, and peaches, $30.

(ii) The CPI was revised in October of 1998 to eliminate the ''Citrus fruits'' subcategory of ''Other fresh fruits.'' In addition, the base-year BLS price index for ''Other fresh fruits'' was reset to 100.00 as of October 1, 1998. In relevant part, the January 1999 CPI permits the assignment of both lemons and peaches to ''Other fresh fruits.'' The January 1999 BLS price indexes for ''Citrus fruits'' and ''Other fresh fruits'' are 96.6 and 105.6, respectively. In relevant part, the September 1998 CPI permits the assignment of lemons to ''Citrus fruits'' and peaches to ''Other fresh fruits.'' The September 1998 BLS price indexes for ''Citrus fruits'' and ''Other fresh fruits'' are 194.9 and 294.9, respectively, and the January 1997 BLS price indexes for ''Citrus fruits'' and ''Other fresh fruits'' are 190.2 and 290.2, respectively.

(iii) Because the BLS eliminated the category, ''Citrus fruits,'' as of October 1998, it did not publish a BLS price index for that category in the January 1999 CPI. Thus, the taxpayer cannot compute a category inflation index for ''Citrus fruits'' under the normal procedures, but may compute a compound category inflation index for that affected BLS category using the procedures described in paragraph (e)(3)(iii)(D)(*4*)(*ii*) of this section.

(iv) The taxpayer computes a compound category inflation index for the two BLS categories that formerly included lemons and peaches. The taxpayer first assigns lemons and peaches to ''Other fresh fruits,'' the most-detailed index in the January 1999 CPI, and then computes the category inflation index for the second portion as follows:

Item	1999 category	Jan. 1999 index/Sept. 1998 index (as published in Oct. 1998)	Category inflation index
Lemons and Peaches	Other fresh fruits	105.6/100.0	1.0560

(v) The taxpayer assigns the lemons and peaches to the most-detailed BLS categories in the January 1998 CPI as follows: lemons to ''Citrus fruits'' and peaches to ''Other fresh fruits.'' Then, the taxpayer computes the category inflation index for the first portion as follows:

Item	1998 category	Sept. 1998 index (as published in Sept. 1998)/Jan. 1997	Category inflation index
Lemons	Citrus fruits	194.9/190.2	1.0247
Peaches	Other fresh Fruits	294.9/290.2	1.0162

(vi) Because lemons and peaches, which are included together in the revised ''Other fresh fruits'' category, had been included in separate BLS categories before the BLS table was revised, the taxpayer must compute a single corresponding category inflation index for the affected BLS categories for the first portion. This corresponding category inflation index is the weighted harmonic mean of the separate corresponding category inflation indexes for the first portion using the cost of the items in ending inventory as the weights. The taxpayer computes the corresponding category inflation index for ''Other fresh fruits'' for the first portion as follows:

Item	(I) Weight (cost of item)	(II) Category inflation index	(III) Quotient: (I)/(II)
Lemons	$40.00	1.0247	$39.04
Peaches	30.00	1.0162	29.52
Total	70.00		68.56

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Weighted harmonic mean of other fresh fruits: (IV)/(V)
$70.00	$68.56	1.0210

(vii) Finally, the taxpayer computes the compound category inflation index for Other fresh fruits as follows:

Item	(I) Category inflation index (second portion)	(II) Category inflation index (first portion)	(III) Compound category inflation index: (I)*(II)
Other fresh fruits	1.0560	1.0210	1.0782

(viii) The taxpayer may establish a new base year for the taxable year ending January 31, 2000.

Example 2. BLS categories separated. (i) The facts are the same as in *Example 1,* except prior to October 1998, both lemons and peaches were assigned to ''Other fresh fruits'' and in the October 1998 CPI, the BLS created a new category, ''Citrus fruits,'' for citrus fruits, such as lemons. Moreover, the BLS reset the base-year BLS price index for ''Other fresh fruits'' to 100.0 as of October 1, 1998. As a result of these changes, the taxpayer may no longer assign lemons to ''Other fresh fruits.''

(ii) Because ''Citrus fruits'' is new as of October 1998, the BLS did not publish a BLS price index for this BLS category in the January 1999 CPI. Thus, because the taxpayer cannot compute a category inflation index for ''Citrus fruits'' under the normal procedures, the taxpayer may compute a compound category inflation index for the affected BLS category using the procedures described in paragraph (e)(3)(iii)(D)(*4*)(*ii*) of this section.

(iii) Based on the January 1999 CPI, the taxpayer assigns lemons to ''Citrus fruits'' and peaches to ''Other fresh fruits.'' Then, the taxpayer computes a compound category inflation index for each of the two BLS categories. The computation of the category inflation index for the second portion is as follows:

Item	1999 category	Jan. 1999 index/Sept. 1998 index (as published in Oct. 1998)	Category inflation index
Lemons	Citrus fruits	96.6/100	0.9660
Peaches	Other fresh fruits	105.6/100	1.0560

(iv) Then, the taxpayer computes the category inflation index for the first portion as follows:

Item	1998 category	Sept. 1998 index (as published in Sept. 1998)/Jan. 1997	Category inflation index
Lemons & Peaches	Other fresh fruits	294.9/290.2	1.0162

(v) Finally, the taxpayer computes the compound category inflation index for ''Citrus fruits'' and ''Other fresh fruits'':

Item	(I) Category inflation index (second portion)	(II) Category inflation index (first portion)	(III) Compound category inflation index: (I)*(II)
Citrus fruits	0.9660	1.0162	0.9816
Other fresh fruits	1.0560	1.0162	1.0731

(vi) The taxpayer may establish a new base year for the taxable year ending January 31, 2000.

(5) *10 percent method. (i) Applicability.* A taxpayer that elects to use the 10 percent method described in paragraph (e)(3)(iii)(C)(*2*) of this section must compute a category inflation index for a less-detailed 10 percent BLS category as provided in this paragraph (e)(3)(iii)(D)(*5*). A less-detailed 10 percent category is a BLS category that—

(*A*) subsumes two or more BLS categories;

(*B*) Does not have a single assigned item whose current-year cost is 10 percent or more of the current-year cost of all the items in the dollar-value pool;

(*C*) Has at least one item in at least one of the subsumed BLS categories; and

(*D*) Has at least one subsumed BLS category that either does not have any assigned items or is a separate 10 percent BLS category.

(*ii) Determination of category inflation index.* If the rules of this paragraph (e)(3)(iii)(D)(*5*) apply, the category inflation index for the less-detailed 10 percent BLS category is equal to the weighted arithmetic mean of the category inflation index (or, compound category inflation index, if applicable) for each of the subsumed BLS categories that have been assigned at least one item from the taxpayer's dollar-value pool (excluding any item that is properly assigned to a separate 10 percent BLS category). [Weighted Arithmetic Mean = Sum of (Weight x Category Inflation Index)]/Sum of Weights]. The appropriate weight for each of the most-detailed BLS categories referenced in the preceding sentence is the corresponding BLS weight. Currently, in January of each year, the BLS publishes the BLS weights determined for December of the preceding year. In the case of a taxpayer using the double-extension IPIC method, the BLS weights for December of the taxable year preceding the base year are to be used for all taxable years. In the case of a taxpayer using the link-chain IPIC method, the BLS weights for December of a given calendar year are to be used for taxable years that end during the 12-month period that begins on July 1 of the following calendar year. However, if the BLS weights are not published for all of the most-detailed BLS categories referenced above, the taxpayer may use the current-year cost (or in the case of a retailer using the retail method, the retail selling prices) of all items assigned to a specific most-detailed BLS category as the appropriate weight for that category, but must compute a weighted harmonic mean. See paragraph (e)(3)(iii)(E)(*1*) of this section for a formula of the weighted harmonic mean.

(E) *Computation of Inventory Price Index (IPI)—(1) Double-extension IPIC method.* Under the double-extension IPIC method, the IPI for a dollar-value pool is the weighted harmonic mean of the category inflation indexes (or, if applicable, compound category inflation indexes) determined under paragraph (e)(3)(iii)(D) of this section for each selected BLS category (or, if applicable 10 percent BLS category) represented in the taxpayer's dollar-value pool at the end of the taxable year. The formula for computing the weighted harmonic mean of the category inflation indexes is: [Sum of Weights/Sum of (Weight/Category Inflation Index)]. The weights to be used when computing this weighted harmonic mean are the current-year costs (or, in the case of a retailer using the retail method, the retail selling prices) in each selected BLS category represented in the dollar-value pool at the end of the taxable year.

(*2) Link-chain IPIC method.* Under the link-chain IPIC method, the IPI for a dollar-value pool is the product of the weighted harmonic mean of the category inflation indexes (or, if applicable, the compound category inflation indexes) determined under paragraph (e)(3)(iii)(D) of this section for each selected BLS category (or, if applicable, 10 percent BLS category) represented in the taxpayer's dollar-value pool at the end of the taxable year multiplied by the IPI for the immediately preceding taxable year. The formula for computing the weighted harmonic mean of the category inflation indexes is: [Sum of Weights/Sum of (Weight/Category Inflation Index)]. The weights to be used when computing this weighted harmonic mean are the current-year costs (or, in the case of a retailer using the retail method, the retail selling prices) in each selected BLS category represented in the dollar-value pool at the end of the taxable year.

(*3) Examples.* The following examples illustrate the rules of this paragraph (e)(3)(iii)(E):

Example 1. Double-extension method. (i) *Introduction.* R is a retail furniture merchant that does not use the retail method. For the taxable year ending December 31, 2000, R used the first-in, first-out method of identifying inventory and valued its inventory at cost. The total cost of R's inventory on December 31, 2000, was $850,000. R elected to use the dollar-value LIFO and double-extension IPIC methods for its taxable year ending December 31, 2001. R does not elect to use the 10 percent method described in paragraph (e)(3)(iii)(C)(*2*) of this section. R determines the current-year cost of the items using the actual cost of the most recently purchased goods. R elected to pool its inventory based on the major groups in Table 6 of the monthly ''PPI Detailed Report'' in accordance with the special IPIC pooling rules of paragraph (b)(4) of this section. All items in R's inventories fall within the 2-digit commodity code in Table 6 of the monthly ''PPI Detailed Report'' for ''furniture and household durables.'' Therefore, R will maintain a single dollar-value pool.

(ii) *Select a BLS table and appropriate month for 2001.* R determines that the appropriate month for 2001 is October. R also determines that the appropriate month for 2000 would have been December if R had used the IPIC method for that year.

(iii) *Assign inventory items to BLS categories for 2001.* For 2001, R assigns all items in the dollar-value pool to the most-detailed BLS categories listed in Table 6 of the October 2001 ''PPI Detailed Report'' that contain those items. The BLS categories and the current-year cost of the items assigned to them are summarized as follows:

Commodity code	Category	Current-year cost
12120101	Living Room Table	$111,924.00
12120211	Dining Room Table	159,578.00
12120216	Dining Room Chairs	98,639.00
12130101	Upholstered Sofas	332,488.00
12130111	Upholstered Chairs	218,751.00
Total		921,380.00

(iv) *Compute category inflation indexes for 2001.* Because R elected to use the double-extension IPIC method and did not elect the 10 percent method, the category inflation indexes are computed in accordance with paragraph (e)(3)(iii)(D)(*3*)(*ii*) of this section (BLS price indexes for October 2001 divided by BLS price indexes for December 2000). R computes the category inflation indexes for 2001 as follows:

Category	(I) Oct. 2001 index	(II) Dec. 2000 index	(III) Category inflation index: (I)/(II)
Living Room Table	172.4	169.2	1.018913
Dining Room Tab1e	171.9	168.1	1.022606
Dining Room Chairs	172.8	169.7	1.018268
Upholstered Sofas	142.2	140.9	1.009226
Upholstered Chairs	134.1	132.5	1.012075

(v) *Compute IPI for 2001.* R must compute the IPI for 2001, which is the weighted harmonic mean of the category inflation indexes for 2001. The formula for the weighted harmonic mean provided in paragraph (e)(3)(iii)(E)(*1*) of this section is [Sum of Weights/Sum of (Weight/Category Inflation Index)]. The IPI for 2001 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
Living Room Table	$111,924.00	1.018913	$109,846.47
Dining Room Table	159,578.00	1.022606	156,050.33
Dining Room Chairs	98,639.00	1.018268	96,869.39
Upholstered Sofas	332,488.00	1.009226	329,448.51
Upholstered Chairs	218,751.00	1.012075	216,141.10
Total	$921,380.00	.....	$908,355.80

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Inventory price index: (IV)/(V)
$921,380.00	$908,355.80	1.01433821

(vi) *Determine the LIFO value of the dollar-value pool for 2001.* For 2001, R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the items in the dollar-value pool by the IPI for 2001. The total base-year cost of R's ending inventory is $908,355.80 ($921,380/1.01433821). Comparing the base-year cost of the ending inventory to the base-year cost of the beginning inventory, R determines that the base-year cost of the 2001 increment is $58,355.80 ($908,355.80—$850,000.00). R multiplies the base-year cost of the 2001 increment by the IPI for 2001 and determines that the LIFO value of the 2001 layer is $59,192.52 ($58,355.80 * 1.01433821). Thus, the LIFO value of R's total inventory at the end of 2001 is $909,192.52 ($850,000.00 (opening inventory) + $59,192.52 (2001 layer)).

(vii) *Select a BLS table and appropriate month for 2002.* For 2002.0, R must compute a new IPI under the double-extension IPIC method to determine the LIFO value of its dollar-value pool. R determines that the appropriate month for 2002 is November.

(viii) *Assign inventory items to BLS categories for 2002.* For 2002, R assigns all items in the dollar-value pool to the most-detailed BLS categories listed in Table 6 of the November 2002 ''PPI Detailed Report'' that contain those items. The BLS categories and the current-year cost of the items assigned to them are summarized as follows:

Commodity code	Category	Current-year cost
12120103	Living Room Desks	$125,008.00
12120211	Dining Room Table	136,216.00
12120216	Dining Room Chairs	113,569.00
12130101	Upholstered Sofas	343,900.00
12130111	Upholstered Chairs	233,050.00
Total	.....	$951,743.00

(ix) *Compute category inflation indexes for 2002.* Because R uses the double-extension IPIC method and did not elect the 10 percent method, the category inflation indexes are computed in accordance with paragraph (e)(3)(iii)(D)(*3*)(*ii*) of this section (BLS price indexes for November 2002 divided by BLS price indexes for December 2000). R computes the category inflation indexes for 2002 as follows:

Category	(I) Nov. 2002 index	(II) Dec. 2000 index	(III) Category inflation index (I)/(II)
Living Room Desks	172.6	160.3	1.076731
Dining Room Table	174.8	168.1	1.039857
Dining Room Chairs	177.0	169.7	1.043017
Upholstered Sofas	144.9	140.9	1.028389
Upholstered Chairs	136.6	132.5	1.030943

(x) *Compute IPI for 2002.* R must compute the IPI for 2002, which is the weighted harmonic mean [Sum of Weights/Sum of (Weight/Category Inflation Index)] of the category inflation indexes for 2002. The IPI for 2002 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
Living Room Desks	$125,008.00	1.076731	$116,099.56
Dining Room Table	136,216.00	1.039857	130,994.93
Dining Room Chairs	113,569.00	1.043017	108,885.09
Upholstered Sofas	343,900.00	1.028389	334,406.53
Upholstered Chairs	233,050.00	1.030943	226,055.17
Total	951,743.00		916,441.28

(IV) Sum of weights	(V) Category inflation index	(VI) Inventory price index: (IV)/(V)
$951,743.00	$916,441.28	1.03852044

(xi) *Determine the LIFO value of the pool for 2002.* For 2002, R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the items in the dollar-value pool by the IPI for 2002. The total base-year cost of the ending inventory is $916,441.28 ($951,743.00/1.03852044). Comparing the base-year cost of the ending inventory to the base-year cost of the beginning inventory, R determines that the base-year cost of the 2002 increment is $8,085.48 ($916,441.28 – $908,355.80). R multiplies the base-year cost of the 2002 increment by the IPI for 2002 and determines that the LIFO value of the 2002 layer is $8,396.94 ($8,085.48 * 1.03852044). Thus, the LIFO value of R's total inventory at the end of 2002 is $917,589.46 ($850,000.00 (opening inventory) + $59,192.52 (2001 layer) + $8,396.94 (2002 layer)).

Example 2. Link-chain method. (i) *Introduction.* The facts are the same as *Example 1*, except that R uses the link-chain IPIC method. The double-extension IPIC method and the link-chain IPIC method yield the same results for the first taxable year in which the dollar-value LIFO and IPIC methods are used. Therefore, this example illustrates only how R will compute the IPI for, and determine the LIFO value of, its dollar-value pool for 2002.

(ii) *Select a BLS table and appropriate month for 2002.* R determines that the appropriate month for 2002 is November.

(iii) *Assign inventory items to BLS categories for 2002.* For 2002, R assigns all items in the dollar-value pool to the most-detailed BLS categories listed in Table 6 of the November 2002 ''PPI Detailed Report'' that contain those items. The BLS categories and the current-year cost of the items assigned to them are summarized as follows:

Commodity code	Category	Current-year cost
12120103	Living Room Desks	$125,008.00
12120211	Dining Room Table	136,216.00
12120216	Dining Room Chairs	113,569.00
12130101	Upholstered Sofas	343,900.00
12130111	Upholstered Chairs	233,050.00
Total		951,743.00

(iv) *Compute category inflation indexes for 2002.* Because R uses the link-chain IPIC method and did not elect the 10 percent method, the category inflation indexes are computed in accordance with paragraph (e)(3)(iii)(D)(*3*)(*iii*) of this section (BLS price indexes for November 2002 divided by BLS price indexes for October 2001). R computes the category inflation indexes for 2002 as follows:

Category	(I) Nov. 2002 index	(II) Oct. 2001 index	(III) Category inflation index: (I)/(II)
Living Room Desks	172.6	162.0	1.065432
Dining Room Table	174.8	171.9	1.016870
Dining Room Chairs	177.0	172.8	1.024306
Upholstered Sofas	144.9	142.2	1.018987
Upholstered Chairs	136.6	134.1	1.018643

(v) *Compute IPI for 2002.* As provided in paragraph (e)(3)(iii)(E)(*2*) of this section, R must compute the IPI for 2002 by multiplying the weighted harmonic mean of the category inflation indexes for 2002 by the IPI for 2001. The IPI for 2002 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
Living Room Desks	$125,008.00	1.065432	$117,330.81
Dining Room Table	136,216.00	1.016870	133,956.16

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
Dining Room Chairs	113,569.00	1.024306	110,874.09
Upholstered Sofas	343,900.00	1.018987	337,492.04
Upholstered Chairs	233,050.00	1.018643	228,784.77
Total	951,743.00		928,437.87

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Weighted harmonic mean of category inflation indexes for 2002: (IV)/(V)	(VII) Inventory price index for 2001	(VIII) Inventory price index for 2002: (VI)*(VII)
$951,743.00	$928,437.87	1.02510144	1.01433821	1.03979956

(vi) *Determine the LIFO value of the pool for 2002.* R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the items in the dollar-value pool by the IPI for 2002. The total base-year cost of the ending inventory is $915,313.91 ($951,743.00 / 1.03979956). Comparing the base-year cost of the ending inventory to the base-year cost of the beginning inventory, R determines that the base-year cost of the 2002 layer is $6,958.11 ($915,313.91–$908,355.80). R multiplies the base-year cost of the 2002 layer by the IPI for 2002 and determines that the LIFO value of the 2002 layer is $7,235.04 ($6,958.11 * 1.03979956). Thus, the LIFO value of R's total inventory at the end of 2002 is $916,427.56 ($850,000.00 (opening inventory) + $59,192.52 (2001 layer) + $7,235.04 (2002 layer)).

(iv) *Adoption or change of method*—(A) *Adoption or change to IPIC method.* The use of an inventory price index computed under the IPIC method is a method of accounting. A taxpayer permitted to adopt the dollar-value LIFO method without first securing the Commissioner's consent also may adopt the IPIC method without first securing the Commissioner's consent. The IPIC method may be adopted and used, however, only if the taxpayer provides the following information on a Form 970, ''Application to Use LIFO Inventory Method,'' or in another manner as may be acceptable to the Commissioner: A complete list of dollar-value pools (including a description of the items in each dollar-value pool); the BLS table (i.e., CPI or PPI) selected for each dollar-value pool; the representative month, if applicable, elected for each dollar-value pool; the BLS categories to which the items in each dollar-value pool will be assigned; the method of assigning items to BLS categories (e.g., the 10 percent method) for each dollar-value pool; and the method of computing the IPI (i.e., double-extension IPIC method or link-chain IPIC method) for each dollar-value pool. In the case of a taxpayer permitted to adopt the IPIC method without requesting the Commissioner's consent, the Form 970 must be attached to the taxpayer's income tax return for the taxable year of adoption. In all other cases, a taxpayer may change to the IPIC method only after securing the Commissioner's consent as provided in § 1.446–1(e). In these latter cases, the Form 970 containing the information described in this paragraph (e)(3)(iv)(A) must be attached to a Form 3115, ''Application for Change in Accounting Method,'' filed as required by § 1.446–1(e). A taxpayer that simultaneously changes to the dollar-value LIFO and IPIC methods from another LIFO method must apply the rules of paragraph (f)(2) of this section before applying the rules of paragraph (e)(3)(iv)(B)(*1*) of this section. To satisfy the requirements of § 1.472–2(h), taxpayers must maintain adequate books and records, including those concerning the use of the IPIC method and necessary computations. Notwithstanding the rules in paragraph (e)(1) of this section, a taxpayer that adopts, or changes to, the link-chain IPIC method is not required to demonstrate that the use of any other method of determining the LIFO value of a dollar-value pool is impractical.

(B) *New base year*—(*1*) *Voluntary change*—(*i*) *In general.* In the case of a taxpayer using a non-IPIC method to determine the LIFO value of inventory, the layers previously determined under that method, if any, and the LIFO values of those layers are retained if the taxpayer voluntarily changes to the IPIC method. Instead of using the earliest taxable year for which the taxpayer adopted the LIFO method for any items in the dollar-value pool, the year of change is used as the new base year for the purpose of determining the amount of increments and liquidations, if any, for the year of change and subsequent taxable years. The base-year cost of the layers in a dollar-value pool at the beginning of the year of change must be restated in terms of new base-year cost using the year of change as the new base year and, if applicable, the indexes for the previously determined layers must be recomputed accordingly. The recomputed indexes will be used to determine the LIFO value of subsequent liquidations. For purposes of computing an IPI under paragraph (e)(3)(iii)(E) of this section, the IPI for the immediately preceding year is 1.00. The new total base-year cost of the items in a dollar-value pool for the purpose of determining future increments and liquidations is equal to the total current-year cost of the items in the dollar-value pool (determined using the taxpayer's method of determining the total current-year cost of the items in the dollar-value pool under paragraph (e)(2)(ii) of this section). A taxpayer must allocate this new total base-year cost to each layer based on the ratio of the old base-year cost of the layer to the old total base-year cost of the dollar-value pool.

(ii) Example. The following example illustrates the rules of this paragraph (e)(3)(iv)(B)(*1*):

Example. (i) In 1990, X elected to use a dollar-value LIFO method (other than the IPIC method) for its single dollar-value pool. X is granted permission to change to the link-chain IPIC method, beginning with the taxable year ending December 31, 2001. X will continue using a single dollar-value pool. X's beginning inventory as of January 1, 2001, computed using its former inventory method, is as follows:

Layer	(I) Base-year cost	(II) Inflation index	(III) LIFO value: (I) * (II)
Base layer	$135,000	1.00	$135,000
1991 layer	20,000	1.43	28,600
1994 layer	60,000	1.55	93,000
1995 layer	13,000	1.59	20,670
1997 layer	2,000	1.61	3,220
Total	230,000		280,490

(ii) Under X's method of determining the current-year cost of items in a dollar-value pool, the current-year cost of the beginning inventory is $391,000. Thus, X's new base-year cost as of January 1, 2001, is $391,000. X allocates this new base-year cost to each layer based on the ratio of old base-year cost of the layer to the total old base-year cost of the dollar-value pool. To recompute the inflation indexes for each of its layers, X divides the LIFO value of each layer by the new base-year cost attributable to the layer. The new base-year cost, recomputed inflation indexes, and LIFO value of X's layers as of January 1, 2001, are as follows:

Layer	(I) Base-year cost	(II) Inflation index	(III) LIFO value: (I) * (II)
Base layer	$229,500	0.588235	$135,000
1991 layer	34,000	0.841176	28,600
1994 layer	102,000	0.911765	93,000
1995 layer	22,100	0.935294	20,670
1997 layer	3,400	0.947059	3,220
Total	391,000		280,490

(iii) In 2001, the current-year cost of X's ending inventory is $430,139. The weighted harmonic mean of the category inflation indexes applicable to X's ending inventory is 1.075347, and in accordance with paragraph (e)(3)(iv)(B)(*1*)(*i*) of this section, the inflation index for the immediately preceding taxable year is 1.00. Thus, X's IPI for 2001 is 1.075347 (1.00 * 1.075347). The total base-year cost of X's ending inventory is $400,000 ($430,139/1.075347). The base-year cost, IPI, and LIFO value of X's layers as of December 31, 2001, are as follows:

Layer	(I) Base-year cost	(II) Inventory price index	(III) LIFO value: (I) * (II)
Base layer	$229,500	0.588235	$135,000
1991 layer	34,000	0.841176	28,600
1994 layer	102,000	0.911765	93,000
1995 layer	22,100	0.935294	20,670
1997 layer	3,400	0.947059	3,220
2001 layer	9,000	1.075347	9,678
Total	400,000		290,168

(iv) In 2002, the current-year cost of X's ending inventory is $418,000. The weighted harmonic mean of the category inflation indexes applicable to X's ending inventory is 1.02292562, and the IPI for the immediately preceding year is 1.075347. Thus, X's IPI for 2001 is 1.10 (1.075347 * 1.02292562). The total base-year cost of X's ending inventory is $380,000 ($418,000/1.10), which results in a liquidation of $20,000 ($400,000 − $380,000) in terms of base-year cost. This liquidation eliminates the 2001 layer ($9,000 base-year cost), the 1997 layer ($3,400 base-year cost), and part of the 1995 layer ($7,600 base-year cost). The base-year cost, indexes, and LIFO value of X's layers as of December 31, 2002, are as follows:

Layer	(I) Base-year cost	(II) Inventory price index	(III) LIFO value: (I) * (II)
Base layer	$229,500	0.588235	$135,000
1991 layer	34,000	0.841176	28,600
1994 layer	102,000	0.911765	93,000
1995 layer	14,500	0.935294	13,562
Total	380,000		270,162

(2) *Involuntary change—(i) In general.* If a taxpayer uses a non-IPIC method to compute the LIFO value of a dollar-value pool, and if the Commissioner determines that the taxpayer's method does not clearly reflect income, the Commissioner may require the taxpayer to change to the IPIC method. If the Commissioner requires a taxpayer to

change to the IPIC method, and the taxpayer does not provide sufficient information from its books and records to compute an adjustment under section 481, the Commissioner may implement the change using the simplified transition method described in paragraph (e)(3)(iv)(B)(*2*)(*ii*) of this section.

(ii) Simplified Transition Method. Under the simplified transition method, the Commissioner will recompute the LIFO value of each dollar-value pool as of the beginning of the year of change using the double-extension IPIC method or the link-chain IPIC method. The adjustment under section 481 is equal to the difference between the recomputed LIFO value and the LIFO value of the pool determined under the taxpayer's former method. The Commissioner will compute an IPI using the double-extension IPIC method or link-chain IPIC method for each taxable year in which the LIFO method was used by the taxpayer based on the assumptions that the ending inventory of the pool in each taxable year was comprised of items that fall into the same BLS categories as the items in the ending inventory of the year of change and that the relative weights of those BLS categories in all prior years were the same as the relative weights of those BLS categories in the ending inventory of the year of change. The base-year cost of the items in a dollar-value pool at the end of a taxable year will be determined by dividing the IPI computed for the taxable year into the current-year cost of the items in that pool determined in accordance with paragraph (e)(2)(ii) of this section. If the comparison of the base-year cost of the beginning and ending inventory produces a current-year increment, the base-year cost of that increment will be multiplied by the IPI computed for that taxable year to determine the LIFO value of that layer.

(iii) Example. The following example illustrates the rules of this paragraph (e)(3)(iv)(B)(*2*)(*ii*).

Example. (i) Z began using a dollar-value LIFO method other than the IPIC method in the taxable year ending December 31, 1998, and maintains a single dollar-value pool. Z's beginning inventory as of January 1, 2000, computed using its method of accounting, was as follows:

Layer	(I) Base-year cost	(II) Inflation index	(III) LIFO value: (I)*(II)
Base layer	$105,000	1.00	$105,000
1998 layer	3,000	1.40	4,200
Total	108,000		109,200

(ii) Upon examining Z's federal income tax return for the taxable year ending December 31, 2000, the examining agent determines that Z's dollar-value LIFO method does not clearly reflect income. The examining agent chooses to change Z to the double-extension IPIC method for 2000 and implements the change using the simplified transition method as follows. First, the inventory in Z's dollar-value pool at the end of 2000 is assigned to the most-detailed categories in the CPI or PPI, whichever is appropriate. Assume that 80 percent of the current-year cost of Z's inventory as of December 31, 2000, is assigned to Category 1, 10 percent is assigned to Category 2, and 10 percent is assigned to Category 3. Assume further that the current-year cost of the inventory in Z's dollar-value pool at the end of 1998 and 1999 was $133,000 and $145,000, respectively.

(iii) The category inflation indexes for 1998 computed under the double-extension IPIC method are 1.17 for Category 1, 1.26 for Category 2, and 1.19 for Category 3. The weights to be used in computing the IPI for 1998 are $106,400 ($133,000 * 80 percent) for Category 1, $13,300 ($133,000 * 10 percent) for Category 2, and $13,300 ($133,000 * 10 percent) for Category 3. The IPI for 1998 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
1	$106,400	1.17	90,940
2	13,300	1.26	10,556
3	13,300	1.19	11,176
Total	133,000		112,672

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Inventory price index: (IV)/(V)
$133,000	$112,672	1.180417

(iv) The base-year cost of the inventory in Z's pool at the end of 1998 is $112,672 ($133,000/1.180417), and the base-year cost of the 1998 increment is $7,672 ($112,672 − $105,000). The LIFO value of the 1998 layer is $9,056 ($7,672 × 1.180417).

(v) The category inflation indexes for 1999 computed under the double-extension IPIC method were 1.21 for Category 1, 1.29 for Category 2 and 1.23 for Category 3. The weights to be used in computing the IPI for 1999 are $116,000 ($145,000 × 80 percent) for Category 1, $14,500 ($145,000 × 10 percent) for Category 2, and $14,500 ($145,000 × 10 percent) for Category 3. The IPI for 1999 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
1	$116,000	1.21	$95,868
2	14,500	1.29	11,240

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
3	14,500	1.23	11,789
Total	145,000		118,897

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Inventory price index: (IV)/(V)
$145,000	$118,897	1.219543

(vi) The base-year cost of the inventory in Z's pool at the end of 1999 is $118,897 ($145,000/1.219543), and the base-year cost of the 1999 layer is $6,225 ($118,897 − $112,672). The LIFO value of the 1999 layer is $7,592 ($6,225 × 1.219543).

(vii) The LIFO value of Z's dollar-value pool at the end of 1999 computed under the double-extension IPIC method is as follows:

Layer	(I) Base-year cost	(II) Inventory price index	(III) LIFO value: (I)*(II)
Base layer	$105,000	1.000000	$105,000
1998 layer	7,672	1.180417	9,056
1999 layer	6,225	1.219542	7,592
Total	118,897		121,648

(viii) The section 481(a) adjustment is equal to the difference between the LIFO value of the inventory at the beginning of 2000 computed under Z's former method of accounting and recomputed by the examining agent under the double-extension IPIC method, or $12,448 ($121,648—$109,200).

(ix) Finally, the examining agent will recompute Z's taxable income for 2000 and succeeding taxable years using the double-extension IPIC method.

(v) *Effective date*—(A) *In general.* The rules of this paragraph (e)(3) and paragraphs (b)(4) and (c)(2) of this section are applicable for taxable years ending on or after December 31, 2001.

(B) *Change in method of accounting.* Any change in a taxpayer's method of accounting necessary to comply with this paragraph (e)(3) or with paragraphs (b)(4) or (c)(2) of this section is a change in method of accounting to which the provisions of section 446 and the regulations thereunder apply. For the first or second taxable year ending on or after December 31, 2001, a taxpayer is granted the consent of the Commissioner to change its method of accounting to a method required or permitted by this paragraph (e)(3) and paragraphs (b)(4) and (c)(2) of this section. A taxpayer that wants to change its method of accounting under this paragraph (e)(3)(v) must follow the automatic consent procedures in Rev. Proc. 2002–9 (2002–3 I.R.B. xxx) (see § 601.601(d)(2) of this chapter). However, the scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply, and the five-year limitation on the readoption of the LIFO method under section 10.01(2) of the Appendix is waived. In addition, if the taxpayer's method of accounting for its LIFO inventories is an issue under consideration at the time the application is filed with the national office, the audit protection of section 7 of Rev. Proc. 2002–9 does not apply. If a taxpayer changing its method of accounting under this paragraph (e)(3)(v)(B) is under examination, before an appeals office, or before a federal court with respect to any income tax issue, the taxpayer must provide a copy of the application to the examining agent(s), appeals officer or counsel for the government, as appropriate, at the same time it files the application with the national office. Any change under this paragraph (e)(3)(v)(B) must be made using a cut-off method and new base year as required by paragraph (e)(3)(iv)(B)(*1*) of this section. Because a change under this paragraph (e)(3)(v)(B) is made using a cut-off method, a section 481(a) adjustment is not permitted. However, a taxpayer changing its method of accounting under this paragraph (e)(3)(v)(B) must comply with the requirements of section 10.06(3) of the APPENDIX of Rev. Proc. 2002–9 (concerning bargain purchases).

* * * * *

(h) *LIFO inventories received in certain nonrecognition transactions*—(1) *In general.* Except as provided in paragraph (h)(3) of this section, if inventory items accounted for under the LIFO method are received in a transaction described in paragraph (h)(2) of this section, then, for the purpose of determining future increments and liquidations, the transferee must use the year of transfer as the base year and must use its current-year cost (computed under the transferee's method of accounting) of those items as their new base-year cost. If the transferee had opening inventories in the year of transfer, then, for the purpose of determining future increments and liquidations, the transferee must use its current-year cost (computed under the transferee's method of accounting) of those inventories as their new base-year cost. For this purpose, ''opening inventory'' refers to all items owned by the transferee before the transfer for which the transferee uses, or elects to use, the LIFO method. The total new base-year cost of the transferee's inventory as of the beginning of the year of transfer is equal to the new base-year cost of the inventory received from the transferor and the new base-year cost of the transferee's opening inventory. The index (or, the cumulative index in the case of the link-chain method) for the year immediately preceding the year of transfer is 1.00. The base-year cost of any layers in the dollar-value pool, as determined after the transfer, must be recomputed accordingly. See paragraph (e)(3)(iv)(B)(*1*) of this section for an example of this computation.

(2) *Transactions to which this paragraph (h) applies.* The rules in this

paragraph (h) apply to a transaction in which—

(i) The transferee determines its basis in the inventories, in whole or in part, by reference to the basis of the inventories in the hands of the transferor;

(ii) The transferor used the dollar-value LIFO method to account for the transferred inventories;

(iii) The transferee uses the dollar-value LIFO method to account for the inventories in the year of the transfer; and

(iv) The transaction is not described in section 381(a).

(3) *Anti-avoidance rule.* The rules in this paragraph (h) do not apply to a transaction entered into with the principal purpose to avail the transferee of a method of accounting that would be unavailable to the transferor (or would be unavailable to the transferor without securing consent from the Commissioner). In determining the principal purpose of a transfer, consideration will be given to all of the facts and circumstances. However, a transfer is deemed made with the principal purpose to avail the transferee of a method of accounting that would be unavailable to the transferor without securing consent from the Commissioner if the transferor acquired inventory in a bargain purchase within the five taxable years preceding the year of the transfer and used a dollar-value LIFO method to account for that inventory that did not treat the bargain purchase inventory and physically identical inventory acquired at market prices as separate items. Inventory is deemed acquired in a bargain purchase if the actual cost of the inventory (or, if appropriate, the allocated cost of the inventory) was less than or equal to 50 percent of the replacement cost of physically identical inventory. Inventory is not considered acquired in a bargain purchase if the actual cost of the inventory (or, if appropriate, the allocated cost of the inventory) was greater than or equal to 75 percent of the replacement cost of physically identical inventory.

(4) *Effective date.* The rules of this paragraph (h) are applicable for transfers that occur during a taxable year ending on or after December 31, 2001.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, in the table in paragraph (b), the entry for 1.472–8 is revised to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.472–8	1545–0028 1545–0042 1545–1767
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 21, 2001.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–184 Filed 1–8–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–048]

Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary deviation.

SUMMARY: The Commander, Eighth Coast Guard District has authorized a temporary deviation from the regulation governing the Burlington Railroad Drawbridge, Mile 403.1, Upper Mississippi River at Burlington, Iowa. This deviation allows the drawbridge to remain closed-to-navigation for 60 days from 12:01 a.m. Central Standard Time (CST) on December 31, 2001, until 12:01 a.m. Central Standard Time (CST) on March 1, 2002. The drawbridge shall open on signal if at least six (6) hours advance notice is given.

DATES: This temporary deviation is effective from 12:01 a.m. Central Standard Time (CST) on December 31, 2001, until 12:01 a.m. Central Standard Time (CST) on March 1, 2002.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. The Bridge Branch maintains the public docket for this temporary deviation.

FOR FUTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District at (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: The Burlington Railroad Drawbridge provides a vertical clearance of 21.5 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

On November 27, 2001 the Burlington Northern Santa Fe Railroad requested the bridge be maintained in the closed-to-navigation position to allow the bridge owner time for preventative maintenance in the winter and when there is less impact on navigation; instead of scheduling maintenance in the summer, when river traffic increases.

This deviation allows the bridge to remain closed-to-navigation from 12:01 a.m. Central Standard Time (CST) on December 31, 2001, until 12:01 a.m. Central Standard Time (CST) on March 1, 2002. The drawbridge will open on signal if at least six (6) hours advance notice is given. Advance notice may be given by calling Mr. Louis Welte, (309) 345–6103 during work hours and Mr. Larry Moll, (309) 752–5244, after work hours.

Dated: December 28, 2001.

Roy J. Casto,

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

[FR Doc. 02–503 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–045]

RIN 2115–AE47

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Illinois Central Railroad Drawbridge, Mile 579.9, Upper Mississippi River. From 12:01 a.m., December 27, 2001, until 9 a.m., March 11, 2002, the drawbridge shall open on signal if at least 24 hours advance notice is given.

This change is necessary to perform annual maintenance and repair on the bridge.

DATES: This rule is effective from 12:01 a.m. Central Standard Time on December 27, 2001, to 9 a.m. Central Standard Time on March 11, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD08–01–045 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch at (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule is being promulgated without an NPRM due to the short time frame allowed between the submission of the request by the Canadian National/Illinois Central Railroad Company and the date of requested closure. The Coast Guard received the Canadian National/Illinois Central Railroad Company's request on 6 November 2001. Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 24 (Mile 273.4 UMR) until March 2, 2002 and Lock No. 12 (Mile 556.7) until March 11, 2002, will preclude any significant navigation demands for the drawspan opening. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators. No objections were raised.

Background and Purpose

On November 6, 2001, the Canadian National/Illinois Central Railroad Company requested a temporary change to the Operation of the Illinois Central Railroad swing bridge across the Upper Mississippi River, Mile 579.9 at Dubuque, Iowa. Canadian National/Illinois Central Railroad Company requested that navigation temporarily provide 24 hours advance notice for bridge operation to facilitate required bridge maintenance during the winter months.

The Illinois Central Railroad Drawbridge navigation span has a vertical clearance of 19.9 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw opens on signal for passage of river traffic. The Canadian National/Illinois Central Railroad Company requested the drawbridge be permitted to remain closed-to-navigation from 12:01 a.m., December 27, 2001, until 9 a.m., March 11, 2002 unless 24 hours advance notice is given of the need for it to open. Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 24 (Mile 273.4 UMR) until March 2, 2002 and Lock No. 12 (Mile 556.7) until March 11, 2002, will preclude any significant navigation demands for the drawspan opening. The Illinois Central Railroad Drawbridge, Mile 579.9 Upper Mississippi River, is located upstream from Lock 24. Performing maintenance on the bridge during the winter, when the number of vessels likely to be impacted is minimal, is preferred to bridge closures or advance notification requirements during the commercial navigation season. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators. No objections were raised.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of the temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because river traffic will be extremely limited by lock closures and ice during this period.

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L 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. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 378.

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 affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1 (series), this rule is categorically excluded from further environmental documentation. Promulgation of changes to drawbridge regulations has been found not to have significant effect on the human environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 12:01 a.m., December 27, 2001, through 9 a.m., March 11, 2002, § 117.T408 is added to read as follows:

§ 117.T408 Upper Mississippi River.

From 12:01 a.m., December 27, 2001 through 9 a.m., March 11, 2002, the drawspan of the Illinois Central Railroad Drawbridge, mile 579.9, requires 24 hours advance notice for bridge operation.

Dated: December 27, 2001.

Roy J. Casto,

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

[FR Doc. 02–504 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 01–013]

RIN 2115–AA97

Security Zone; Port Hueneme Harbor, Ventura County, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone covering all waters within Port Hueneme Harbor in Ventura County, CA. This security zone is needed for national security reasons to protect the Naval Base Ventura County and the commercial port from potential subversive acts. Entry into this zone is prohibited, unless specifically authorized by the Capitan of the Port Los Angeles-Long Beach, the Commanding Officer, Naval Base Ventura County, or their designated representatives.

DATES: The rule is effective from 12:01 a.m. PST on December 21, 2001 to 11:59 p.m. PDT on June 15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles-Long Beach 01–013 and are available for inspection or copying at Coast Guard Marine Safety Office Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ken O'Connor, Waterways Management, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports, and waterways of the United States. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners advising of this new rule.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center in New York and the Pentagon in Arlington, Virginia, there is an increased risk that further subversive activity may be launched against the United States. These terrorist acts have increased the need for safety and security measures on U.S. ports and waterways as further attacks may be launched from vessels within the area of Port Hueneme Harbor and the Naval Base Ventura County.

In response to these terrorist acts, to prevent similar occurrences, and to protect the Naval Facilities at Port Hueneme Harbor and the Naval Base Ventura County, the Coast Guard is establishing a security zone in all waters within Port Hueneme Harbor. This security zone is necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard

ports, harbors, or waters of the United States in Port Hueneme Harbor, Ventura County, CA. Specifically this security zone prohibits all vessels from entering Port Hueneme Harbor, beyond the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS) demarcation line set forth in section 80.1120 of Title 33 of the Code of Federal Regulations (CFR), without first filing a proper Advance Notification of Arrival as required by sections 160.T208–T214 of Title 33 of the CFR as well as obtaining clearance from Commanding Officer, Naval Base Ventura County, ''Control 1''.

This security zone is established pursuant to the authority of the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including sections 6.01 and 6.04 of Title 33 of the CFR. Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel, a monetary penalty of not more than $10,000, and imprisonment for not more than 10 years.

This rule will be enforced by the Captain of the Port Los Angeles-Long Beach, who may also enlist the aid and cooperation of any Federal, State, county, municipal, and private agencies to assist in the enforcement of this rule. Commanding Officer, Naval Base Ventura County, ''Control 1,'' will control vessel traffic entering Port Hueneme Harbor.

Regulatory Evaluation

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

Small Entities

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

For the same reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that it is categorically excluded from further environmental review.

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. Add a new temporary § 165.T11–060 to read as follows:

§ 165.T11–060 Security Zone; Port Hueneme Harbor, Ventura County, California.

(a) *Location.* The following area is a Security Zone: The water area of Port Hueneme Harbor inside of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS) demarcation line.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, the following rules apply to the security zone established by this section:

(i) No person or vessel may enter or remain in this security zone without the permission of the Captain of the Port Los Angeles-Long Beach, CA, or the Commanding Officer, Naval Base Ventura County, CA, ''Control 1,'';

(ii) Vessels that are required to make Advanced Notifications of Arrival as per §§ 160.T204–T214 of part 160 of this chapter continue to make such reports;

(iii) All vessels must obtain clearance from ''Control 1'' on VHF–FM marine radio 06 prior to crossing the COLREGS demarcation line at Port Hueneme Harbor;

(iv) Vessels without marine radio capability must obtain clearance in advance by contacting ''Control 1'' via telephone at (805) 982–3938 prior to crossing the COLREGS demarcation line at Port Hueneme Harbor.

(2) The Captain of the Port will notify the public of this Security Zone via broadcast and published notice to mariners.

(3) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from complying with the rules of the road and safe navigation practice.

(4) The regulations of this section will be enforced by the Captain of the Port Los Angeles-Long Beach, the Commanding Officer, Naval Base Ventura County or their authorized representatives.

(c) *Dates.* This section becomes effective at 12:01 a.m. PST on December 21, 2001, and will terminate at 11:59 p.m. PDT on June 15, 2002.

Dated: December 21, 2001.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–502 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–223]

RIN 2115–AA97

Safety Zone; Fore River Bridge Repairs—Weymouth, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Fore River (Route 3A) Bridge Repairs, starting January 1, 2002 until September 30, 2002, in Weymouth, MA. The safety zone is to ensure the safe operation of a 55-foot-wide crane barge underneath the Fore River Bridge in order to conduct repair operations, Monday through Saturday of each week during the effective time period and is necessary to protect maritime traffic in the area of the safety zone. The safety zone prohibits vessels from operating within 30-feet of the barge.

DATES: This rule is effective from January 1, 2002 until September 30, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Michael Popovich, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3067.

SUPPLEMENTARY INFORMATION:

Regulatory History

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**. Discussions were held with all interests most likely to be affected by this safety zone. These include Massachusetts Highway Department, The Middlesex Corporation (TMC), Weymouth Fore River operators, barge and ferry companies, and recreational boater representatives. These interests agree that the parameters of the zone will not unduly impair business and unscheduled operations or transits of vessels. Therefore, notice and comment is unnecessary. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to protect marine traffic from bridge construction hazards while transiting a portion of the Fore River, Weymouth, Massachusetts, during the Fore River Bridge repairs. This safety zone should have minimal impact on vessel transits due to the fact that the safety zone does not block the entire channel, and procedures have been established for the movement of the construction barge, should larger vessels that are unable to transit around the barge while in the channel, need to transit the area. Notifications will be made to the maritime community via notice to mariners and marine information broadcasts informing them of boundaries of the zone.

Background and Purpose

A previous rulemaking, published at 66 FR 13851, effective from February 21 through December 31, 2001, established a safety zone identical to that established in this rulemaking to conduct repairs to the Fore River Bridge. Additional time is needed to complete the repairs required to allow for the proper operation of the bridge. The safety zone allows TMC to place a 55-foot-wide crane barge in the Fore River underneath the Fore River Bridge to conduct repair operations, Monday through Saturday of each week from January 1, 2002 through September 30, 2002. This safety zone prohibits vessels from operating within 30-feet of the barge. Most marine traffic may transit safely outside of the safety zone during the repairs. In the event a large vessel should need to transit the channel, the TMC barge shall move upon request. Requests to move the barge should be made directly to TMC at (781) 665–3261 or (978) 590–2754 with as much advance notice as possible (at least 8 hours is preferred). The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts.

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 under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Weymouth Fore River during this bridge repair period, the effect of this regulation will not be significant for several reasons: maritime interests, which frequently use the channel, have provided input into the scheduling of the bridge repairs, the safety zone does not block the entire channel, advanced notice will be given through marine broadcasts, and the construction barge will be required to move upon request for larger vessels unable to transit around it while in the channel.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Weymouth Fore River between January 1 and September 30, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone does not block the entire channel, advanced notice will be given through marine broadcasts, and the construction barge will be required to move upon request for larger vessels unable to transit around it while in the channel.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call Chief Petty Officer Michael Popovich, Marine Safety Office Boston, at (617) 223–3067. 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 would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

This 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

The Coast Guard 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 pose 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. A rule with tribal implications has 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.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 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. From January 1, 2002 until September 30, 2002, add temporary § 165.T01–223 to read as follows:

§ 165.T01–223 Safety Zone: Fore River Bridge Repairs—Weymouth, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of the Weymouth Fore River within a 30-foot radius of The Middlesex Corporation (TMC) construction barge located under the Fore River Bridge.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the

designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) No person may enter the waters within the boundaries of the safety zone unless previously authorized by the Captain of the Port, Boston or his authorized patrol representative.

Dated: December 14, 2001.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–505 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP MIAMI–01–115]

RIN 2115–AA97

Security Zones; Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving security zones 100 yards around all tank vessels loaded with hazardous cargo and passenger vessels with passengers aboard when these vessels enter or depart the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida. We are also establishing temporary fixed security zones 100 yards around all tank vessels loaded with hazardous cargo and passenger vessels with passengers aboard when these vessels are moored in the Ports of Palm Beach, Port Everglades, Miami, or Key West, Florida. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative.

DATES: This rule is effective from 11:59 p.m. on September 25, 2001 until 11:59 p.m. on June 15, 2002 unless terminated earlier by the Captain of the Port, Miami, Florida.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Miami 01–115 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139, between 7:30 p.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Joseph Boudrow, Coast Guard Marine Safety Office Miami, at (305) 535–8701.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and place Coast Guard vessels in the vicinity to advise mariners of the restriction.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Ports of Palm Beach, Miami, Port Everglades, and Key West, Florida against tank vessels and cruise ships entering, departing and moored within these ports. There will be Coast Guard and local police department patrol vessels on scene to monitor traffic through these areas.

The security zone for the Port of Palm Beach is activated when a subject vessel passes the ''LW'' buoy, at approximate position 26° 46′ 18N, 080° 00′ 36W. The security zone for the Port of Miami is activated when a subject vessel passes the ''M'' buoy, at approximate position 25° 46′ 06N, 080° 05′ 00W. The Port Everglades security zone starts when a subject vessel passes ''PE'' buoy, at approximate position 26° 05′ 30N, 080° 04′ 48W. And the security zone for the Port of Key West is activated when a subject vessel passes ''KW'' buoy, at approximate position 24° 27′ 42N, 081° 48′ 06W. The zone for a vessel is deactivated when the vessel passes these buoys on its departure from port.

The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) of all active security zones in the ports by identifying the names of the vessels around which the zones are centered. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida.

Regulatory Evaluation

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to enter the zone on a case by case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 each agency's

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implication 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 Party

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. It is not economically significant and creates no environmental risk to health or risk to safety disproportionately affecting children.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded 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 in the docket for inspection or copying where indicated under **ADDRESSES.**

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 relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports 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 temporary § 165.T07–115 is added to read as follows:

§ 165.T07–115 Security Zones; Ports of Palm Beach, Port Everglades, Miami, and Key West, Florida.

(a) *Regulated area.* Temporary moving security zones are established 100 yards around all tank vessels with hazardous cargo onboard and all passenger vessels with passengers aboard during transits entering or departing the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida. These moving security zones are activated when the subject vessel passes: ''LW'' buoy, at approximate position 26° 46′ 18N, 080° 00′ 36W when entering the Port of Palm Beach, passes ''PE'' buoy, at approximate position 26° 05′ 30N, 080° 04′ 48W when entering Port Everglades; the ''M'' buoy, at approximate position 25° 46′ 06N, 080° 05′ when entering the Port of Miami; and ''KW'' buoy, at approximate position 24° 27′ 42N, 081° 48′ 06W when entering the Port of Key West. Temporary fixed security zones are established 100 yards around all tank vessels with hazardous cargo onboard and all passenger vessels with passengers aboard docked in the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida.

(b) *Regulations.* In accordance with the general regulations of § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port, Miami or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) of all active security zones in port by identifying the names of the vessels around which they are centered.

(c) *Dates.* This regulation becomes effective at 11:59 p.m. on September 25, 2001 and will terminate at 11:59 p.m. on June 15, 2002 unless terminated earlier by the Captain of the Port, Miami, Florida.

Dated: September 25, 2001.

J.A. Watson, IV,

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

[FR Doc. 02–546 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301193; FRL–6812–5]

RIN 2070–AB78

Indian Meal Moth Granulosis Virus; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the Indian Meal Moth Granulosis Virus on dried fruits and nuts when applied/used as a microbial pesticide to control the Indian Meal Moth (*Plodia interpunctella*). AriVir, LLC. submitted a petition to EPA

under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of Indian Meal Moth Granulosis Virus (IMMGV).

DATES: This regulation is effective January 9, 2002. Objections and requests for hearings, identified by docket control number [OPP–301193], must be received by EPA, on or before March 11, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number [OPP–301193] in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8733; and e-mail address: hollis.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at ttp://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301193. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 7, 2000 (65 FR 41984) (FRL–6556–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e), as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide tolerance petition by AgriVir, LLC., 1625 K St., NW., Washington, DC 20006. This notice included a summary of the petition prepared by the petitioner AgriVir, LLC. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of IMMGV.

III. Risk Assessment

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Additionally, section 408(b)(2)(D) requires that the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Based on the toxicology data cited and the limited exposure to humans and domestic animals, there is a reasonable certainty that no harm will result from aggregate exposure to IMMGV to the U.S. population including infants and children to residues of IMMGV when used as viral pest control agent to

control the Indian Meal Moth on stored nuts and dried fruits. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the long history of research, use and safety of testing baculoviruses which is documented in the public scientific literature (Doller, G. 1985. The safety of insect virus as biological control agents. In ''Viral Insecticides for Biolocial Control'' (Eds. Maramorosch, K. and Sherman, H.G.), Academic Press, New York: 399, Heimpel, A.M. 1971. Safety of insect pathogens for man and vertebrates. In ''Microbial Control of Insects and Mites'' (Eds. Burges, H.D. and Hussey, N.W.), Academic Press, New York: 469-489, Groner, A. 1986. Specificity and safety of baculoviruses. In ''The Biology of Baculoviruses Vol. I: Biological Properties and Molecular Biology'' (Eds. Granados, R.D. and Federici, B.A), CRC Press, Boca Raton, Florida: 177-202). Consigili, R.A., D.L, Russell and M.E. Wilson. 1986. The biochemistry and molecular biology of the granulosis virus that infects *Plodia interpunctella*. Cur. Top. Microbiol. and Immunol. 131: 69-101. Hunter, D.K. 1970. Pathogenicity of a granulosis virus of the Indian meal moth. J. Invertebr. Pahtol. 16: 339-341.

IMMGV is a naturally-occurring organism to which some environmental and dietary exposure is likely to be common for most individuals. The conclusion of safety is further supported by the lack of toxic or pathogenic effects on test animals at high doses (data submitted by the registrant, MRID #'s 453070-01, 450662-07 & 450662-08). Baculoviruses have been described in the scientific literature for approximately 40 years. In addition to their natural occurrence, these viruses have a long history of safe use as bioinsecticides. Baculoviruses have been studied extensively in both laboratory and field experiments, which have shown that the virus host range is limited to arthropods. IMMGV has been shown to be very restricted in its insect host range. No toxicological or pathogenic effects produced by the baculovirus itself, have been observed in mammals, birds, fish or plants. The lack of mammalian toxicity at high levels of exposure to IMMGV demonstrates the safety of the product at levels well above maximum possible exposure levels anticipated in the crops. There has been a significant amount of research performed on baculoviruses and numerous scientific references are available which describe the biology of these viruses, their host range, and their mode of action.

Toxicity studies submitted in support of this tolerance exemption include the following:

1. *Acute oral toxicity/pathogenicity (453070-01).* Thirteen male (254-321g) and 13 female (160-208g) albino rats were divided into three groups and treated with 0.1 milliliter (mL) of the test substance. Treatment was administered by oral gavage with at least 1 x 10^8 viral particles per animal. No deaths occurred in any of the test animals. Other than diarrhea during the first few hours following dosing, there were no other apparent clinical symptoms. Based upon the data there were no significant adverse effects reported upon doses of at least 1 x 10^8 viral capsules. Toxicity Category IV.

2. *In vitro mammalian cell viral infectivity in mammalian cells (450662-08).* Human WI-38 and WS1 cell cultures and African Green monkey CV-1 cell cultures were exposed to ≥ 1 x 10^6 units of the test substance. The cell cultures were observed daily for 21 days following inoculation for virus induced cytopathic effects. The test preparation was shown to be highly infectious and cytopathic to the target *Plodia interpunctella* larva. No differences were seen between the virus treated nor the solvent treated control cell cultures with respect to any cytopathic endpoint at any time post-inoculation. Based on the data, there was no evidence that the virus could infect any of the three mammalian cell lines.

3. *In vitro mammalian cell viral induced cytotoxicity (450662-07).* Human WI-38 and WS1 cell cultures and African Green monkey CV-1 cell cultures were exposed to ≥ 1 x 10^6 units of IMMGV Technical (IMMGV) for 1–hour. The cell cultures were then washed, refed with virus-free medium, incubated for 8 days, fixed, stained and the number of colonies counted. The test preparation was shown to be highly infectious and cytopathic to the target *Plodia interpunctella* larva although analysis determined that the actual number of viral capsules used was only 42% of the target value. No differences were seen between the virus treated nor the solvent treated control cell cultures with respect to cloning efficiency in any of the three cell lines. Based on the data, there was no evidence that the test substance was cytotoxic to any of the three mammalian cell lines.

4. *Acute eye irritation (450662-09).* The test substance was instilled in the eyes of four males and two female adult New Zealand albino rabbits at approximately 0.04 g/eye (~7.14 x 10^9 viral capsules). Animals were acclimated for 11 days and before treatment their eyes were checked for normalcy using ophthalmic fluorescein and an ultraviolet (UV) lamp. The right eye of each animal was treated and the other eye served as a control. No deaths occurred. Clinical signs noted included conjunctivitis, corneal opacity and iritis, all of which cleared within 4 days of treatment. Toxicity Category IV.

Data waivers were requested for the following studies:

1. *Acute dermal toxicity.* This study was waived based upon the lack of toxicity in animals dosed orally (453070-01) and more importantly cells inoculated with viral pest control agent (450662-07 & 450662-08). Cell culture infectivity and cytoxicity assays demonstrated that there were no toxic effects to mammalian cell lines (human lung, human endothelial and primate renal cell lines) when infected with doses of IMMGV. Cell culture assays provide valuable information on the ability of the viral pest control agent to infect, replicate in, transform or cause toxicity in mammalian cell lines. Thus, this assay is the most likely indicator of evaluating the toxicity of a viral pest control agent. Unlike the oral, dermal and inhalation routes of exposure, these barriers (exposure conditions) do not exist in cell culture assays as the host cell is completely exposed thus providing a higher exposure potential (for exposure of body tissues, organs and systems). Cell culture studies which demonstrate no toxicity to mammalian cell lines upon infection with the viral pest control agent can therefore be used as an indicator in determining the probability of toxicity to the viral pest control agent via other routes of exposure (oral, dermal, inhalation). Therefore, this evaluation criteria along with the data submitted (referenced above) and the long history of safe use of baculoviruses provided the Agency with a scientific rationale to waive the requirement for an acute dermal toxicity study. In addition, the IMMGV is a characteristically large molecular entity and is therefore unable to penetrate intact skin. However, in the unlikely event that viral penetration does occur through contact with broken skin, the studies submitted by the registrant have demonstrated a lack of toxicity/pathogenicity and infectivity associated with IMMGV.

2. *Acute inhalation toxicity.* This study was waived based upon the lack of toxicity in animals dosed orally (453070-01) and more importantly cells inoculated with viral pest control agent (450662-07 & 450662-08). Cell culture infectivity and cytoxicity assays demonstrated that there were no toxic

effects to mammalian cell lines (human lung, human endothelial and primate renal cell lines) when infected with doses of IMMGV. Cell culture assays provide valuable information on the ability of the viral pest control agent to infect, replicate in, transform or cause toxicity in mammalian cell lines. Thus, this assay is the most likely indicator of evaluating the toxicity of a viral pest control agent. Unlike the oral, dermal and inhalation routes of exposure, these barriers (exposure conditions) do not exist in cell culture assays as the host cell is completely exposed thus providing a higher exposure potential (for exposure of body tissues, organs and systems). Cell culture studies which demonstrate no toxicity to mammalian cell lines upon infection with the viral pest control agent can therefore be used as an indicator in determining the probability of toxicity to the viral pest control agent via other routes of exposure (oral, dermal and inhalation). Therefore, this evaluation criteria along with the data submitted (referenced above) and the long history of safe use of baculoviruses provided the Agency with a scientific rationale to waive the requirement for an acute inhalation toxicity study. In addition, the product labeling includes precautionary language for the pesticide handler to a dust mask as a further measure of safety.

3. *Primary dermal irritation*. This study was waived based upon the lack of toxicity in animals dosed orally (453070-01) and more importantly cells inoculated with viral pest control agent (450662-07 & 450662-08). Cell culture infectivity and cytoxicity assays demonstrated that there were no toxic effects to mammalian cell lines (human lung, human endothelial and primate renal cell lines) when infected with doses of IMMGV. Cell culture assays provide valuable information on the ability of the viral pest control agent to infect, replicate in, transform or cause toxicity in mammalian cell lines. Thus, this assay is the most likely indicator of evaluating the toxicity of a viral pest control agent. Unlike the oral, dermal and inhalation routes of exposure, these barriers (exposure conditions) do not exist in cell culture assays as the host cell is completely exposed thus providing a higher exposure potential (for exposure of body tissues, organs and systems). Cell culture studies which demonstrate no toxicity to mammalian cell lines upon infection with the viral pest control agent can therefore be used as an indicator in determining the probability of toxicity to the viral pest control agent via other routes of exposure (oral, dermal and inhalation). Therefore, this evaluation criteria along with the data submitted (referenced above) and the long history of safe use of baculoviruses provided the Agency with a scientific rationale to waive the requirement for an acute dermal toxicity study. In addition, the product labeling includes precautionary language for the pesticide handler to wear gloves as a further measure of safety.

4. *Literature citations (450662-06)*. Information from the open scientific literature has been cited in support of the relative safety and lack of mammalian toxicity associated with baculoviruses to include the IMMGV. The IMMGV is very host-specific, it does not infect any host other than the Indian Meal Moth larvae and does not cross-infect any Lepidopteran or other insect. The range for the insect host is worldwide. Studies listed in the literature review provide information on the life cycle and mode of action of IMMGV such that it acts by pathogenicity, not a toxic mechanism. It presents no hazard potential to mammals and non-target species.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food*. Because baculoviruses are naturally-occurring organisms, there is a great likelihood for previous exposure for most, if not all individuals. To date, there have been no reports of any hypersensitivity incidents or reports of any known adverse reactions resulting from exposure to IMMGV. The amount of product used will result in a negligible increase, if any, of virus exposure. In addition, even if there is a significant increase in exposure to the virus, the toxicity studies submitted by the registrant along with the extensive reports in the scientific literature indicating the safety of the viruses, suggest that there should not be any additional risk of adverse effects due to exposure to IMMGV.

2. *Drinking water exposure*. Because of the use site and amount of product that will be applied, potential non-occupational exposures in drinking water is negligible. Currently, there are no reports which show that IMMGV has been found in any drinking water. Baculoviruses occur naturally in soil and there is a low likelihood that they would survive passage through the soil to reach underground water (Consigili, R.A., and Wilson, M.E., 1986. The Biochemical and Molecular Biology of the Granulosis Virus that Infects *Plodia Interpunctella*. Current topics in Microbiology and Immunology 131:69-101. MRID 450662-06). Even if the virus is able to reach ground water, it is highly unlikely that the viruses would survive municipal water treatment due to its inability to survive outside its host. Therefore, it is likely there will not be an increase of IMMGV in drinking water. In addition, because the virus host range is limited to the Indian meal moth, even if the virus is found in drinking water, the results of the acute oral toxicity studies using a high dose of the virus, suggest that there will not be any adverse effects upon human consumption in the unlikely event any virus found its way into drinking water, therefore; the Agency has no drinking water exposure concerns.

B. Other Non-Occupational Exposure

Baculoviruses are naturally-occurring viruses that have been described in the scientific literature for approximately 40 years. In addition to scientific research, there has been a long history of safe use of baculoviruses to control arthropods. Because the amount of virus which will be applied is small, it is not likely that there will be a significant increase in potential exposure. Any increase in virus titer is likely to be negligible at most. Baculoviruses have been shown to have a host range limited to arthropods and the host range of this virus is even more restrictive than most baculoviruses (Consigili, R.A., and Wilson, M.E., 1986. The Biochemical and Molecular Biology of the Granulosis Virus that Infects *Plodia Interpunctella*. Current topics in Microbiology and Immunology 131:69-101. MRID 450662-06). Therefore, even if there was an increase in exposure, there should not be any increase in potential human health effects.

VI. Cumulative Effects

The Agency has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to this or other baculovirus-containing products, the Agency is confident that there will not be cumulative effects from the registration of this product.

VII. Determination of Safety

1. *U.S. population.* There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population from exposure to residues of IMMGV. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the long history of safe use of baculoviruses as bioinsecticides, the lack of mammalian toxicity associated with IMMGV, the limited host range of the virus and the inability of IMMGV to infect mammalian cell lines.

2. *Infants and children.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) (MOE) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different MOE will be safe for infants and children. MOEs are often referred to as uncertainty (safety) factors. In this instance, based on all the available information, the Agency concludes that IMMGV is practically non-toxic to mammals, including infants and children and that they will consume only minimal, if any, residues of the microbial pesticide. Thus, there are no threshold effects of concern and, as a result the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

As a result, EPA has not used a MOE approach to assess the safety of the IMMGV.

VIII. Other Considerations

A. Endocrine Disruptors

There are no reports or indications in the available scientific literature which suggests that Indian meal moth granulosis virus has caused or has the potential to cause adverse effects on the endocrine and/or immune systems of humans or animals. The virus host range is limited to the Indian meal moth, where it would be expected to affect the defense systems of the target insect pest. The target insect's response is not different from any animal's response to a disease agent. These suppositions are confirmed by the results of the mammailian toxicity tests cited above.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance without any numberical limitation for the reasons stated above. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purposes for the IMMGV.

C. Codex Maximum Residue Level

There are no Codex Maximum Residue Levels established for residues of the IMMGV.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301193 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 11, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–301193, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request

via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule 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. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 21, 2001.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1218 is added to subpart D to read as follows:

§ 180.1218 Indian Meal Moth Granulosis Virus; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide Indian Meal Moth Granulosis Virus in or on dried fruits and nuts.

[FR Doc. 02–223 Filed 1–8–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Notice 3]

RIN 2137–AD64

Pipeline Safety: High Consequence Areas for Gas Transmission Pipelines

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Research and Special Programs Administration (RSPA) is proposing to define areas of high consequence where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. This proposed rule is the first step in a two step process to address the integrity management programs for gas pipelines.

RSPA created the proposed definition from the comments received on the notice that invited further public comment about integrity management concepts as they relate to gas pipelines (Information Notice). Additionally, RSPA gathered information through a series of discussions and meetings with representatives of the gas pipeline industry, research institutions, State pipeline safety agencies and public interest groups. The proposed definition does not require any specific action by pipeline operators, but will be used in the pipeline integrity management rule for gas transmission lines that RSPA is currently developing.

DATES: Interested persons are invited to submit written comments by March 11, 2002. Late-filed comments will be considered to the extent practicable.

ADDRESSES:

Filing Information

You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except federal holidays. All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

Electronic Access

You may also submit written comments to the docket electronically. To submit comments electronically, log on to the following Internet Web address: *http://dms.dot.gov.* Click on ''Help & Information'' for instructions on how to file a document electronically.

General Information

You may contact the Dockets Facility by phone at (202) 366–9329, for copies of this proposed rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at (202) 366–4571, by fax at (202) 366–4566, or by E-mail at *mike.israni@rspa.dot.gov,* regarding the subject matter of this proposed rule. General information about the RSPA/OPS programs may be obtained by accessing OPS's Internet page at *http://ops.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

We are issuing integrity management program requirements for pipelines in several steps. RSPA began the series of rulemakings by issuing requirements pertaining to hazardous liquid and carbon dioxide pipeline operators. A final rule which applies to hazardous liquid operators with 500 or more miles of pipeline was published on December 1, 2000 (65 FR 75378). That rule applies to hazardous liquid and carbon dioxide pipelines that can affect high consequence areas, which include populated areas defined by the U.S. Census Bureau as urbanized areas or places, unusually sensitive environmental areas, and commercially navigable waterways. We issued a similar proposed rule for hazardous liquid operators with less than 500 miles of pipeline (66 FR 15821; March 21, 2001).

We are now beginning the integrity management rulemakings for gas transmission lines by first proposing a definition of high consequence areas. This definition will be entirely separate from the definition established for hazardous liquid pipelines. We will then propose requirements for gas transmission pipeline operators to develop and implement integrity management programs to provide additional protections to those areas. We are proceeding in two steps for several reasons. We gathered and reviewed a great deal of information on where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. We compared this information to the areas we currently require enhanced protections. We are, however, still collecting information on and verifying the validity of pipeline assessment methods other than internal inspection devices and pressure testing. Information on viable alternative assessment methods for gas transmission pipelines is critical to our proposal for an integrity management program. Unlike hazardous liquid pipelines, a large percent of gas transmission pipelines are not configured for the use of internal inspection devices or cannot be taken out of service for any length of time due to the disruption of critical gas supply to customers. Therefore, we must complete this work before we issue a proposal to address protections for gas pipelines in high consequence areas.

Additionally, while a consensus standard on implementing an overall integrity management program is complete, many consensus standards on pipeline integrity management that could be incorporated into an integrity rulemaking are still under development. Therefore, we decided to proceed with a definition based on information we analyzed, and continue work on proposed assessment and protection requirements for an integrity management program.

RSPA created this definition through a process which began with the goal of improving the assurance of pipeline integrity in those geographic areas where a rupture could have the most significant consequence on people. We thought it necessary to focus on those geographic areas to ensure that operators would expend resources in the areas where the benefits would be greatest, while the regulatory agencies and the industry continued to learn how to effectively improve integrity for the entire pipeline system.

We next assembled technical information to support development of rules to define the geographic areas of focus and prescribe the process to be used to increase the assurance of pipeline integrity. This was accomplished through a series of discussions and meetings with representatives of the gas pipeline industry, research institutions, State pipeline safety agencies and public interest groups. We digested the technical information from these meetings and developed preliminary hypotheses about how the rules should be structured. These hypotheses were documented in the Information Notice (66 FR 34318; June 27, 2001), which invited public comment both on the

hypotheses and on the technical issues requiring resolution.

We developed the definition that we are proposing in this rulemaking based on the technical input received during the series of stakeholder meetings and the comments received on the **Federal Register** Notice. The use of this definition for areas of high consequence, in conjunction with implementation of future integrity management requirements, represents a major step in increasing the assurance of integrity for gas pipeline systems. Once integrity management program requirements are in place for the high consequence areas, RSPA will review the benefits achieved for future consideration of whether to extend integrity management requirements to other areas on pipelines. This review will also help us formulate effective practices to further enhance the integrity of the entire pipeline infrastructure.

RSPA's goal in developing the gas pipeline integrity management rules is to provide the regulatory structure required for operators to focus their resources on improving pipeline integrity in the areas where a pipeline failure would have the greatest impact on public safety. The RSPA philosophy toward gas pipelines is to build on current Class location regulations which require the operator to know what people by location would be impacted by a pipeline rupture, and to require added assurance of pipeline integrity in the areas where the population density is greatest.

These current Class location regulations, which are unique to gas pipelines, require an operator to periodically (typically done annually) monitor and record data on increases in population near its pipelines. Data monitoring gives a current and very accurate picture of where people live and work who could be affected by a pipeline release.

Since January 2000, RSPA has met with State agencies, representatives of the Interstate Natural Gas Association of America (INGAA), the American Gas Association (AGA), Battelle Memorial Institute, the Gas Technology Institute (GTI), Hartford Steam Boiler Inspection and Insurance Company, and operators covered under 49 CFR part 192. (See DOT Docket No. 7666 for summaries of the meetings.) We also met with the Western States' Land Commissioners, National Governors Association, National League of Cities, National Council of State Legislators, Environmental Defense, Public Interest Reform Group, and Working Group on Communities Right-To-Know.

From these meetings we gained a clearer understanding of four significant characteristics of gas pipelines that we used in developing a proposed definition of high consequence areas. First, the effects of a gas pipeline rupture and subsequent explosion are highly localized. The physical properties of natural gas dictate that it rises upward from a rupture or hole in the pipeline as the gas expands into the air. The observation of damage at the sites of pipeline ruptures confirmed this behavior of gas. Second, the zone of damage from an explosion and burning of gas following a pipeline rupture is related to the line's diameter and the pressure at which the pipeline is operated. Again, RSPA confirmed these patterns from observing the heat affected zone surrounding actual pipeline ruptures and explosions. We correlated these observations using a simplified mathematical model relating the properties of the gas, the pipe diameter, and the operating pressure to the predicted heat affected zone. Third, the size of the heat affected zone from pipeline ruptures where pipe diameter was less than 36 inches and operating pressures were at or below 1000 psig, was limited to a diameter of approximately 660 feet.

RSPA corroborated the size of the heat affected zone by observing the sites of actual ruptures. The size of the zone is also consistent with the current Class location definitions. This consistency is not surprising. Thirty-some years ago when the Class location regulations were developed, the 660 foot-wide zone around a pipeline was based on available data about a heat affected zone. However, at that time data only existed on pipeline failures where the pipe diameter was less than 36 inches and the operating pressures were lower than 1000 psig. The fourth piece of information relevant to our proposed definition is that the heat affected zone for pipelines of diameter equal to or greater than 36 inches, operating at pressures in excess of 1000 psig, can extend to as much as 1000 feet from the pipeline. The size of the zone for larger pipelines is based on mathematical models verified by comparison with data on the areas burned around actual gas pipeline ruptures.

On the dates of February 12–14, 2001, we held a public meeting in Arlington, VA, to discuss integrity management requirements for gas pipelines in high consequence areas, and ways to enhance communications with the public about hazardous liquid and gas pipelines. This meeting featured reports on the status of industry and government activities to improve the integrity of gas pipelines. Meeting attendees also participated in in-depth discussions on the integrity of gas pipelines. The reports can be found in the DOT docket (#7666) and on the RSPA Web site under Initiatives/ Pipeline Integrity Management Program/ Gas Transmission Operators Rule.

At the public meeting, industry and State representatives presented their perspectives on a number of issues relating to integrity management. Several members of the public also made comments. Topics included:

- Considerations for defining high consequence areas affected by gas pipelines;
- Evaluation of design factors currently used for gas transmission pipelines;
- Evaluation of performance history and experience with the impact zone in gas transmission failures;
- Integrity management best practices and relationship between incident causes and industry practices;
- Options for various forms of direct assessment of the integrity of gas pipelines, including costs and effectiveness;
- Basis for establishing test pressure intervals;
- Appropriateness of using pressure (stress) to differentiate integrity standards for pipelines
- Status of research activities; and
- Status of development of new national consensus standards.

These presentations can be viewed on the RSPA Web site under Initiatives/ Pipeline Integrity Management Program/ Gas Transmission Operators Rule.

We integrated the results from this meeting with the list of technical perspectives and issues that RSPA developed during the stakeholder meetings held over the previous twelve months. We then formulated the hypotheses on which we expected to base an integrity management rule and questions related to these hypotheses. We published both in a **Federal Register** Notice that we discuss in the next section.

Notice of Request for Comments

On June 27, 2001, RSPA issued a notice of request for comments (66 FR 34318) which asked for further information and clarification, and invited further public comment, on defining high consequence areas and developing integrity management requirements for gas transmission lines. In the notice, RSPA stated its objective to develop a rule on gas pipeline integrity management to address threats posed by pipeline segments in areas where the consequences of potential pipeline accidents pose the greatest risk

to people and property, and provides additional protections for these areas. We had a similar objective when we developed the rules on liquid pipeline integrity management programs, although environmental protection played a larger role in those rules. We also advised on our intention to minimize any actual adverse impact of a new safety requirement on the supply of natural gas to customers.

In the notice, we described the seven elements we believed should be included in any gas pipeline integrity management rule. We used similar elements in developing the liquid pipeline integrity management rules. These elements were based on certain hypotheses we discussed in detail in the notice. Then, we invited comment about these elements and hypotheses. The notice further summarized the areas where RSPA was seeking further information before proposing an integrity management program rule for gas operators. We categorized these information needs into nine categories, seven of which were the elements we described as essential to any integrity management program rule. The other two categories were to seek information about the costs of an integrity management rulemaking, and the rule's potential impact on gas supply.

The first element we discussed was how to define high consequence areas, i.e., those areas where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. We put forth the following hypotheses for comment:

- Data from sites where gas pipelines ruptured and exploded show that the range of impact of such explosions is limited. Therefore, the area in which nearby residents may be harmed or there may be property damaged by potential pipeline ruptures, can be mathematically modeled as a function of the physical size of the pipeline and the material transported (typically, but not exclusively, natural gas).
- Because we require gas pipeline operators to maintain data on the number of buildings within 660 feet of their pipelines, the definition of potentially high consequence areas where additional integrity assurance measures are needed should incorporate these data.
- The range of impact from the rupture and explosion of very large diameter (greater than 36 inches) high pressure (greater than 1000 psi) gas pipelines is greater than the 660 feet currently used in the regulations.
- Special consideration must be given to protect people living or working near gas pipelines who would have difficulty evacuating the area quickly (*e.g.*, schools, hospitals, nursing homes, prisons).
- Due to the relatively small radius of impact of a gas pipeline rupture and subsequent explosion, and the behavior of gas products, environmental consequences are expected to be limited. At this time, RSPA has little information to indicate the definition of high consequence areas near gas pipelines should include environmental factors.
- Given that pipeline operators maintain extensive data on the distribution of people near their pipelines, RSPA intends for operators to use these data, together with a narrative definition of a high consequence area (defined by RSPA), to identify the specific locations of high consequence areas.

Electronic Discussion Forum

To promote greater discussion of these issues, RSPA also initiated an electronic discussion forum which was open from June 27 through August 13, 2001, at the RSPA Web site under the subheading ''More Information Needed on Gas Integrity Management Program.'' A transcript of the electronic discussion forum is placed in this docket. Comments received relevant to a definition of high consequence areas are discussed here.

Comments to FR Notice on Integrity Management Concepts and Hypotheses (Gas Transmission Pipelines)

Comments to the docket were provided by one state public service agency, five industry associations (including one association of industrial gas consumers), sixteen companies or groups of companies that operate gas pipelines, one company that operates hazardous liquid pipelines, and one company that builds pipeline bridges. In this document we summarized the comments relating to the first element—Defining High Consequence Areas. We will summarize and discuss comments on the remaining elements when we propose a rule on requirements for gas pipeline integrity management programs.

Define the Areas of Potentially High Consequence

This element of a rule would define the areas where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and property. In the Information Notice, we discussed a model that was presented at the February public meeting relating gas pipeline diameter and operating pressure to the physical boundaries of the area impacted by the heat from a gas pipeline rupture and subsequent fire. C–FER, a Canadian research and consulting organization, developed the model which predicted the extent of the heat affected zone would be 660 feet for pipelines of up to 36 inches diameter and operating at pressures up to 1000 psig, and 1000 feet for larger pipelines operating at 1000 psig or higher. The model used 5000 BTU/hr-ft^2 as the critical heat flux for defining the impact radius. We requested comment on the validity of this model, and of any other models that could be used in developing a definition. We requested comment on the validity of limiting an impact zone to areas where there are more than 25 houses or a facility housing people of limited mobility.

We requested comment on the feasibility of including all populous areas where the impact radius could exceed 660 feet, and of including high traffic roadways, railways and places where people are known to congregate, such as, churches, beaches, recreational facilities, museums, zoos, and camping grounds. We also requested further information on the impacts of a gas release on areas of environmental significance, and for comment on including any of these areas in a definition.

Comments

AGA and APGA, trade associations representing investor-owned and municipally-owned gas utilities, submitted joint comments. They stated that high consequence areas should be defined by class location, census-based population data and the zone of influence analysis in the C–FER report. They commented that operators collect and use information establishing class location and that such data can be readily incorporated into a definition, but they believe census data should also be an option.

While AGA and APGA agreed with providing special protection for facilities housing people with limited mobility, they maintained that identifying these facilities may be very difficult if they are not licensed and listed by a city or state. They further maintained that it is not appropriate to analyze every place where people may congregate or every roadway intersection, because this information is very dynamic and would be very difficult to keep current. These associations also argued against including commercially navigable waterways or environmentally sensitive areas because Congress did not mandate

these areas be included in a gas pipeline integrity rule, and a gas release would not present a significant risk to these areas.

AGA and APGA argued that requiring operators to maintain and submit detailed population data is inefficient. They pointed out that some operators do not keep current data on populations near their pipelines, but rather treat all lines as though they were Class 4. Also, that for older pipelines, the most available record would be the class location distribution along their pipelines.

AGL Resources, Inc., a parent company of Atlanta Gas Light Co., Chattanooga Gas Co., and Virginia Natural Gas, supported using the current definitions of Class 3 and 4 locations because the large majority of their transmission lines are designed to operate in class 4 locations. .

The Association of Texas Intrastate Natural Gas Pipelines commented that using class locations to define high consequence areas would be appropriate since operators already maintain this information. The Association recommended we only include additional criteria that can be applied uniformly across all pipeline systems, such as class locations where the impact radius exceeds 660 feet. The Association argued against including high traffic roadways and places where people are known to congregate because these areas would be too subjective and therefore difficult to interpret or enforce uniformly. The Association maintained that although gas pipelines pose insignificant environmental risks, it would be appropriate to require operators to evaluate their systems to determine areas where condensate or other liquids are known to accumulate, and where a rupture would lead to release of these liquids near sensitive wildlife areas or bodies of water.

Baltimore Gas & Electric Company (BG&E), a natural gas distribution system operator, commented that a definition should incorporate non-population factors, particularly those based on the risk posed by a pipe segment, not simply the consequences of failure. BG&E also stated that the definition should differentiate transmission pipelines which are part of a distribution system where they are closely coupled to the distribution process, but did not suggest how to do this.

Chevron Pipe Line Company (CPL) supported protecting areas with facilities housing people unable to evacuate the area quickly. CPL was not in favor of including places where people congregate, because CPL thought the term too broad and it could easily encompass the entire length of a pipeline thereby diluting the focus on enhancing integrity in high risk areas.

Consumers Energy Company did not agree with defining high consequence area primarily by population density. Rather, Consumers Energy thought other factors that affect the overall risk a pipeline poses should be considered, such as pipeline operations, performance history and wall thickness.

El Paso Pipeline Group, an operator of five major natural gas transmission pipelines, commented that a definition should protect those areas where population density is greatest. El Paso urged RSPA to develop a workable definition which would take into consideration that operators have been collecting land use data relating to dwellings and other structures located within 660 feet of their pipelines. El Paso further urged RSPA to rely on the Gas Research Institute (GRI) study, dated December, 2001 (GRI–00/0189—''A Model for Sizing High Consequence Areas Associated With Natural Gas Pipelines'') because this study shows that the impact on the heat-affected zone depends on many factors beyond the heat flux value. Due to many factors involved, El Paso was in favor of the value used in the C–FER analysis as a reasonable value.

Enron Transportation Services (ETS) commented that using the current definitions of Class 3 and 4 locations would allow operators to integrate the existing population data they maintain (data on populated areas within 660 feet of a pipeline) into an integrity management plan. ETS maintained that the current definitions of class 3 and 4 areas should pick up less densely-populated areas on the fringe of these areas. ETS recommended that a definition include locations of facilities housing people of impaired mobility because these locations are consistent with the purpose of the class location process. ETS further added that many operators are already locating these facilities as part of their class location survey determination. ETS also supported the critical heat flux value used in the C–FER analysis as a reasonable value for evaluating a high consequence area.

ETS was against including crossings of roads and railways because of the low relative risk posed by pipelines at these locations, compared to the risk presented by vehicle and train traffic. ETS maintained that patrols of these locations, as the pipeline safety regulations currently require, will identify any potential problems. ETS further argued that places where the public congregates are already treated as populated areas requiring an increased level of protection. As for environmental areas, ETS commented that natural gas presents little threat to water and many pipeline rights-of-way have already had cultural resource clearance. Although ETS did not dispute that a threatened species or habitat could be affected, it did not want such areas generally included. ETS recommended operators treat such areas on a case-by-case basis, but such areas not be mapped for security reasons (e.g., the sole remaining habitat of a threatened or endangered species).

INGAA, a trade organization which represents interstate natural gas transmission pipeline companies, offered several comments about the hypotheses for the high consequence area definition. INGAA explained the 660-foot radius used in developing part 192 was based on photographs of actual burn areas from the ignition of a pipeline rupture; however, in 1970, few pipelines larger than 30 inches in diameter or operating at pressures higher than 1000 psig existed. INGAA further explained that the 5000 BTU/hr-ft^2 radiation heat flux used in the C–FER model was developed as part of an integrated analysis to define the heat affected zone around a ruptured natural gas pipeline and the results of this analysis were validated against data on the extent of the burn zone from actual pipeline ruptures. INGAA explained that this model produced a 660-foot radius circle for a 30-inch diameter pipeline operating at 1000 psig. INGAA did not see why the methodology could not be applied to a pipeline transporting hydrogen.

INGAA stated that a 25-house limit for a high impact zone is consistent with the definition for hazardous liquid pipelines, where a population density of 1000 people or more per square mile was used. INGAA maintained that this translates to 25 houses within a circle of 660-foot radius, assuming two people per house. INGAA further argued that based on typical Class 3 population density, 25 houses is an appropriate number and consistent with class location regulations.

INGAA argued that it would be too expensive to collect data on areas beyond the 660-foot radius. However, INGAA would support extending the area of protection beyond the 660-foot corridor for structures containing concentrations of people with limited mobility, such as, hospitals, schools, childcare facilities, retirement communities or prisons. INGAA explained that this is consistent with the current draft of the Integrity

Management Appendix to American Society of Mechanical Engineers (ASME) B31.8 Std.

INGAA argued that current definitions for Class 3 and 4 areas probably cover many areas where people congregate. INGAA acknowledged that high traffic roadways and railways would not be covered if they were not already in Class 3 and 4 areas, but thought these areas are probably addressed through design, construction, operation and maintenance requirements.

INGAA was opposed to including any environmental areas in the definition. INGAA explained that methane releases would inflict very limited collateral damage to wildlife and would not impact water supplies.

Keyspan Energy Delivery, a local distribution company (LDC), was in favor of defining high consequence areas as Class 3 and 4 locations because its lines comply with the requirements for these class locations. Keyspan was also in favor of clearly defined areas, but wanted any definition to recognize that LDCs cannot precisely evaluate and re-evaluate such areas. Keyspan recommended a definition which would allow for performance-based variables but did not provide any examples.

Kinder Morgan, Inc., a large midstream energy company, favored a definition of high consequence areas which uses a model, such as the one C–FER developed, relating pipeline diameter and operating pressure to the physical boundaries of the area of impact. Kinder Morgan recommended further that we use a sliding approach where high consequence areas would be defined as areas of high population density within the C–FER defined hazard area. Kinder Morgan maintained that areas where people congregate are currently covered in the definition of Class 3, and that these areas should be included in the high consequence area definition only if they are located within the defined hazard area for a given pipeline.

MidAmerican Energy Company, a combination gas and electric utility, generally agreed with the definitions recommended by AGA/APGA and INGAA, because these definitions would not impact its operations. MidAmerican commented that if high traffic roadways are included they need to be clearly defined, and suggested definitions. MidAmerican also clarified that including places where people congregate would have minimal impact on its operations.

The New York Gas Group (NYGAS), a natural gas utility trade association, suggested we replace the term high consequence area with a less inflammatory term such as Affected Area. NYGAS agreed with including Class 3 and 4 locations but argued that it will be virtually impossible for local distribution companies to identify facilities housing people with impaired mobility unless such facilities are licensed or are on a list that an operator can obtain. NYGAS was opposed to using census data to determine a high consequence area, because they believe the data is not accurate and is updated every ten years. NYGAS did not support including high traffic roadways, railways and places where people congregate in the definition because of the uncertainty and complexity of trying to include these elements.

New York State Department of Public Service (NYDPS) commented that in addition to facilities housing people with limited mobility, consideration should be given to special features near pipelines, such as places of public assembly, historical landmarks, parks, bridges, power line corridors, other pipeline facilities, major roadways, and railways.

NYDPS supported the concept of an impact radius for determining high consequence areas, but contended that the C–FER model (using 5000 BTU/hr-ft^2) conveniently results in an impact radius of about 660 feet. Based on this outcome, NYDPS believes the impact zone will never extend beyond the current class location for most operators. NYDPS suggested defining a more appropriate critical heat flux value (one lower than the C–FER model) so the impact radius could extend beyond the 660 feet.

The Energy Distribution Segment of NiSource Inc. (NiSource EDG), which is comprised of ten distribution companies, expressed concern that basing a high consequence area on the potential for considerable harm, would be too expansive to be of any practical value. NiSource EDG thought that a definition should consider the number of persons who might be harmed, as well as the potential significance of the harm, and that it should also include identifiable physical locations where people are unable to evacuate or to take protective actions.

NiSource EDG was against basing an impact zone on the number of houses, because data from which an operator could extrapolate the number of houses might not exist. NiSource explained that because many local distribution companies design their systems to be consistent with the requirements of a Class 4 location, they do not monitor housing distribution data near their pipelines. Therefore, NiSource EDG argued, imposing criteria which would require local distribution companies to initiate class location surveys would delay implementation of a rule, increase administrative and record-keeping burdens, and be extremely expensive.

NiSource argued against including an environmental component in the definition, and against including what it maintained were nebulous areas, i.e., high traffic roadways, railways, and places where people congregate.

Pacific Gas and Electric Company (PG&E), a utility subsidiary of PG&E Corporation, supported the use of structure data but noted that once a class location reaches 3, the structure data is no longer accumulated or may not be kept current. PG&E proposed that operators be allowed to use third party data sources which address the location of high consequence structures, as well as census data to determine whether housing density could reach or exceed 25 structures within a circle defined by an analysis such as the C–FER model. PG&E supported use of the C–FER model for larger diameter pipelines, and supported allowing more extensive models for operators that choose to perform a more detailed analysis of the impact zone following a pipeline rupture. PG&E supported including day-care facilities with more than 25 people, but was opposed to including any environmental component in a definition.

Tosco Corporation, an independent refiner and marketer of gasoline and other petroleum products, and a pipeline owner and operator, was in favor of using existing class 3 and 4 location criteria. Tosco also believed that other relevant factors must be considered in determining how to protect an area beyond 660 feet from the pipeline, such as line diameter, line pressure and local environmental conditions. Tosco was opposed to micro-determining a high consequence area down to a foot basis, as maintaining data on such precise areas could be unmanageable. Tosco was not in favor of using census data to define its high consequence areas, rather, it favored counting structures within 660 feet of a pipeline.

Electronic Forum Comments

A commenter to the electronic forum reminded RSPA that the Carlsbad, New Mexico, failure happened in a low consequence area, and high consequence areas should be defined as areas where there is a high probability that the pipeline could be damaged by outside forces.

Another commenter from a school facilities planning division argued that

schools are extremely high consequence areas and should be explicitly mentioned.

The Proposed Rule

RSPA's goal for the gas integrity management rules (the definition and the integrity program requirements) is to provide greater assurance of pipeline integrity in geographic areas where a gas pipeline rupture could do the most harm to people. Through our proposed definition of high consequence areas, and the integrity management program requirements now under development, we will ensure that an operator's resources are expended on areas where the benefits will be the greatest. Once we propose and implement the integrity management program requirements for the areas we define, we will study the results and consider how effective it would be to extend added protection to other areas.

The areas we propose to define as high consequence areas for gas transmission pipelines are different from those we defined for hazardous liquid pipelines (see 49 CFR 195.450). The areas we defined for hazardous liquid pipelines were without regard to where the pipeline was located; whereas the proposed areas for gas transmission pipelines are defined with respect to a zone around a pipeline. Furthermore, certain sensitive environmental areas were included in the high consequence areas for hazardous liquid pipelines but are not included in the proposed definition for gas pipelines. The differences are due to differences in the physical properties of the products and consequences of a gas release versus a hazardous liquid release, and the benefits of having accurate data on population already maintained by gas transmission operators.

Due to the physical properties of gas, the rupture of a gas pipeline impacts a very limited area adjacent to the location of the rupture. In contrast, when a liquid pipeline ruptures, the liquid can flow a greater distance from the site of the rupture. Furthermore, unlike a liquid release, the rupture of a gas pipeline cannot lead to far-reaching damage to habitats of threatened or endangered species. Moreover, gas released from a pipeline rupture flows upward into the air following a rupture, and so cannot pollute drinking water or ecological resources.

RSPA based the population component of the definition for hazardous liquid pipelines on the U.S. Census Bureau's definition of urbanized areas and places. As hazardous liquid operators are not required to maintain population data, we decided to use the U.S. Census Bureau's definitions because they were the best available data on population adjacent to hazardous liquid pipelines. In contrast, because gas pipeline safety requirements are structured according to class location (i.e., population density), gas pipeline operators already maintain current data on the location of people in areas adjacent to their pipelines. We are confident this data is accurate. Thus, it seemed logical to structure a definition that would use the data pipeline companies already collect and maintain.

Nonetheless, even though the we structured the gas pipeline high consequence areas differently from the hazardous liquid high consequence areas, the inclusion of both Class 3 and 4 locations in the proposed definition is consistent with the census-defined areas encompassing population density of approximately 1000 people per square mile. In Class 3 locations, the lower limit on occupied buildings in a sliding mile is 46 (i.e., an area one mile long and 1320 (2×660) feet wide), which is equivalent to a population density of 460 people per square mile assuming 2.5 people per building. Other populated areas included in the hazardous liquid definition are picked up in the proposed definition by the lower population density value used in the Class 3 location definition and by including isolated buildings near a pipeline that house people with limited mobility.

RSPA's proposed definition of high consequence areas for gas transmission pipelines extends to areas beyond current class locations, or in other words, beyond areas where operators are currently required to have data. Our analysis of data on the area affected by a pipeline accident, demonstrated the need for special consideration of buildings located more than 300 feet from the pipeline that house people with limited mobility. It also demonstrated a need for consideration of areas near gas pipelines of diameter greater than 30 inches and operating at pressures in excess of 1000 psig. Therefore, we are including in the proposed definition, areas out to 660 feet from a pipeline (1000 feet from a pipeline with a diameter greater than 30 inches and operating at a pressure greater than 1000 psig) where there are buildings housing people with limited mobility and areas where people congregate. Although operators are not currently required to maintain data on these areas, operators are required to patrol their pipeline right-of-way. Based on these requirements, we believe operators should have knowledge of where people congregate near their pipeline. Additionally, this information should be available from local public safety officials.

Our basis for extending the area to 1000 feet is based on the C–FER model, previously discussed in this document. (Their report is in Docket #7666). The C–FER Model demonstrated that large diameter pipe (greater than 30 inches) operated at pressures greater than 1000 psig has the potential to impact an area greater than 660 feet from the pipeline. The C–FER analysis was based on a simplified model of a gas pipeline rupture. The model included simplified mathematical treatment of several phenomena important to characterizing the extent of damage following a pipeline rupture (for example, critical heat flux, the time of ignition of the escaping gas, the height of the burning jet, the pipe decompression rate). The model also included estimates of several important parameters associated with the phenomena. Due to the simplifications in the model and the need to select values for the key parameters, the model was validated by comparing its predictions with the results of actual incidents for which the burn radius (area around the rupture which experienced damage) associated with a pipeline rupture and ignition could be measured. The C–FER report shows these comparisons between model predictions and observed burn areas. The comparisons appear to validate the predictive ability of the model.

High Consequence Areas

We considered the comments and information received in response to the hypotheses presented in the Information Notice. We developed a proposed definition of high consequence areas for gas transmission pipelines based on the hypotheses and comments, as well as our extensive analysis of technical information from diverse sources. Our primary concern is with protecting populated areas from a gas release. Therefore, we are proposing to include the following class location areas, which are already defined in part 192. We concluded that these areas will encompass about 85% of populated areas, which is comparable to the percentage of populated areas picked by the hazardous liquid definition using the Census Bureau's definitions. These are the areas where gas transmission pipeline operators maintain data on population and buildings near their pipelines.

- Class 3 areas. Class 3 areas are defined in the pipeline safety regulations as a class location unit with 46 or more buildings intended for

human occupancy. A class location unit is an area that extends 220 yards on either side of the centerline of any continuous one-mile length of pipeline. A class 3 area is also an area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area, such as a playground, recreation area, outdoor theater, or other place of public assembly, which is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. Neither the days nor the weeks need be consecutive.

• Class 4 areas. Class 4 areas are any class location unit which include buildings with four or more stories.

We are proposing to extend the definition of areas of high consequence beyond the class location areas. We analyzed the C–FER model against RSPA accident data and concluded that a release from most pipelines would not affect an area greater than 660 feet. However, we also want to ensure that areas where there are facilities with people who may not be able to evacuate an area quickly are better protected from the likelihood of a pipeline release. Therefore, we propose to define these areas as follows:

An area where a pipeline lies within 660 feet of a hospital, school, day-care facility, retirement facility, prison or other facility having persons who are confined, are of impaired mobility, or would be difficult to evacuate.

With the use of a commercial database, we are collecting data on the locations of these facilities to help identify these areas.

Our research further demonstrates that a rupture or release from a larger-sized pipeline would likely affect an area beyond 660 feet, i.e., those pipelines that are more than 30 inches in diameter and operate at pressures greater than 1000 psig. Therefore, we are defining a larger high consequence area for areas where there are larger high pressure pipelines. We propose to define these areas as follows:

An area where a pipeline lies within 1000 feet from a hospital, school, day-care facility, retirement facility, prison or other facility having persons who are confined, are of impaired mobility or would be difficult to evacuate, where the pipeline is greater than 30 inches in diameter and operates at an maximum allowable operating pressure (MAOP) of 1000 psig or greater.

As with the previously described areas, we are using a commercial database to help identify these areas.

In light of recent accident history, particularly, the explosion near Carlsbad, New Mexico, RSPA recognizes that the class location definitions may not cover all areas where a pipeline may pose a risk to the public. There are areas where people may not live, but they gather regularly for recreational or other purposes. We propose to define these areas as follows:

An area where a pipeline lies within 660 feet (or within 1000 feet where the pipeline is greater than 30 inches in diameter and operates at a MAOP of 1000 psig or more) where 20 or more persons congregate at least 50 days in any 12-month period. (The days need not be consecutive.) Examples of such areas include, but are not limited to, beaches, recreational facilities, camping grounds, and museums.

The 20-person number is used in the current definition of a class 3 location. We believe it is representational of the number of people that typically frequent a recreational area. This component of the proposed high consequence area definition should pick up most recreational areas or other areas where the public gathers on a regular basis. We have explicitly included camping areas to ensure that areas like those where the people were camping near the pipeline in Carlsbad will receive additional protection. Also, based on the C–FER model calculations, we propose to increase the area of the impacted zone from the current 300 feet to 660 feet (or 1000 feet for larger diameter pipelines).

As we previously mentioned, gas transmission operators are not currently required to maintain data on areas where people congregate near their pipelines. However, because operators are required to patrol their pipeline rights-of-way, they should have knowledge about these areas. This information should also be available from local public safety officials.

These proposed areas go beyond those specified in current regulations in the following ways:

1. A current Class 3 location includes buildings or areas where people congregate located within 300 feet of the pipeline. The proposed definition extends these areas from the pipeline out to 660 feet for most pipelines and out to 1000 feet for larger pipelines (those greater than 30 inches in diameter and operating at pressures greater than 1000 psig).

2. Current Class location regulations consider people located within 660 feet of a pipeline. The proposed definition includes an impact zone of 1000 feet from the pipeline for pipelines greater than 30 inches in diameter operating at pressures greater than 1000 psig.

3. Current Class location regulations include no explicit provision for facilities housing people with limited mobility. The proposed definition includes these facilities.

4. The proposed definition more explicitly references areas where people congregate near a pipeline, particularly, camping grounds.

We received no comment encouraging the inclusion of environmental areas as high consequence areas. In the proposed definition, we did not include sensitive environmental areas due to the highly localized impact of a gas pipeline rupture and explosion. Since a release from a gas pipeline accident is airborne, it is unlikely any major damage will occur to a threatened or endangered species. We received a similar response to our question on whether to include high traffic areas. We did not include such areas in the proposed definition because special attention is already given to these areas in the design and maintenance of pipelines near road crossings. Furthermore, the number of drivers that could be affected by a gas transmission pipeline accident is limited due to the highly localized effect of a gas release.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures.

DOT considers this action to be a non-significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4,1993). Therefore, the Office of Management and Budget (OMB) has not reviewed this rulemaking document. This proposed rule is also not significant under DOT's regulatory policies and procedures (44 FR 11034: February 26, 1979).

This proposed rule has no cost impact on the pipeline industry or the public, as it is only a definition. A regulatory evaluation is available in the Docket. The High Consequence Areas definition will be used in the forthcoming rulemaking on ''Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Operators).'' When we issue that proposed rule, we will then fully evaluate all the associated costs and benefits.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) RSPA must consider whether a rulemaking would have a significant impact on a substantial number of small entities. This proposed rulemaking will not impose additional requirements on pipeline operators, including small entities that operate regulated pipelines. As this action only involves a definition, there are no cost implications, and thus, we determined it had no impact on small entities. Costs

are likely to result once we issue requirements for actions that use this definition at a later date. RSPA will soon propose integrity management requirements for gas transmission pipelines in high consequence areas; at that time will examine the costs and benefits of that rulemaking. Based on this information demonstrating that this rulemaking will not have an economic impact, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This notice of proposed rulemaking contains no information collection subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)). Therefore, RSPA concludes the proposed rule contains no paperwork burden and is not subject to OMB review under the paperwork Reduction Act of 1995.

This proposed rule is simply a definition of high consequence areas. The definition will be used in the forthcoming rulemaking on ''Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Operators)''. RSPA will prepare a paperwork burden analysis for that proposed rule.

Executive Order 13084

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule does not propose any regulation that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on States and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply. Nevertheless, in public meetings on November 18–19, 1999, and February 12–14, 2001, RSPA invited the National Association of Pipeline Safety Representatives (NAPSR), which includes State pipeline safety regulators, to participate in a general discussion on pipeline integrity. Since then RSPA held conference calls with NAPSR to receive their input before proposing a definition of high consequence areas.

Unfunded Mandates

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We analyzed the proposed rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and preliminarily determined the action would not significantly affect the quality of the human environment. The Environmental Assessment of this proposal is available for review in the docket.

The Environmental Assessment (EA) considered the impacts of the proposed definition, in conjunction with future requirements of an integrity management rule. The EA found that the proposed definition by itself, did not by itself have any impact on the environment. When integrity management program requirements are issued which will incorporate the definition, there should be positive environmental benefits for the areas receiving additional protection.

However, because the environmental consequences from a gas release are limited, any impact is expected to be minimal. Therefore, the proposed definition of high consequence areas for gas pipeline integrity management will not have a significant environmental impact.

List of Subjects in 49 CFR Part 192

High consequence areas, Integrity assurance, Pipeline safety, and Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend part 192 of title 49 of the Code of Federal Regulations as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, and 60108; and 49 CFR 1.53.

2. A New §192.761 would be added under a new heading of ''High Consequence Areas'' in subpart M to read as follows:

Subpart M—Maintenance

* * * * *

High Consequence Areas

§ 192.761 Definitions.

The following definitions apply to this section and § 192.763:

High consequence area means any of the following areas:

(a) A Class 3 area as defined in §§ 192.5(b)(3) and 192.5(c);

(b) A Class 4 area as defined in §§ 192.5(b)(4) and 192.5(c);

(c) An area where a pipeline lies within 660 feet of a hospital, school, day-care facility, retirement facility, prison or other facility having persons who are confined, are of impaired mobility or would be difficult to evacuate;

(d) An area where a pipeline lies within 1000 feet from a hospital, school, day-care facility, retirement facility, prison or other facility having persons who are confined, are of impaired mobility or would be difficult to evacuate, if the pipeline is greater than 30 inches in diameter and operates at a maximum allowable operating pressure (MAOP) greater than 1000 psig; or

(e) An area where a pipeline lies within 660 feet (or within 1000 feet where the pipeline is greater than 30 inches in diameter and operates at a MAOP greater than 1000 psig) where 20 or more persons congregate at least 50 days in any 12-month period. (The days need not be consecutive.) Examples of such areas include, but are not limited to, beaches, recreational facilities, camping grounds, and museums.

Issued in Washington, DC, on January 3, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–543 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. 2001–11213, Notice 2]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2002; Corrections

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination; corrections.

SUMMARY: FRA published a document in the **Federal Register** of January 2, 2002, setting the minimum random drug and alcohol testing rates for calendar year 2002. The testing rates are based on the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Although the original notice correctly set the minimum random testing rates, the overall positive rates for drug testing and alcohol testing were inadvertently transposed. This document corrects the error.

DATES: This correction is effective January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, FRA, 1120 Vermont Avenue, NW, Washington, DC 20005 (Telephone: (202) 493–6313).

Corrections

In the **Federal Register** issue of January 2, 2002, in FR Doc. 01–32047, two sentences need correcting. On page 21, in the third column, correct the first sentence of the **SUMMARY** caption to read:

Using data from Management Information System annual reports, FRA has determined that the calendar year 2000 rail industry random testing positive rate was .79 percent for drugs and .20 percent for alcohol.

On page 22, correct the last sentence in the first column that runs over into the second column, in the **SUPPLEMENTARY INFORMATION** caption to read:

In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002, since the industry random drug testing positive rate for 2001 was .79 percent.

Dated: January 3, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02–559 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 010521133-1307-02; I.D. No. 050101B]

RIN 0648-AP17

Endangered and Threatened Species; Final Rule Governing Take of Four Threatened Evolutionarily Significant Units (ESUs) of West Coast Salmonids

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

ACTION: Final rule.

SUMMARY: Under the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) shall issue such regulations as he deems necessary and advisable for the conservation of species listed as threatened. NMFS now issues a final ESA 4(d) rule adopting regulations necessary and advisable to conserve four salmonid ESUs listed as threatened species. This final rule applies the take prohibitions enumerated in section 9(a)(1) of the ESA in most circumstances to three salmonid ESUs in California: California Central Valley Chinook, California Coastal Chinook, and Northern California steelhead. For these three ESUs, NMFS does not find it necessary and advisable to apply the take prohibitions described in the ESA to certain specified categories of activities that contribute to conserving these ESUs or are governed by a program that adequately limits impacts on these ESUs. Therefore, this final rule also includes 10 such limits on the application of the section 9(a)(1) take prohibitions for these three ESUs. This final rule also modifies an existing ESA 4(d) rule, which applies the take prohibitions to the threatened Central California Coast coho ESU, by incorporating the same 10 limits on the application of the take prohibitions as described for the chinook and steelhead ESUs.

DATES: Effective on March 11, 2002, except for §223.203 (b)(16)(v) and (b)(17)(vii) which are effective on July 8, 2002. Applications for a permit for scientific purposes or a permit to enhance the conservation or survival of Central Valley spring-run chinook, California Coastal chinook and Northern California steelhead must be received by the Assistant Administrator for Fisheries no later than April 9, 2002.

ADDRESSES: Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Craig Wingert at 562–980–4021, Miles Croom at 707–575–6068, Diane Windham at 916–930–3601, or Chris Mobley at 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 1999, NMFS published a final rule listing the California Central Valley (CCV) Spring-run Chinook and California Coastal (CC) Chinook ESUs (*Oncorhynchus tshawytscha* or O. *tshawytscha*) as threatened species (64 FR 50394). In a final rule published on June 7, 2000, NMFS also listed the Northern California (NC) steelhead ESU (*O. mykiss*) as a threatened species (65 FR 36074). These final rules describe the background of the listing actions and provide a summary of NMFS' conclusions regarding the status of these three ESUs.

On October 31, 1996, NMFS listed the Central California Coast (CCC) coho salmon (*O. kisutch*) ESU as a threatened species (61 FR 56138). The final rule describes the background for this coho salmon listing action and also provides a summary of NMFS' conclusions regarding the status of the ESU. In conjunction with the final listing notice for the CCC coho salmon ESU, NMFS published a final ESA 4(d) rule which put in place all of the prohibitions of section 9(a)(1) of the ESA for this ESU.

Section 4(d) of the ESA provides that whenever a species is listed as threatened, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species. Such protective regulations may include any or all of the prohibitions that apply automatically to protect endangered species under ESA section 9(a). Those section 9(a) prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as

endangered, unless with written authorization for incidental take. It is also illegal under section 9 of the ESA to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 11 of the ESA provides for civil and criminal penalties for violation of section 9 or of regulations issued under the ESA.

Whether take prohibitions or other protective regulations are necessary or advisable is in large part dependent upon the biological status of the species and potential impacts of various activities on the species. The salmon and steelhead ESUs that are covered by this final rule have survived for thousands of years through cycles in ocean conditions and weather; therefore, NMFS has concluded that they are at risk of extinction primarily because their populations have been reduced by human ''take''. These ESUs have declined in abundance due to take of fish from harvest, past and ongoing destruction or damage to freshwater and estuarine habitats, hydropower development, hatchery practices, and other causes. Two reports prepared by NMFS (NMFS 1996 and 1998) reviewed the factors which have contributed to the decline of west coast steelhead and chinook populations, including the ESUs covered by this rule, and both conclude that all of the factors identified in section 4(a)(1) of the ESA have played some role in their decline. The reports identify destruction and modification of habitat, over-utilization in fisheries, and hatchery effects as significant factors for the decline of these ESUs. While the most influential factors for decline differ from species to species and among ESUs depending on their geographic location, the loss and degradation of habitat conditions and impacts from harvest among other impacts, are factors that have affected all of the species and ESUs. Accordingly, NMFS has determined that it is necessary and advisable to apply the section 9(a)(1) take prohibitions to the threatened ESUs covered in this final rule in order to reduce take and provide for their conservation.

NMFS believes that with appropriate safeguards, many state, local and other non-Federal activities can be specifically tailored to minimize impacts on listed salmonid ESUs such that additional Federal protections are unnecessary for their conservation. Although the primary purpose of state, local and other non-Federal programs is generally to further some activity such as maintaining roads, controlling development, ensuring clean water or harvesting trees, rather than conserving salmon or steelhead, some entities have modified one or more of these programs to protect and conserve listed salmonids and protect their habitat.

For this reason, NMFS has incorporated a mechanism (termed take limitations) in this final ESA 4(d) rule where state, local and other non-Federal entities can be assured that certain activities (see Substantive Content of Final Regulation for the 10 categories of activities specified in this rule) they conduct or permit are consistent with ESA requirements when they avoid or minimize the risk of take of listed ESUs. When NMFS determines that such programs provides sufficient conservation for the threatened salmonid ESUs covered by this final rule, NMFS will find that it is not necessary and advisable to apply take prohibitions to activities governed by those programs. In these circumstances, as described in more detail herein, additional Federal ESA regulation through the section 9(a) take prohibitions is not necessary and advisable because it would not meaningfully contribute to the conservation of the ESUs. NMFS believes that not applying take prohibitions to programs that meet such conservation standards may result in even greater conservation benefits for these threatened ESUs than would the blanket application of take prohibitions, through implementation of the program itself and by demonstrating to similarly situated jurisdictions or entities that practical and realistic salmonid protection measures exist. An additional benefit of using this take limitation approach is that NMFS can focus its enforcement efforts on activities and programs that have not yet adequately addressed the conservation needs of the ESUs covered by this rule.

Substantive Content of Final Regulation

On August 17, 2001, NMFS proposed to apply the ESA section 9(a)(1) take prohibitions to the CCV spring-run chinook salmon, CC chinook salmon, and NC steelhead ESUs. NMFS has concluded that the section 9 take prohibitions that automatically apply to endangered species are necessary and advisable for the conservation of these three threatened ESUs. Accordingly, this final rule applies the prohibitions of ESA section 9(a)(1) to each of these three ESUs. NMFS applied the section 9(a)(1) take prohibitions to the CCC coho salmon ESU in a previous rulemaking (see 61 FR 56138), and the August 17, 2001, proposed rule (66 FR 43150) did not propose to change those protections.

In its August 17, 2001, proposal (66 FR 43150), NMFS proposed that the take of listed fish in these four ESUs (i.e., CCV spring-run chinook, CC chinook, NC steelhead, and CCC coho salmon) would not be prohibited when it resulted from 10 specific categories of activities that meet specified levels of protection and conservation. As described in the proposed rule, these activities must be conducted in a way that contributes to the conservation of these ESUs, or they must be governed by a program that limits impacts on the ESUs to an extent that makes added protection through Federal regulation not necessary and advisable for their conservation. In this final rule NMFS has concluded that it will not apply the ESA section 9(a) prohibitions to these four ESUs for the 10 categories of activities described in this final rule when they meet the necessary level of protection and conservation.

As an alternative to utilizing the 10 limitations on the take prohibitions described in this final rule, affected entities may choose to seek an ESA section 10 permit from NMFS, or may be required to satisfy ESA section 7 consultation if Federal funding, management, or approval is involved. This final rule does not impose restrictions beyond those applied in other sections of the ESA, but rather provides another option beyond the provisions of sections 7 and 10 for the authorization of incidental take and in some instances directed take.

As discussed above, NMFS has identified 10 categories of activities or programs for which it is not necessary and advisable to impose take prohibitions when they contribute to the conservation of these four ESUs or are governed by a program that adequately limits impacts on these ESUs. Under the criteria specified in the final rule, these activities include the following: (1) Activities conducted in accordance with an existing ESA incidental take authorization; (2) ongoing scientific research activities, for a period of 6 months; (3) emergency actions related to injured, stranded, or dead salmonids; (4) fishery management activities; (5) hatchery and genetic management programs; (6) scientific research activities permitted or conducted by the State of California; (7) state, local, and private habitat restoration activities that are part of approved watershed conservation plans; (8) properly screened water diversion devices (i.e., screening devices per NMFS' guidelines or equivalent configurations); (9) routine road maintenance activities; and (10) municipal, residential, commercial, and industrial (MRCI) development activities. These limitations on the take prohibitions are described in more

detail in the proposed rule and the specific criteria and standards that must be met to qualify for the limitations are described in detail in the regulations contained in this final rule. In general, these take limitations and associated approval criteria are for future programs where NMFS will limit the application of the ESA section 9(a)(1) take prohibitions rather than for existing programs. NMFS anticipates that new take limits for additional activities may be added to these regulations in the future.

NMFS emphasizes that these 10 limitations on the section 9 take prohibitions are not prescriptive regulations. The fact that an activity is not conducted within the specified criteria for one of the 10 take limits does not necessarily mean that the activity violates the ESA or this regulation. Many activities do not affect the threatened ESUs covered by this final rule, and, therefore, do not need to be conducted within any of the 10 categories of take limits to avoid ESA section 9 take violations. Nevertheless, an entity can be certain it is not at risk of violating the section 9 take prohibitions or at risk of enforcement actions if it conducts its activities in accordance with the take limits. Jurisdictions, entities, and individuals are encouraged to evaluate their practices and activities to determine the likelihood of whether take is occurring. Entities can comply with the ESA through this and other 4(d) rules, section 10 research, enhancement, and incidental take permits, or through section 7 consultation with Federal agencies. If take is likely to occur, then the jurisdiction, entity or individual should modify its practices to avoid the take of these threatened salmonid ESUs or seek protection from potential ESA liability through section 7, section 10, or section 4(d) rule procedures.

This final rule does not require jurisdictions, entities, and individuals to seek coverage from NMFS under any of the 10 take limits. In order to reduce its liability, a jurisdiction, entity, or individual may informally comply with a limit by choosing to modify its programs to be consistent with the evaluation considerations described in the individual limits. Alternatively, a jurisdiction, entity, or individual may seek, at its discretion, to qualify its plans, activities, or ordinances for inclusion under one of the 10 take limits by obtaining an authorization from the NMFS' Southwest Region Administrator as detailed in the regulations contained in this final rule (see **ADDRESSES**).

NMFS will continue to work collaboratively with all affected governmental entities to recognize existing management programs that conserve and meet the biological requirements of these and other threatened salmonid ESUs, and to strengthen other programs so that they contribute to the conservation of listed salmonids. This final rule may be amended to add new limits on the take prohibitions, or to amend or delete adopted take limits as circumstances warrant.

The following section entitled ''Notice of Availability'' lists four documents referred to in the proposed rule and this final regulation. The purpose of making these documents available to the public is to inform governmental entities and other interested parties of the technical components expected to be addressed in programs submitted for NMFS' review. These technical documents provide guidance to entities as they consider whether to submit a program to NMFS for coverage under one of the take limits in the final rule. The documents represent guidance, and are not binding regulations requiring particular actions by any entity or interested party.

For example, NMFS' technical report entitled: ''Viable Salmonid Populations (VSP) and the Recovery of ESUs'', which is referenced in the fishery and hatchery management take limits, provides a framework for identifying populations and their status as a component of developing adequate harvest or hatchery management plans. The final rule indicates that Fishery Management and Evaluation Plans (FMEPs) and Hatchery and Genetic Management Plans (HGMPs) should utilize the concepts of 'viable' and 'critical' salmonid population thresholds, consistent with the concepts contained in NMFS's VSP report. Similarly, NMFS' fish screening criteria explicitly recognize that they are general in nature and that site constraints or particular circumstances may require adjustments in design, which must be developed with a NMFS staff member or designee, to address site specific considerations and conditions. Finally, research involving electrofishing comes within the scientific research limit if conducted in accordance with NMFS' guidelines for electrofishing. The guidelines recognize that other techniques may be appropriate in particular circumstances, and NMFS can recognize those as appropriate during the approval process.

The Oregon Department of Transportation's (ODOT) road maintenance program for governing routine maintenance activities is an existing program currently being implemented that NMFS has found adequate for threatened ESU conservation and, therefore, has been established as a take limitation in a previous ESA 4(d) rule (65 FR 42422). Other jurisdictions may seek coverage under the road maintenance limit in this final rule if they use the ODOT program or submit a program that utilizes other practices found by NMFS to meet or exceed the ODOT standards for the protection of threatened salmonids.

Where this rule cites a guidance document, a program's consistency with the guidance is sufficient to demonstrate that the program meets the particular purpose for which the guidance is cited. However, the entity or individual requesting that NMFS concur that a program meets the criteria of a particular limit has the latitude to show that its variant or approach is, in the circumstances where it will apply and affect listed fish, equivalent or better.

NMFS will continue to review the applicability and technical content of its own documents as they are used in the future and make revisions, corrections, or additions as needed. NMFS will use the mechanisms of this final rule to take comment on revisions of any of the referenced state programs. If any of these documents are revised in the future and NMFS relies on the revised version to provide guidance in continued implementation of the rule, NMFS will publish in the **Federal Register** a notice of its availability stating that the revised document is now the one referred to in 50 CFR 223.203(b).

Notice of Availability

The following is a list of documents cited in the regulatory text of this final rule. Copies of these documents may be obtained upon request (see Appendix A to 50 CFR 223.203).

1. Oregon Department of Transportation (ODOT) Maintenance Management System Water Quality and Habitat Guide (July, 1999).
2. Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act (NMFS, 2000a).
3. Fish Screening Criteria for Anadromous Salmonids, National Marine Fisheries Service, Southwest Region, 1997.
4. Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units. (June 2000).

The limits on the take prohibitions in this final rule do not relieve Federal agencies of their duty under section 7 of the ESA to consult with NMFS if actions they fund, authorize, or carry out may affect the ESUs covered by this rule or any other listed species. To the extent that actions subject to section 7

consultation are consistent with a circumstance for which NMFS has limited the take prohibitions, a letter of concurrence from NMFS will greatly simplify the consultation process, provided the program is still consistent with the terms of the limit.

Applicability of Final Rule to Specific ESUs

In the regulatory language in this final rule, the limits on the applicability of the take prohibitions to specific ESUs are accomplished through citation to the Code of Federal Regulations' (CFRs') enumeration of threatened marine and anadromous species in 50 CFR 223.102. For the convenience of readers of this document, 50 CFR 223.102 refers to the threatened salmonid ESUs covered in this final rule through the following designations:

(a)(3) Central California Coast coho salmon

(a)(20) Central Valley spring-run chinook salmon

(a)(21) California Coastal chinook salmon

(a)(22) Northern California steelhead

Summary of Comments in Response to the Proposed Rule

The public comment period for the proposed rule was open from August 17, 2001, through October 1, 2001. During the comment period, NMFS held three public hearings (Chico, CA on 9/13/01; Eureka, CA on 9/18/01; and Ukiah, CA on 9/19/01) to solicit public comments. A limited number of individuals provided oral testimony at the three public hearings. During the comment period, NMFS received 8 written comments on the proposed rule from various agencies, non-governmental organizations, and individuals. A summary of the comments and NMFS' responses to those comments are presented here by specific issue.

Comments and Responses

Tribal Coordination

Comment 1: The Bureau of Indian Affairs (BIA) reminded NMFS of its obligation to consult with potentially affected Indian tribes that might be affected by this ESA 4(d) rule pursuant to Executive Order 13175 (Consultation and coordination with Indian tribal governments). In addition, BIA provided NMFS with a list of recognized Indian tribes that occur within the range of the threatened ESUs covered by this final rule.

Response: In response to the BIA's guidance, NMFS notified all of the potentially affected Indian tribes of the proposed ESA 4(d) rule and the U.S. District Court Order to finalize the rule by December 31, 2001. NMFS offered to meet with any tribe to explain the rule, discuss its potential impact on the tribe, and to explain its relationship to the Tribal ESA 4(d) rule which NMFS published on July 10, 2000 (65 FR 42481). NMFS has consulted in the past with many of these tribes on previous ESA 4(d) rules, as well as the Tribal ESA 4(d) rule, and will consult with any and all tribes as they request us to do so.

Comment 2: BIA requested clarification as to whether or not the Tribal ESA 4(d) rule (65 FR 42481, July 10, 2000) applied to the four ESUs covered in this ESA 4(d) rule.

Response: The Tribal ESA 4(d) rule (65 FR 42481) NMFS published on July 10, 2000, is actually a broadly defined limitation on the ESA section 9(a)(1) take prohibitions for recognized Indian tribes that applies to all threatened salmon and steelhead ESUs including the four covered by this final ESA 4(d) rule and any threatened salmonid ESUs that may be listed in the future. Under this Tribal ESA 4(d) rule, a section 9(a)(1) take limitation was created for resource management plans (e.g., harvest, habitat restoration, research and monitoring, etc.) developed by Tribes where NMFS has determined that implementation of the plan will not appreciably reduce the likelihood of survival and recovery for the listed ESU(s) that are affected by the plan. This Tribal ESA 4(d) rule was intended to harmonize NMFS' statutory conservation efforts under the ESA with tribal rights and the Federal Trust responsibility to tribes.

Comment 3: BIA advised NMFS that Tribal governments may incur direct compliance costs if they choose to pursue coverage under the Tribal ESA 4(d) rule or this final rule.

Response: NMFS does not anticipate that Indian Tribes will pursue coverage under the take limits in this final ESA 4(d) rule. Although Tribes are certainly eligible to pursue coverage under the limitations in this final rule, the purpose of the Tribal ESA 4(d) rule was to provide recognized tribes with a broad take limitation that could cover any type of resource management plan including those that might be developed pursuant to this final ESA 4(d) rule (e.g., routine road maintenance, fish harvest, habitat restoration, etc.). For this reason, NMFS would strongly recommend to Tribes that they utilize the Tribal ESA 4(d) rule instead of this final rule to obtain coverage for their activities if they choose to do so. Not only is the Tribal ESA 4(d) rule sufficiently flexible that it can accommodate the full range of tribal resource management plans, but it provides for a broad and open government-to-government consultation process in developing and evaluating such plans. NMFS recognizes that Tribes may incur direct compliance costs in the development of tribal resource management plans. NMFS is prepared to work closely with interested tribes to develop resource management plans for consideration under the Tribal ESA 4(d) rule that will minimize costs and will also provide technical expertise and other support wherever it can pursuant to the 1997 Secretarial Order (June 5, 1997).

Take Guidance

Comment 4: One commenter stated the proposed ESA 4(d) rule does not adequately state why a take prohibition is necessary for these threatened ESUs, nor does it establish a basis for the conclusion that specified activities are likely to result in a take.

Response: NMFS believes that the listing determinations for each of the ESUs covered by this final rule, as well as all other west coast salmonid listing determinations, have documented the historic and current factors responsible for their decline to the point where ESA protection was necessary. Factors responsible for the decline of these ESUs include loss and degradation of freshwater habitat from a wide range of habitat modifying activities, harvest of fish in recreational and in some cases commercial fisheries, predation, and natural fluctuations in the environment (e.g., ocean conditions, rainfall, drought, etc.). NMFS believes that historic and ongoing take of fish in these ESUs as a result of these factors has contributed significantly to their decline. For this reason, NMFS has concluded that it is necessary and advisable to prohibit and closely regulate the allowable take of these species. Failure to prohibit and regulate take by this final rule would result in continued decline of listed salmonids.

It is NMFS' policy to increase public awareness of, and to identify which activities we believe are likely or not likely to, injure or kill a listed species. The take guidance in the proposed rule and in this final rule are intended to do that. It is only possible based on direct experience with managing populations in their natural environment and from scientific literature to describe the types of activities that may have adverse impacts (i.e., result in take) on fish and their habitat and describe their consequences (e.g., blocking fish from reaching spawning grounds, dewatering incubating redds, etc.). NMFS understands that there is considerable

interest by many entities in knowing as much as possible about what constitutes take of a listed species and the take guidance in this final rule attempts to provide that information. However, determining whether an individual local program or activity will or is likely to injure or kill a listed fish requires an accurate and credible assessment that takes into account local factors and conditions.

Comment 5: One commenter stated that NMFS' take guidance in the proposed rule identifies activities that ''are very likely'' or ''may'' injure or kill listed species, instead of stating only activities resulting in ''actual death or injury.''

Response: NMFS provided broad take ''guidance'' for the purpose of helping individuals understand what actions could possibly lead to take. By offering guidance on what type of activities may cause take, individuals can better avoid any illegal behavior that could result in an actual death or injury.

Comment 6: One commenter stated that the proposed ESA 4(d) rule is more restrictive than the ESA section 9 take prohibitions.

Response: NMFS disagrees. The proposed and final ESA 4(d) rule do impose the section 9(a)(1) take prohibitions in the ESA, but simultaneously it puts into place limitations on those take prohibitions for certain categories of activities under specified conditions. In effect, whenever NMFS finds that an activity falls within a take limit in the final rule, the section 9 take prohibitions do not apply to that activity. In this way, this rule is more flexible and potentially less restrictive than an alternative ESA 4(d) rule that would simply put into place the section 9 take prohibitions without limitation. In this latter case where only the take prohibitions are in effect, the only way to comply with the ESA is to either avoid taking entirely or to have take authorized through ESA sections 7 or 10.

Comment 7: One commenter requested clarification that the rule does not prohibit take associated with an activity when it is conducted pursuant to an approved Federal permit.

Response: If a Federal permit was subject to a previous section 7 consultation for which an incidental take permit was issued, then take associated with the project will have been previously authorized. However, if a Federal permit was issued without section 7 consultation or without an incidental take statement for the ESUs in this final rule, then the permitted activity would not have take authorization for these ESUs and might violate the ESA section 9 take prohibitions. Under this circumstance, ESA section 7 consultation should be initiated or reinitiated with NMFS so that incidental take can be properly authorized.

Comment 8: Several commenters suggested or requested that NMFS create take limitations for other programs such as the Natural Resources Conservation Service's Field Office Technical Guidance and some or all elements of the CALFED program in California's Central Valley.

Response: NMFS believes that the ESA 4(d) rule process provides another opportunity in addition to ESA sections 7 and 10, for state and other jurisdictions to assume leadership for threatened salmonid conservation at the state and local level in addition to the conventional tools that are available through sections 7 and 10 of the ESA. NMFS is prepared to collaborate with Federal, state, tribal, and local entities to develop and evaluate programs that will take advantage of the ESA 4(d) option for achieving salmonid conservation and compliance with section 9 take prohibitions of the ESA. NMFS is especially interested in state-level conservation programs because such programs can more efficiently and comprehensively provide for conservation of threatened salmonids. However, incorporation of any additional take limitations into this or future ESA 4(d) rules will need to go through the rulemaking process.

Federal programs, including many programs and activities being carried out as part of the CALFED implementation program, are subject to ESA section 7 consultation if they may affect listed species. This ESA 4(d) rule does not and cannot relieve Federal agencies of their ESA section 7 consultation obligations under the ESA and, therefore, authorization of incidental take for Federally permitted, conducted, or funded programs must occur through the section 7 process.

Legal Issues/Section 7/National Environmental Policy Act (NEPA)/ Regulatory Flexibility Analysis/ Regulatory Impact Review

Comment 9: The Department of the Interior commented that the ESA 4(d) rule may affect terrestrial and other species under the jurisdiction of the U.S. Fish and Wildlife Service (FWS) and that NMFS should, therefore, consult with FWS pursuant to section 7 of the ESA.

Response: NMFS recognizes that promulgation of this ESA 4(d) rule is a Federal action requiring consultation under section 7 of the ESA. NMFS must ensure through the ESA section 7 process that the 4(d) rule does not jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitat. NMFS has completed the required ESA section 7 consultation with itself concerning the effects of this 4(d) rule on listed species under NMFS' jurisdiction and concluded that the rule is not likely to adversely affect these listed species or adversely modify their critical habitat.

NMFS also consulted with FWS concerning the effects of promulgating this ESA 4(d) rule on listed species under FWS' jurisdiction (FWS' listed species) and their critical habitat. FWS concurred with NMFS that the imposition of ESA section 9(a)(1) take prohibitions for the ESUs addressed by this rule was not likely to adversely affect FWS' listed species or their critical habitat. However, both agencies recognized that plans, programs, or activities developed for future approval by NMFS pursuant to the take limits in this final rule have the potential to affect FWS' listed species or their critical habitat depending on their geographic location and the details of the plan, program or activity. Through the consultation process NMFS has committed to work closely with FWS during development of such plans, programs or activities to determine if and how they may affect FWS' listed species or their critical habitat. As part of this early coordination process, NMFS has committed to work with FWS and any applicant seeking a take limit approval under this final rule to ensure that any plan, program, or activity that is developed either avoids impacts to, or does not adversely affect any of FWS' listed species or their critical habitat. Finally, if a plan, program or activity cannot be developed that will not adversely affect or not avoid impacts to FWS' listed species or their critical habitat NMFS will continue to work with FWS to ensure appropriate compliance with the ESA for FWS' listed species or critical habitat. On the basis of these determinations and commitments, FWS concluded that promulgation of this rule is not likely to adversely affect species under FWS' jurisdiction.

Comment 10: Some commenters asked NMFS to clarify the extent which NEPA applies to the ESA 4(d) rule.

Response: NEPA applies to this and other ESA 4(d) rules, and as this final rule states, NMFS completed Environmental Assessments (EAs) for this regulatory action. Those documents were made available during the comment period and continue to be

available via NMFS' Southwest Region website (http://swr.nmfs.noaa.gov).

Comment 11: One commenter suggested that the EAs prepared by NMFS were inadequate and failed to examine a full range of alternatives, particularly with regard to some of the take limitations contained in the proposed rule.

Response: NMFS believes that the range of alternatives examined in the EAs is appropriate and that no additional alternatives need to be considered.

NMFS believes that the EAs that were prepared for this final rule are adequate to support the regulatory action of imposing the section 9(a)(1) take prohibitions on the CCV spring-run chinook, CCC chinook, and NC steelhead ESUs. However, NMFS has determined that additional NEPA analysis is necessary to support any future agency approvals under the 10 take limitations contained in the rule. NMFS intends to conduct additional, programmatic NEPA analysis that specifically addresses the environmental impacts of approving activities under each of the take limitations (e.g., water diversion screening, etc.) contained in this final rule. This is consistent with the approach NMFS is now taking for the ESA 4(d) rule it published in July 2000 which covered 14 threatened salmon and steelhead ESUs. Until programmatic NEPA analyses are completed for each of the take limitations in this final rule as described above, NMFS will prepare separate NEPA analysis for any plan or activity for which the agency is requested to make an approval under any of the rule's take limitations. For example, until a programmatic NEPA document is completed which specifically addresses recreational angling under the Fishery Management and Evaluation Plan (FMEP) take limitation in this final rule, NMFS will not approve any FMEPs until approval of that plan has been addressed in a plan specific NEPA document.

Comment 12: Two commenters argued that according to the holding in *Alsea Valley Alliance* v. *Evans*, 99-6265-HO (D. Oreg., September 12, 2001), the four threatened salmonid ESUs covered by this ESA 4(d) rule have been improperly listed under the ESA, and hence, NMFS has no statutory authority to issue an ESA 4(d) rule pertaining to them.

Response: NMFS disagrees. Unless a listing decision is invalidated by a court, or superceded by another formal rule making, an ESU remains listed and, thus, properly subject to ESA 4(d) rule protection. None of the four ESUs covered by this final rule were de-listed as a result of the *Alsea* case and, thus, NMFS has an obligation to promulgate ESA 4(d) rules that it believes are necessary and advisable for their conservation.

Comment 13: The National Association of Home Builders (NAHB) commented that it opposes the proposed ESA 4(d) rule on many of the same grounds that are currently being litigated by NAHB against NMFS in *Kittitas County* v. *Evans* with regard to the July 10, 2000 ESA 4(d) rule, particularly the MRCI limit.

Response: NMFS will not address arguments and objections that are raised generally by reference to a pending case, such as Kittitas County. Rather, NMFS will respond to specific comments made in this rulemaking.

Comment 14: NAHB commented that with this ESA 4(d) rule NMFS is interpreting the ESA in a way that alters the federal-state framework by permitting Federal encroachment upon a traditional state power such as the states' traditional and primary power over land and water use. NAHB also asserted that NMFS had failed to demonstrate what it is necessary and advisable to place the additional burden on local governments of creating and submitting to NMFS for approval, ordinances that actively conserve these threatened salmonid ESUs

Response: NMFS disagrees that the ESA 4(d) rule alters the federal-state framework by encroaching on land and water use regulation by state/local governments. NMFS also disagrees that the rule places any additional burdens on state and local governments. To the extent that state or local regulation or permitting of land use or water use may result in the take of these threatened salmonids, the Municipal Residential Commercial and Industrial (MRCI) and other take limitations contained in this rule provide a mechanism for the state/local entity to relieve itself of the take prohibitions. Also, development and submittal of a plan to NMFS for consideration under any of the take limitations in the ESA 4(d) rule is completely voluntary. Should individuals, local governments or the state instead wish to obtain a take exception for threatened species subject to the section 9 prohibitions, they may submit a Habitat Conservation Plan to NMFS under section 10 of the ESA.

Comment 15: NAHB commented that NMFS did not demonstrate why it is necessary and advisable to require that each ordinance be approved by NMFS and placed in the **Federal Register** and be subjected to 30 days of public notice and comment in order to obtain coverage for the MRCI take limitation.

Response: In order for NMFS to determine whether a particular ordinance or plan may be sufficiently protective of threatened species, it must be submitted to NMFS for review and consideration. Prior to making any such determination, NMFS believes that it is important to obtain public and/or agency comments on both the ordinance or plan and our pending determination. For this reason, this final rule calls for publishing a notification in the **Federal Register** announcing the availability of the ordinance or plan for review and comment.

Comment 16: NAHB commented that NMFS cannot hold local governments liable for take under the ESA.

Response: The take limitations in the rule are permissive and not mandatory. Any vicarious liability determination would arise from application of the take prohibitions to the local government, depend upon the specifics of the regulations and the regulated activity, and so would depend upon the circumstances of each case.

Comment 17: NAHB asserted that the proposed ESA 4(d) rule raises 10th Amendment concerns by creating a state duty to administer the Federal law of ''take'' against third parties.

Response: The take limitations in this final rule are permissive, not mandatory (i.e., they impose no requirements on state and local governments). The only prohibition in this final rule is against take of the threatened species covered by this final rule. This final rule does not impose any affirmative duty upon the state to administer the ESA.

Viable Salmon Population (VSP) Framework

Comment 18: One commenter said that references to ''historic abundance levels'' and ''habitat capacity of the population'' in the discussion in the proposed rule about how NMFS would assess population status as part of its VSP framework are ambiguous and unclear.

Response: Historic conditions are meant to serve as one possible reference point in evaluating population status because under historic conditions populations were assumed to have been viable. The time frame, therefore, refers to a period in time where the population or ESU was considered self sustaining and may represent different time frames for different species or populations. Although historical data, if it is available, may be a useful tool in this assessment, it does not mean that NMFS will require or assume that every population must be at a historic

abundance level in order to be viable. Where historic data are not available or are of uncertain accuracy, the assessment of viable population levels could be based upon an evaluation of the habitat capacity or carrying capacity of the habitat available to a population.

Take Limitations - General Comments

Comment 19: Several commenters stated that each of the take limitations should have provisions for monitoring and oversight where NMFS is approving plans or ordinances (e.g., FMEPs, routine road maintenance, water diversion screening, etc.).

Response: NMFS agrees that programs that are approved under the take limits in this rule are incomplete if there is no mechanism to track their effectiveness and implementation. NMFS believes that this final rule provides for a sufficient level of monitoring and oversight of activities that may qualify for coverage under the 10 take limitations. Several of the take limits (e.g., recreational fishing, hatchery and genetic management, routine road maintenance, MRCI) in this final rule specifically require that monitoring be incorporated into programs or plans in order to qualify for coverage under the limitation. In addition, the final rule indicates that NMFS will evaluate on a regular basis the effectiveness of all programs that are approved under the take limits to insure that they are achieving the level of protection that is consistent with the conservation of the threatened ESUs covered in the rule. If a program or plan does not meet the required objectives, NMFS will work with the relevant entity to make adjustments to the program accordingly. If the relevant entity chooses not to adjust the program to meet the necessary objectives for coverage under the take limit, then NMFS will publish notification in the **Federal Register** that the program is no longer exempt from the ESA section 9(a)(1) take prohibitions because it does not sufficiently conserve the threatened ESUs.

Comment 20: One commenter was concerned that activities falling under any one of the 10 take limitation categories in the proposed rule were automatically exempt from the take prohibitions and would not be monitored by NMFS.

Response: Virtually all of the take limitations in this final rule require that entities seeking a limitation submit a plan to NMFS which addresses a wide range of detailed criteria specified in the rule. These include habitat modifying activities such as routine road maintenance, MRCI development, and water diversion screening. Only after NMFS has reviewed these plans against the specified criteria in the rule and responded to public comments on the plans, will NMFS make a determination as to whether or not the plan qualifies for coverage under a limit. As discussed in the preceding response to comment, NMFS believes this final rule requires sufficient monitoring of activities covered under the take limits, and ample opportunity for NMFS to provide oversight of activities covered under the take limits.

MRCI Take Limitation

Comment 21: One commenter expressed concerns that the MRCI take limitation does not explicitly require entities seeking coverage to address cumulative impacts or mitigation and recommended the final rule include such a requirement.

Response: NMFS recognizes the importance of assessing cumulative impacts for MRCI development and other types of activities covered by the take limitations in this final rule. For some take limitations such as recreational angling (i.e. the FMEP take limit), NMFS has explicitly incorporated consideration of cumulative impacts into the rule where it is feasible. For habitat modifying activities, however, this is difficult. NMFS believes, however, that cumulative impacts are addressed at least in part for habitat modifying activities, such as MRCI development and routine road maintenance, since coverage of such an activity under the rule requires NMFS to find that it is contributing to the attainment of, or is contributing to the maintenance of, properly functioning habitat conditions for the threatened ESUs covered in the rule.

Comment 22: One commenter stated that the description of the evaluation criteria relating to riparian management areas in MRCI plans should indicate that such areas are often larger than one site-potential tree height and that it should also specify the types of riparian functions that should be protected in such plans.

Response: NMFS recognizes that riparian areas are important to threatened salmonids and, therefore, provided guidance in this final rule that MRCI plans should provide sufficient riparian management requirements or measures within a distance of one site-potential tree height from the stream channel. This general guidance was based on the best available scientific information which indicates that this stream side area is the one in which development activities most affect riparian zone habitat functions. Although this is a good rule of thumb, NMFS recognizes, as stated in the guidance for riparian zone management, that this distance can vary substantially from location to location and should be determined on a site-specific basis taking into account the conditions of the site or area and the type of habitat that may be affected by the MRCI development.

Comment 23: One commenter indicated that it was unclear whether a plan must be submitted to NMFS when an entity requests coverage under the MRCI take limit, and that it was also unclear who is responsible for approving such a plan if warranted.

Response: NMFS does expect interested jurisdictions to submit a plan to NMFS which describes the MRCI activities to be covered and which addresses the twelve evaluation criteria contained in the take limit. As indicated in this final rule, the Southwest Regional Administrator is responsible for determining whether a MRCI plan qualifies for coverage under this take limit.

Comment 24: The MRCI limit is subjective, violates the ESA, and is arbitrary and void for vagueness.

Response: The MRCI limitation was intended to be more broadly flexible than most of the other take limitations in order to address and provide coverage to the wide variety of circumstances that may arise under this category of activities. As noted elsewhere in this final rule, tailoring activities to comply with the take limitations and submittal of any plan to NMFS for consideration under any of the take limits, including the MRCI limit, is strictly voluntary. The MRCI limit has 12 specific land use considerations relevant to preserving fish habitat that NMFS will use to evaluate submitted land use regulations. NMFS' use of these considerations to make its consistent with conservation and attaining and maintaining properly functioning condition determinations gives adequate clarity and certainty to this part of this regulation.

Comment 25: One commenter felt that NMFS should provide performance standards that ordinances should meet and that the twelve evaluation criteria contained in the MRCI take limit were too vague.

Response: As discussed in this final rule, the fundamental performance standard against which ordinances or plans will be evaluated under this take limit is whether they contribute to maintaining and/or restoring properly functioning habitat conditions that will conserve the threatened ESUs. Under this limit, NMFS will evaluate

ordinances or plans to determine if and how they affect conditions on the landscape and the extent to which they are contributing to the maintenance of or restoration of essential habitat functions. If such plans would maintain or contribute to restoring these functions, then they may qualify under the take limitation.

The 12 considerations contained in this final rule identify the specific issues and/or factors NMFS will use as a framework for evaluating ordinances or plans. These considerations are based on current scientific understanding of salmonid biological requirements. By assessing these twelve considerations, NMFS believes it can evaluate the extent to which an ordinance or plan contributes to maintaining or restoring properly functioning habitat conditions that will conserve the threatened ESUs. Depending on the scope of the ordinance or plan, all twelve of these considerations may not be relevant. NMFS recognizes this fact and will base its evaluation on only those considerations that are relevant.

Recreational Fisheries Take Limitation

Comment 26: One commenter suggested that the final rule should provide a mechanism allowing FMEPs to be ''tiered'' off of Pacific Fishery Management Council (PFMC) approved Fishery Management Plans in order to avoid redundancy and duplication.

Response: The FMEP take limitation in this final rule is intended to provide a more efficient mechanism for insuring that freshwater recreational fisheries managed by the State of California adequately protect and contribute to the conservation of the threatened ESUs covered by the rule while still providing for angling opportunities. Coverage of State managed fisheries in this manner will provide assurance to the State and anglers that they are in compliance with the ESA. Such fisheries are under the jurisdiction of the State and are not managed by PFMC. Since the PFMC manages marine fisheries covered by Federal Fishery Management Plans it is unclear how the FMEP process in this final rule can be tiered off of the FMP process that is implemented by the PFMC. Because the two processes manage two separate fisheries, NMFS does not believe that there will be unnecessary duplication or redundancy in the development of FMEPs. To the extent feasible, however, NMFS will encourage the State to utilize information gathered as part of the FMP process in the development of FMEPs that are submitted for coverage under this rule.

Water Diversion Screening Take Limitation

Comment 27: One commenter argued that the water diversion screening take limitation is inappropriate and does not meet the requirements of the ESA.

Response: NMFS believes strongly that the water diversion screening take limit is appropriate, that it provides for the conservation of the threatened ESUs covered by the rule, and that it is consistent with the ESA. As the commenter pointed out, NMFS is well aware that the entrainment of juvenile salmonids in unscreened or poorly screened water diversions is a problem, both in the central valley and in coastal watersheds. The water diversion screening limit in this rule is intended to provide an incentive for screening unscreened or poorly screened diversions. This final rule and this take limit do not allow unregulated take of listed salmonids at water diversions in the central valley or in coastal watersheds. In fact, this final rule imposes the ESA section 9(a)(1) take prohibitions on these three threatened ESUs making it illegal to entrain these fish into water diversions, and only relieves diverters of the take prohibitions if they qualify by meeting the criteria in the water diversion screening take limit or by obtaining take authorization through the processes of ESA section 7 or 10. NMFS will only provide coverage to water diverters under the water screening diversion take limit if they meet the criteria specified in the rule. These criteria call for: (1) NMFS to certify that a diversion is screened, maintained, and operated in compliance with NMFS' fish screening criteria; and (2) the owner/operator of the facility to allow NMFS to inspect the facility to insure compliance with the criteria. NMFS believes these screening criteria are fully protective of juvenile salmonids and presently uses them as the basis for evaluating water screening diversion projects under ESA sections 7 and 10 of the ESA.

Comment 28: One commenter was concerned that this final rule and this take limitation in particular would exempt all take of these threatened ESUs at the Federal and state water pumping facilities that operate in the central valley, provided they are operated in compliance with whatever screening criteria are in place.

Response: As discussed elsewhere, this final rule will impose the ESA section 9(a)(1) take prohibitions on three threatened ESUs, including the CCV spring-run chinook ESU. The water diversion screening take limit is primarily built into the rule to provide an incentive to smaller, non-Federal water diverters to screen their diversions with appropriate screens. In contrast, the Federal and state pumps and the associated fish protection facilities are part of the Federal and state water projects which are operated in a coordinated fashion by the Bureau of Reclamation and the Department of Water Resources. The combined operation of the Federal and state water projects, including the Federal and state pumps and the associated fish protection facilities, constitute a Federal project activity which is subject to section 7 of the ESA. This final rule does not relieve Federal agencies such as the Bureau of Reclamation of their obligation to consult under the ESA, nor does it exempt the take of these threatened species by Federal agencies. For this reason, the incidental take of CCV spring-run chinook at the Federal and state pumps and the associated fish protection facilities are authorized through section 7 of the ESA, not this final ESA 4(d) rule. Future modifications of the fish protection facilities in the Delta will comport to the extent appropriate with NMFS' fish screening criteria and the mechanism for any required ESA compliance will be section 7 of ESA through the Bureau of Reclamation.

Comment 29: One commenter asserted that NMFS' screening criteria are not well supported or justified scientifically.

Response: NMFS disagrees. NMFS' fish screening criteria are extensively detailed and have undergone a high degree of scientific scrutiny. They are based on decades of operational experience that have yielded some of the best screen designs for salmonid protection in existence. Several States, including California, have adopted NMFS' screening criteria and use them extensively. Lastly, extensive biological evaluations have demonstrated little or no injury to fish when testing screen facilities constructed to NMFS' criteria.

Comment 30: One commenter suggested that this take limit should also ''grandfather'' in older fish screen and passage facilities provided they met the standards that were in existence at the time they were installed.

Response: The intent of this take limitation is to allow a water diversion to be made as safe as possible for the threatened ESUs covered by the rule. Therefore, we believe that the best available information regarding fish screen criteria that are protective of salmonids should be used as the basis for providing coverage to water diversions under this limit. In our view, the 1997 criteria constitute the best

available information. As new biological information becomes available, however, it may be necessary to update these criteria and all new facilities from that point forward would need to comply with any updated criteria. NMFS recognizes that it may not be necessary to retrofit all existing screen facilities with new features every time that new information becomes available and that some older facilities may still function in a manner that is protective of threatened salmonids. In such cases, NMFS may consider certification of screen designs that meet the criteria in place at the time of construction providing there is no evidence to show that the device is causing the take of listed salmonids.

Habitat Restoration Take Limitation

Comment 31: One commenter argued that NMFS should not insert itself in the process of approving watershed conservation plan guidelines. This commenter also contended that NMFS does not have the authority to require states or local governments to consult with the agency in the development of such plans.

Response: The goal of this take limitation is to provide a mechanism for exempting habitat restoration projects from the ESA section 9 take prohibitions when those projects have been identified as being necessary to restore watershed function as a result of watershed scale assessments. In order for NMFS to provide this type of blanket coverage for habitat restoration projects and to avoid having to review all watershed conservation plans and habitat restoration projects separately, we believe it is appropriate for NMFS to link this exemption to an approval of watershed conservation plan guidelines. Absent the process described by this take limitation, the only means available for NMFS to authorize take that may occur as a result of habitat restoration projects is to review and approve them individually through ESA section 7 or section 10 processes. The process described in this take limit, if implemented by the state, can serve to expedite implementation of habitat restoration projects while at the same time promote watershed assessments and the development of watershed conservation plans on the basis of standard guidance. As clearly stated in the proposed and final rule, state and local entities are not required to use any of the take limitations, including the limitation for habitat restoration. In other words, NMFS is not requiring the state and local entities to develop guidelines or watershed conservation plans. We have made this option available as part of a process for facilitating the implementation of habitat restoration projects through exemption from the section 9 take prohibitions. As an alternative to using this take limitation, state or local entities may choose to utilize the section 7 or section 10 processes to obtain take authorization for habitat restoration projects they plan to implement.

Take Guidance

The threatened salmonid ESUs addressed in this final rule are in danger of becoming extinct throughout all or a significant portion of their range in the foreseeable future. Abundance of these ESUs has been reduced by over-fishing, past and ongoing freshwater and estuarine habitat destruction, hydropower development, hatchery practices, and other causes. NMFS has concluded, therefore, that it is necessary and advisable to apply the ESA section 9(a)(1) prohibitions to these ESUS to aid in their conservation. ESA section 9(a)(1) prohibitions make it illegal for any person subject to the United States' jurisdiction to ''take'' these species without written authorization. ''Take'' is defined to occur when a person engages in activities that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a species or attempt to do any of these. Impacts on a protected species' habitat may harm members of that species and, therefore, constitute a ''take'' under the ESA. Such acts may include significant habitat modification or degradation that actually kills or injures listed fish by significantly impairing essential behavioral patterns including breeding, spawning, rearing, migrating, feeding or sheltering (64 FR 60727, November 8, 1999).

On July 1, 1994 (59 FR 34272), NMFS and the FWS published a policy committing both agencies to identify, to the extent possible, those activities that would or would not violate section 9 of the ESA. The intent of this policy is to increase public awareness about ESA compliance and focus public attention on those actions needed to protect listed species.

Based on the best available information, NMFS believes the categories of activities that follow are those activities which as a general rule may be most likely to result in injury or harm to listed salmonids. It is important to emphasize, however, that whether injury or harm results from a particular activity is entirely dependent upon the facts and circumstances of each individual case. The mere fact that an activity may fall within one of these categories does not mean that the specific activity is causing harm or injury. These categories of activity, however, are ones that may be most likely to cause harm and, thus, violate the ESA section 9(a)(1) take prohibitions in this final rule. The activities listed below in A thru J are as cited in NMFS' harm rule (64 FR 60727, November 8, 1999).

A. Constructing or maintaining barriers that eliminate or impede a listed species' access to habitat or ability to migrate.

B. Discharging pollutants, such as oil, toxic chemicals, radioactivity, carcinogens, mutagens, teratogens or organic nutrient-laden water including sewage water into a listed species' habitat.

C. Removing, poisoning, or contaminating plants, fish, wildlife, or other biota required by the listed species for feeding, sheltering, or other essential behavioral patterns.

D. Removing or altering rocks, soil, gravel, vegetation or other physical structures that are essential to the integrity and function of a listed species' habitat.

E. Removing water or otherwise altering stream flow when it significantly impairs spawning, migration, feeding or other essential behavioral patterns.

F. Releasing non-indigenous or artificially propagated species into a listed species' habitat or where they may access the habitat of listed species.

G. Constructing or operating dams or water diversion structures with inadequate fish screens or fish passage facilities in a listed species' habitat.

H. Constructing, maintaining, or using inadequate bridges, roads, or trails on stream banks or unstable hill slopes adjacent to or above a listed species' habitat.

I. Conducting timber harvest, grazing, mining, earth-moving, or other operations which result in substantially increased sediment input into streams.

J. Conducting land-use activities in riparian areas and areas susceptible to mass wasting and surface erosion, which may disturb soil and increase sediment delivered to streams, such as logging, grazing, farming, and road construction.

K. Illegal fishing. Harvest in violation of fishing regulations.

L. Various streambed disturbances may trample eggs or trap adult fish preparing to spawn. The disturbance could be mechanical disruption caused by constructing push-up dams, removing gravel, mining, or other work in a stream channel. It may also take the form of egg trampling or smothering by livestock in the streambed or by

vehicles or equipment being driven across or down the streambed (as well as any similar physical disruptions).

M. Interstate and foreign commerce dealing in listed salmonids and importing or exporting listed salmonids may harm the fish unless it can be shown through an ESA permit that they were harvested in a manner that complies with ESA requirements.

N. Altering lands or waters in a manner that promotes unusual concentrations of predators.

O. Shoreline and riparian disturbances (whether in the riverine, estuarine, marine, or floodplain environment) that may retard or prevent the development of certain habitat characteristics upon which the fish depend (e.g., removing riparian trees reduces vital shade and cover, floodplain gravel mining, development, and armoring shorelines reduces the input of critical spawning substrates, and bulkhead construction can eliminate shallow water rearing areas).

P. Filling or isolating side channels, ponds, and intermittent waters (e.g., installing tide gates and impassable culverts) can destroy habitats the fish depend upon for refuge areas during high flows.

The list provides examples of the types of activities that could have a high risk of causing take, but it is by no means exhaustive. It is intended to help people avoid activities that may violate the ESA and to encourage efforts to protect and conserve the threatened ESUs covered in this final rule. A determination as to whether take has actually occurred depends on the circumstances of a particular case.

Many activities that may kill or injure salmonids, such as fill and removal authorities, National Pollutant Discharge Elimination System or other water quality permitting, and pesticide use are regulated by state and/or Federal processes. For those types of activities, NMFS would not concentrate enforcement efforts on those who operate in conformity with current permits. Rather, if the regulatory program does not provide adequate salmonid protection, NMFS intends to work with the responsible agency to make necessary changes in the program.

For instance, concentrations of pesticides may affect salmonid behavior and reproductive success. Current EPA label requirements were developed in the absence of information about the impacts of such pesticides on aquatic species such as salmonids. Where new information indicates that pesticide label requirements are not adequately protective of salmonids, NMFS will work with EPA through the ESA section 7 consultation process to develop more protective use restrictions and, thereby, provide the best possible guidance to all users. Similarly, where water quality standards or state authorizations lead to pollution loads that may cause take, NMFS intends to work with the state water quality agencies and EPA to bring those standards or permitting programs to a point that does protect salmonids.

Persons or entities concluding that their activity is likely to injure or kill protected fish are encouraged to immediately adjust that activity to avoid take (or adequately limit any impacts on the species) and seek NMFS' authorization for incidental take under: (a) an ESA section 10 incidental take permit; (b) an ESA section 7 consultation; or (c) one of the limits (if available) on the take prohibitions provided in this final rule. The public is encouraged to contact NMFS (see **FOR FURTHER INFORMATION CONTACT**) for assistance in determining whether circumstances at a particular location (involving these activities or any others) would constitute a violation of this final rule.

Impacts on listed salmonids resulting from actions in compliance with a permit issued by NMFS pursuant to section 10 of the ESA would not constitute a violation of this final rule. Section 10 permits may be issued for research activities, enhancement of a species' survival, or to authorize incidental take occurring in the course of an otherwise lawful activity. NMFS consults on a broad range of activities conducted, funded, or authorized by Federal agencies. These include fisheries harvest, hatchery operations, silviculture activities, grazing, mining, road construction, dam construction and operation, discharge of fill material, and stream channelization and diversion. Federally funded or approved activities that affect listed salmonids and for which ESA section 7 consultations have been completed will not constitute violations of this final rule provided the activities are conducted in accord with all reasonable and prudent measures and terms and conditions contained in any biological opinion and incidental take statement issued by NMFS.

References

A list of references cited in this final rule is available upon request (see **ADDRESSES**).

Classification

Regulatory Flexibility Act

In accordance with the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), therefore, NMFS prepared an IRFA which was made available through the proposed ESA 4(d) rule for public comment. Although no comments were received on the IRFA during the public comment period, NMFS has made some revisions to the Final Regulatory Flexibility Analysis (FRFA) by defining further geographic subareas to insure its consistency with the Final Regulatory Impact Review (RIR). The FRFA is available upon request (see **ADDRESSES**) and a summary follows.

This ESA 4(d) rule has no specific requirements for regulatory compliance. Instead, the rule sets an enforceable performance standard in the form of the section 9(a)(1) take prohibitions (i.e., do not ''take'' the threatened ESUs) that applies to all entities and individuals unless an activity is within a carefully circumscribed set of activities for which NMFS will not impose the take prohibitions. Hence, the universe of entities reasonably expected to be directly or indirectly impacted by the prohibition is potentially broad.

The entities potentially affected by imposition of the ESA section 9 take prohibitions occur over a large geographic area which includes the Sacramento River basin in California's central valley, as well as coastal watersheds ranging from the Russian River to Redwood Creek. Activities potentially affecting salmon and steelhead ESUs covered by the proposed rule are those associated with agriculture, fishing, hatcheries, mining, heavy construction, highway and street construction, logging, wood and paper mills, electric services, water transportation, and other industries. As many of these activities involve local, state, and Federal oversight, including permitting, governmental activities from the smallest towns or planning units to the largest cities may potentially be impacted. The activities of some nonprofit organizations may also be affected by these regulations.

NMFS examined the potential impact of the ESA 4(d) rule on a sector-by-sector basis. Unavailable or inadequate data leaves a high degree of uncertainty surrounding both the numbers of entities likely to be affected, and the characteristics of any impacts on particular entities. The problem is complicated by differences among entities even in the same sector as to the nature and size of their current operations, contiguity to waterways, individual strategies for dealing with the take prohibitions, etc. Finally, most of the activities that would be subject to the take prohibitions in the rule are already subject to the take prohibitions

imposed by existing ESA 4(d) rules that protect other salmonid ESUs utilizing the same habitat. Thus, determining the incremental cost of this rule requires information concerning regulated entities' response to pre-existing ESA 4(d) rules, some of which have been in effect for only a little over a year.

In the absence of 4(d) rules, entities could comply with the ESA through section 10 research, enhancement, and incidental take permits with private entities, or through ESA section 7 consultation with Federal agencies. Since implementation of the July 2000 4(d) rule NMFS has received plans from various entities in Oregon, Washington, Idaho and California for approval under the limits to the take prohibitions. States can now send a list of research activities they expect to authorize for the following year instead of sending individual ESA section 10 applications. During promulgation of the July 2000 rule NMFS did not have a complete understanding of the economic impacts entities would incur as a result of imposition of the take prohibitions. To gain some insight as to how entities may have changed their activities in response to implementation of the take prohibitions, we have summarized the numbers of plans submitted and their status under the July 4(d) rule in the following table. While portions of these plans were developed independently of the July 4(d) rule, they may have been modified in order to qualify for the take limits of the rule, as opposed to undergoing ESA section 7 or 10 procedures. Authorization under the rescue/salvage limit, City of Portland, Oregon Parks and Recreation Department's Pest Management Program and Washington's Forest Practices became effective September 8, 2000, and January 8, 2001, for the steelhead and salmon ESUs respectively, and are not listed in the table. Oregon Department of Transportation's (ODOT's) Routine Road Maintenance program also became effective with the effective dates, but other entities can qualify for ESA coverage under this limit if they use ODOT's program or an equivalent program.

Limit	Number of Plans Received to Date	Number of Plans Pending Approval	Number of Plans Approved	Number of Plans Expected in Next Year
Research	3	0	3	4 yearly (Oregon Washington Idaho, California)
Fishery Management Plans	13	12	1	33
Hatchery Genetic Management Plans	9	9	0	61
Joint State/Tribal Plans	2	0	2	12
Habitat Restoration Activities	0	0	0	4
Diversion Screening	20	2	0	100
Oregon Department of Transportation's (ODOT's) Routine Road Maintenance or Equivalent Plan	0	0	0	7-10
Municipal, Residential, Commercial, and Industrial Plans	0	0	0	10

Entities that are now subject to the July 4(d) rule fall into 4 categories: (1) Those entities who have sought or are actively seeking ESA compliance via the July 4(d) rule limits; (2) those who are not sure if their activities will harm salmonids, but are seeking guidance from NMFS; (3) those who are actively seeking ESA compliance via the section 10 or section 7 process; and (4) those entities that are taking salmon but are not seeking ESA compliance.

Examination of the geographical aspects of overlapping ESUs, and consideration of differences in the distribution of the different ESUs within river systems revealed five subareas composing the geographic extent of the four ESUs combined. Subarea 1 consists of that area where this rule's take prohibition for Central Valley spring chinook would be superimposed on existing take prohibitions for threatened Central Valley steelhead and endangered winter-run chinook salmon. In this region only a small variety of activities involving deliberate take of spring-run chinook is expected to be affected.

Subarea 2 consists of that area where Central California coast coho will be subject to limitations on the take prohibition not presently allowed by the existing ESA 4(d) rule for that threatened ESU and no new take prohibition is being added. The impact of this rule in this subarea is the increased flexibility allowed by the 10 take prohibition limits.

Subarea 3 consists of that area where this rule superimposes the take prohibitions for Northern California steelhead and California coastal chinook on the existing take prohibition for Central California coast coho. Deliberate take of the steelhead and chinook will be newly affected in this subarea and the take limits will be introduced for coho, making them congruent with the take limits for steelhead and chinook in that area.

Subarea 4 consists of the area where this rule superimposes the take prohibition for steelhead and chinook on the existing take prohibition for the Southern Oregon/Northern California coho ESU. Deliberate take of steelhead and chinook will be newly regulated in this area, but no change will be made for the take limits applicable to coho.

Subarea 5 consists of those portions of the Northern California steelhead and California coastal chinook ESUs not utilized by either coho ESU. Because steelhead (and chinook to a lesser extent) are much more widely distributed within the ESU boundaries than coho, there are substantial areas where steelhead and/or chinook will be protected which are not utilized by coho. Modifications to habitat which have no risk of taking coho may risk taking steelhead and chinook in such areas.

Although there may be some limited impact in all of these subareas the only substantial economic impacts on individual small entities from this rule, therefore, are expected to occur in the non-federal portions of subarea 5, which lie almost entirely in low population density areas of Humboldt, Mendocino, and Sonoma counties. These three counties had a combined 1998 population of about 640,000 with personal income of about $18 billion. However, most of the people and income are contributed by urban centers in Sonoma and Humboldt counties which are not contained in subarea 5. No population estimate is available for subarea 5, but it is believed to be less than 15,000. Small entities in this

subarea likely to be directly affected by this rule include private timber harvesters, cattle ranches, a small number of farms and vineyards, and possibly small businesses engaged in road and culvert construction. The number of such entities is not known, but is a small subset of the same classes of entities found in the three counties containing subarea 5.

This final rule applies the take prohibitions enumerated in ESA section 9(a)(1), and also limits application of the take prohibitions to certain specified categories of activities that contribute to conserving these ESUs or are governed by a program that adequately limits impacts on these ESUs. There are no record keeping or reporting requirements associated with imposition of the take prohibition; therefore, it is not possible to simplify or tailor record keeping or reporting to be less burdensome for small entities. However, some programs for which NMFS may in the future find it is unnecessary to prohibit take because they fall under one of the take limitations in this final rule would involve recordkeeping and/or reporting to support that continuing determination. NMFS has attempted to minimize any burden associated with these programs.

The public reporting burden per response for this collection of information is estimated to average 5 hours for a submission on screening of a water diversion or for a report on salmonids assisted, disposed of, or salvaged; 20 hours to prepare a road maintenance agreement; 30 hours for an MRCI ordinance development package; and 10 hours for an MRCI development annual report.

This rule also contains a collection-of-information requirement associated with habitat restoration activities conducted under watershed conservation plans that has received PRA approval from OMB under control number 0648-0230. The public reporting burden for the approval of watershed conservation plans is estimated to average 10 hours.

These estimates include any time required for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

In formulating this final rule, NMFS considered several alternative approaches which are described in the IRFA. These included: (1) Enacting a ''global'' ESA 4(d) protective regulation for threatened species through which NMFS would automatically apply the section 9 take prohibitions to all threatened species at the time of listing; (2) enacting ESA 4(d) protective regulations that include the take prohibitions, but contain no take limits, or only a few limits, on the application of the take prohibitions for relatively uncontroversial activities such as fish rescue/salvage; (3) enacting ESA 4(d) regulations which include the take prohibitions in combination with detailed prescriptive requirements applicable to one or more sectors of activity; (4) enacting ESA 4(d) protective regulations similar to the existing interim 4(d) protective regulations for Southern Oregon/Northern California coast coho salmon which includes four additional limitations on the extension of the take prohibitions, for harvest plans, hatchery plans, scientific research, and habitat restoration projects, when in conformance with specified criteria; (5) enacting ESA 4(d) regulations similar to the interim rule for Southern Oregon/Northern California coast coho, but with recognition of more programs and circumstances in which application of take prohibitions is neither necessary or advisable, and (6) enacting no ESA 4(d) protective regulations for the threatened salmonid ESUs. This last approach would leave the threatened ESUs without any protection other than provided by ESA section 7 consultations for actions with some Federal nexus.

The approach taken in this final rule is alternative 5 which would impose the ESA section 9 take prohibition and also create 10 limits to the take prohibitions for specific circumstances or categories of activity (see discussion of take limitations in the proposed rule). This approach is fundamentally the same as that taken in NMFS's July 2000 ESA 4(d) rule for 14 threatened salmonids (65 FR 42422). For several of these activity categories (i.e., recreational harvest, artificial propagation, habitat restoration, road maintenance, and municipal, residential, commercial and industrial development) the regulation is structured so that it allows plans or programs developed after promulgation of this final rule to be submitted to NMFS for review and approval under criteria described in the rule.

All of the other alternatives which provide take prohibitions for the threatened ESUs may result in unnecessary impacts on economic activity of small entities, given NMFS' judgment that more limited protections would suffice to conserve the species. NMFS believes this final rule provides the greatest latitude for individual entities and regulatory agencies to tailor activities and programs to fit individual circumstances while avoiding or minimizing take of threatened salmonids. At present, NMFS concludes that there are no legally viable alternative rules that would have less impact on small entities and still fulfill the agency's obligations to protect these threatened salmonid ESUs.

Executive Order (E.O.) 12866

Pursuant to E.O. 12866 (58 FR 51735, October 4, 1993), NMFS has prepared a Regulatory Impact Review (RIR) which considers costs and benefits of the regulatory alternatives that were considered in developing this ESA 4(d) rule, including the alternative of not promulgating a protective rule. Copies of the RIR are available upon request (see **ADDRESSES**).

Costs and benefits of this final rule and other alternative rule making approaches include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits where estimates cannot be meaningfully made for impacts that are essential to consider. The benefit provided by this rule, as well as each of the other alternatives NMFS considered that afford sufficient protection for the threatened ESUs, is its contribution to the recovery of the threatened ESUs. No monetized measure of the benefit of recovery is available.

The RIR finds that in Area 1, Area 3, and Area 4 the only activities likely to be affected by this final rule are those involving deliberate direct take of listed species, especially angling, hatchery operation, and research. The costs of these activities, either to the state or private parties, are estimated to increase over the baseline due to increased permitting, NEPA documentation, and monitoring requirements. Activities in Area 2, where coho already have a take prohibition in place, will become less costly due to reduced permitting and NEPA requirements. In Area 5, timber harvest, grazing, stream diversions, summer dams, road construction and maintenance, and construction of new or improved culverts will come under increased regulation. Incremental costs associated with summer dams, roads, and culverts are significant but could not be quantified at this time. Aggregate quantified incremental first-year costs for the proposed rule are estimated to be between $11.8 million and $17.7 million, while annual costs thereafter are estimated to be from $4.6 million to $9.1 million. The same costs estimated for a blanket take prohibition with no limits are estimated at $18.9 million to $21.6 million and $6.2 million to $10.7 million, respectively.

The RIR concludes that the proposed rule would substantially improve conditions favorable to recovery of the threatened ESUs compared to taking no action, that the only alternative which could achieve quicker results (detailed prescriptive requirements) is too costly and intrusive, and that the proposed rule is the least costly rule among the alternatives which are sufficiently protective of threatened salmon and steelhead ESUs.

Because this final rule will eliminate application of the section 9 take prohibition to those State or local programs or activities that fall within defined take limitation criteria protective of salmonids, those programs will encourage participation and contribute to the conservation of the threatened ESUs covered by the rule; NMFS' involvement will be more collaborative and less often require enforcement actions. This approach has the greatest probability that compliance burdens will be equally shared, that economic incentives will be employed in appropriate cases, and that practical standards adapted to the particular characteristics of the state or region will aid citizens in reducing the risks of take in an efficient way. For these reasons, it is likely that this final rule will minimize the cost to the public of avoiding or minimizing take over the long term in comparison with the other alternatives that were considered.

Executive Order 13175-Consultation and Coordination with Indian Tribal Governments

E.O. 13175 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This final rule does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13175 do not apply to this final rule.

Nonetheless, NMFS took steps to inform potentially affected tribal governments, to provide information to tribes on the content and scope of the rule and its relationship to the Tribal ESA 4(d) rule (65 FR 42481, July 10, 2000), and to solicit tribal input on the rule. NMFS did not receive any formal comments from Indian tribes, but remains prepared to meet with interested tribes to discuss the rule and its relationship to their activities. As a result of the July 2000 Tribal ESA 4(d) rule, NMFS has already established efforts to coordinate with many of the tribes that are located within the range of ESUs affected by this rule.

Executive Order 13132 - Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this final rule. In fact, this final rule provides a mechanism by which NMFS may defer to state and local government programs, where they provide necessary protections for threatened salmonids.

NMFS' July 2000 ESA 4(d) rule for 14 threatened salmonids (65 FR 42422), including three steelhead ESUs in California, was the first instance in California where the agency defined some reasonably broad categories of activities, both public and private, for which take prohibitions were not considered necessary and advisable when specified criteria were met. Since that rule was promulgated, NMFS has engaged in discussions with various State and local agencies and other organizations in California wishing to pursue development of programs that would qualify under the various take limits contained in that final rule. In addition, NMFS has sought working relationships with other governmental and non-governmental organizations, and endeavored to promote use of the ESA 4(d) rule. Because the threatened ESUs addressed in this rule overlap substantially with the ESUs addressed in the July 2000 ESA 4(d) rule (65 FR 42422), working relationships have already been established with many agencies and organizations that may be affected by this rule.

In addition to these efforts, NMFS staff have given presentations to interagency forums, community groups, and others, and served on a number of interagency advisory groups or task forces considering conservation measures. Many cities, counties and other local governments have sought guidance and consideration of their planning efforts from NMFS, and staff have met with them whenever possible. Lastly, NMFS staff have continued coordination with the state aimed at developing recreational fisheries and artificial propagation management plans and other programs that will be protective of threatened salmonids and ultimately may be recognized within the July 2000 ESA 4(d) rule or this final rule.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This final rule contains collection-of-information requirements subject to the PRA and which have been approved by OMB under control number 0648-0399.

The public reporting burden per response for this collection of information is estimated to average 5 hours for a submission on screening of a water diversion or for a report on salmonids assisted, disposed of, or salvaged; 20 hours to prepare a road maintenance agreement; 30 hours for an MRCI ordinance development package; and 10 hours for an MRCI development annual report.

This final rule also contains a collection-of-information requirement associated with habitat restoration activities conducted under watershed conservation plans that has received PRA approval from OMB under control number 0648-0230. The public reporting burden for the approval of watershed conservation plans is estimated to average 10 hours.

These estimates include any time required for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

National Environmental Policy Act

NMFS prepared EAs, as defined under the authority of NEPA of 1969, addressing each threatened ESU covered by this final rule. Based on a review and evaluation of the information contained in these NEPA documents, NMFS has determined that promulgation of protective regulations for these four threatened salmonid ESUs, including the creation of limitations on the applicability of the prohibitions on taking any of those salmonids, is not a major Federal action that would significantly affect the quality of the

human environment within the meaning of section 102(2)(c) of NEPA of 1969. NMFS believes these EAs examined appropriate alternatives, and that preparation of an Environmental Impact Statement is not required. Copies of the EAs/Findings of No Significant Impact are available on request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 31, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531-1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.203, paragraphs (a), (b)(1), and (c) are revised and introductory text to this section, paragraphs (b)(14) through (b)(22), and Appendix A to this section are added to read as follows:

§ 223.203 Anadromous fish.

Available guidance documents cited in the regulatory text are listed in Appendix A to this section.

(a) *Prohibitions*. The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to the threatened species of salmonids listed in § 223.102(a)(1) through (a)(10), and (a)(12) through (a)(22), except as provided in paragraph (b) of this section and § 223.209(a).

(b) *Limits on the prohibitions*. (1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter implementing such exceptions, also apply to the threatened species of salmonids listed in § 223.102(a)(1) through (a)(10), and (a)(12) through (a)(22).

* * * * *

(14) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(20) through (a)(22) do not apply to activities specified in an application for a permit for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than April 9, 2002. The prohibitions of paragraph (a) of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or September 9, 2002, whichever occurs earliest.

(15) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3), and (a)(20) through (a)(22) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to:

(i) Aid a sick, injured, or stranded salmonid,

(ii) Dispose of a dead salmonid, or

(iii) Salvage a dead salmonid which may be useful for scientific study.

(iv) Each agency acting under this limit on the take prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency or other co-manager has authorized in writing to perform the listed functions.

(16) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3), and (a)(20) through (a)(22) do not apply to fishery harvest activities provided that:

(i) Fisheries are managed in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a letter of concurrence from NMFS. NMFS will approve an FMEP only if it clearly defines its intended scope and area of impact and sets forth the management objectives and performance indicators for the plan. The plan must adequately address the following criteria:

(A) Define populations within affected listed ESUs, taking into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiably unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the listed ESU. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units, describe how the management units are defined, given biological and life history traits, so as to maximize consideration of the important biological diversity contained within the listed ESU, respond to the scale and complexity of the ESU, and help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

(B) Utilize the concepts of ''viable'' and ''critical'' salmonid population thresholds, consistent with the concepts contained in NMFS's technical report entitled ''Viable Salmonid Populations and the Recovery of ESUs'' (NMFS, 2000b). This report provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and ensuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with viable and critical population threshold states and respond accordingly to minimize the long-term risks to population persistence. Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that the likelihood of survival and recovery of the entire ESU in the wild would not be appreciably reduced by greater risks to that individual population.

(C) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status and on a harvest program that assures that those rates or objectives are not exceeded. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations.

(D) Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

(E) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics, such as age, fecundity, size and sex data, and migration timing.

(F) Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

(G) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(H) Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions.

(I) Be consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on a regular basis, as defined in NMFS' letter of concurrence for the FMEP, a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP.

(iii) The state confers with NMFS on its fishing regulation changes affecting listed ESUs to ensure consistency with the approved FMEP. Prior to approving a new or amended FMEP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days.

(iv) NMFS provides written concurrence of the FMEP which specifies the implementation and reporting requirements. NMFS' approval of a plan shall be a written approval by the NMFS' Southwest Regional Administrator. On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If the program is deficient, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit for activities associated with that FMEP. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that the prohibitions would then apply to those fishery harvest activities. A template for developing FMEPs is available from NMFS' Southwest Region web site (http://swr.nmfs.noaa.gov).

(v) The prohibitions of paragraph (a) of this section relating to threatened species listed in § 223.102 (a)(20) do not apply to fishery harvest activities managed solely by the State of California until July 8, 2002.

(17) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3) and (a)(20) through (a)(22) do not apply to activity associated with artificial propagation programs provided that:

(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria:

(A) The HGMP has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet conservation objectives, contribute to the ultimate sustainability of natural spawning populations, and/or is intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program that will be used to measure the program's success or failure.

(B) The HGMP utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in NMFS' technical report entitled: ''Viable Salmonid Populations and Recovery of ESUs'' (NMFS, 2000b). Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population.

(C) Broodstock collection programs reflect appropriate priorities taking into account health, abundances, and trends in the donor population. The primary purpose of broodstock collection programs of listed species is to re-establish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitat. After the species' conservation needs are met and when consistent with survival and recovery of the ESU, broodstock collection programs may be authorized by NMFS for secondary purposes such as to sustain tribal, recreational, and commercial fisheries.

(D) The HGMP includes protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

(E) The HGMP evaluates, minimizes, and accounts for the propagation program's genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by the straying of hatchery fish.

(F) The HGMP describes interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. For those programs of which the purpose is to sustain fisheries, HGMPs must not compromise the ability of FMEPs or other management plans to conserve listed salmonids.

(G) The HGMP provides for adequate artificial propagation facilities to properly rear progeny of naturally spawned broodstock, to maintain population health and diversity, and to avoid hatchery-influenced selection or domestication.

(H) The HGMP provides for adequate monitoring and evaluation to detect and evaluate the success of the hatchery program and any risks potentially impairing the recovery of the listed ESU.

(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed;

(J) NMFS provides written concurrence of the HGMP which specifies the implementation and reporting requirements. For federally operated or funded hatcheries, the ESA section 7 consultation will achieve this purpose.

(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on a regular basis a report summarizing this information, and the implementation and effectiveness of the HGMP as defined in NMFS' letter of concurrence. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP.

(iii) The state confers with NMFS on a regular basis regarding intended collections of listed broodstock to ensure consistency with the approved HGMP.

(iv) Prior to final approval of an HGMP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment for a period of at least 30 days.

(v) NMFS' approval of an HGMP shall be a written approval by NMFS' Southwest Regional Administrator.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level of salmonid productivity commensurate with the conservation of the listed salmonids. If the HGMP is not effective, NMFS will identify to the responsible agency ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions would then apply to that program. A template for developing HGMPs is available from NMFS Northwest Region's web site (www.nwr.noaa.gov).

(vii) The prohibitions of paragraph (a) of this section relating to threatened species listed in § 223.102 (a)(20) do not apply to artificial propagation programs managed solely by the State of California until July 8, 2002.

(18) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(3) and (a)(20) through (a)(22) do not apply to scientific research activities provided that:

(i) Scientific research activities involving purposeful take are conducted by employees or contractors of CDFG or as a part of a monitoring and research program overseen by or coordinated with CDFG.

(ii) CDFG provides for NMFS' review and approval a list of all scientific research activities involving direct take planned for the coming year, including an estimate of the total direct take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(iii) CDFG annually provides to NMFS the results of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by CDFG personnel, or are in accord with a permit issued by the CDFG.

(v) CDFG provides NMFS annually, for its review and approval, a report listing all scientific research activities it conducts or permits that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year's scientific research activities and a summary of the results of such research.

(vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accordance with NMFS' Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act (NMFS 2000a).

(vii) NMFS' approval of a research program shall be a written approval by NMFS' Southwest Regional Administrator.

(19) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(3) and (a)(20) through (a)(22) do not apply to habitat restoration activities, as defined in paragraph (b)(19)(iv), provided that the activity is part of a watershed conservation plan, and:

(i) The watershed conservation plan has been certified by the State of California to be consistent with the state's watershed conservation plan guidelines.

(ii) The State's watershed conservation plan guidelines have been found by NMFS to provide for plans that:

(A) Take into account the potential severity of direct, indirect, and cumulative impacts of proposed activities in light of the status of affected species that are listed as threatened.

(B) Will not reduce the likelihood of either survival or recovery of listed species in the wild.

(C) Ensure that any taking will be incidental.

(D) Minimize and mitigate any adverse impacts.

(E) Provide for effective monitoring and adaptive management.

(F) Use the best available science and technology, including watershed analysis.

(G) Provide for public and scientific review and input.

(H) Include any measures that NMFS determines are necessary or appropriate.

(I) Include provisions that clearly identify those activities that are part of plan implementation.

(J) Control risk to listed species by ensuring funding and implementation of the above plan components.

(iii) NMFS will periodically review state certifications of watershed conservation plans to ensure adherence to approved watershed conservation plan guidelines.

(iv) ''Habitat restoration activity'' is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. ''Primary purpose'' means the activity would not be undertaken but for its restoration purpose.

(v) Prior to approving state watershed conservation plan guidelines under paragraph (b)(19)(ii) of this section, NMFS will publish notification in the **Federal Register** announcing the availability of the proposed guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of not less than 30 days.

(20) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(3) and (a)(20) through (a)(22) do not apply to the physical diversion of water from a stream or lake, provided that:

(i) NMFS' engineering staff or any resource agency or tribe NMFS designates (authorized officer) has agreed in writing that the diversion facility is screened, maintained, and operated in compliance with NMFS' Southwest Region ''Fish Screening

Criteria for Anadromous Salmonids, January 1997'' or with any subsequent revision.

(ii) The owner or manager of the diversion allows any NMFS engineer or authorized officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria.

(iii) On a case-by-case basis, NMFS or an Authorized Officer will review and may approve a juvenile fish screen design and construction plan and schedule that the water diverter proposes for screen installation. The plan and schedule will describe interim operation measures to avoid take of threatened salmonids. NMFS may require a commitment of compensatory mitigation if implementation of the plan and schedule is terminated prior to completion. If the plan and schedule are not met, or if a schedule modification is made that is not approved by NMFS or the Authorized Officer, or if the screen installation deviates from the approved design, the water diversion will be subject to take prohibitions and mitigation.

(iv) This limit on the prohibitions of paragraph (a) of this section does not include any impacts or take caused by reduced flows resulting from the diversion or impacts caused during installation of the diversion device. These impacts are subject to the prohibition on take of listed salmonids.

(21) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3) and (a)(20) through (a)(22) do not apply to routine road maintenance activities provided that:

(i) The activity results from routine road maintenance conducted by employees or agents of the State of California, or any county, city or port in California, that complies with a program substantially similar to that contained in the Oregon Department of Transportation's (ODOT) Transportation Maintenance Management System Water Quality and Habitat Guide (July, 1999) or that is determined to meet or exceed the protections provided by the ODOT Guide; or by employees or agents of the State of California or any county, city or port in California that complies with a routine road maintenance program that meets proper functioning habitat conditions as described further in paragraph (a)(21)(ii) of this section. NMFS' approval of state, city, county, or port programs that are equivalent to the ODOT program, or of any amendments, shall be a written approval by NMFS' Southwest Regional Administrator. Any jurisdiction desiring its routine road maintenance activities to be considered within this limit must first commit in writing to apply management practices that result in protections equivalent to or better than those provided by the ODOT Guide, detailing how it will assure adequate training, tracking, and reporting, and describing in detail any dust abatement practices it requests to be covered.

(ii) NMFS finds the routine road maintenance activities of the State of California, or any city, county, or port, to be consistent with the conservation of threatened salmonids' habitat when it contributes to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the threatened ESUs. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit so that take prohibitions would then apply to the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iii) Prior to implementing any changes to a program within this limit the jurisdiction provides NMFS a copy of the proposed change for review and approval as to being within this limit.

(iv) Prior to approving any State of California, city, county, or port program as being within this limit, or approving any substantive change in a program as being within this limit, NMFS will publish notification in the **Federal Register** announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of not less than 30 days.

(v) Pesticide and herbicide spraying is not included within this limit, even if in accord with the ODOT guidance.

(22) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3) and (a)(20) through (a)(22) do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

(i) Such development occurs pursuant to city, county, or regional government ordinances or plans that NMFS has determined are adequately protective of threatened species by maintaining or restoring properly functioning habitat conditions. NMFS approval or determinations about any MRCI development ordinances or plans shall be a written approval by the NMFS Southwest Regional Administrator. NMFS will apply the following 12 evaluation considerations when reviewing MRCI development ordinances or plans to assess whether they adequately conserve threatened salmonids by maintaining and restoring properly functioning habitat conditions:

(A) The MRCI development ordinance or plan ensures that development will avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(B) The MRCI development ordinance or plan adequately avoids stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed, including peak and base flows of perennial streams.

(C) The MRCI development ordinance or plan provides adequately protective riparian area management requirements to attain or maintain PFC around all rivers, estuaries, streams, lakes, deepwater habitats, and intermittent streams. Compensatory mitigation is provided, where necessary, to offset unavoidable damage to properly functioning habitat conditions caused by MRCI development impacts to riparian management areas.

(D) The MRCI development ordinance or plan avoids stream crossings by roads, utilities, and other linear development wherever possible, and, where crossings must be provided, minimizes impacts through choice of mode, sizing, and placement.

(E) The MRCI development ordinance or plan adequately protects historical stream meander patterns and channel

migration zones and avoids hardening of stream banks and shorelines.

(F) The MRCI development ordinance or plan adequately protects wetlands and wetland functions, including isolated wetlands.

(G) The MRCI development ordinance or plan adequately preserves the hydrologic capacity of permanent and intermittent streams to pass peak flows.

(H) The MRCI development ordinance or plan includes adequate provisions for landscaping with native vegetation to reduce need for watering and application of herbicides, pesticides, and fertilizer.

(I) The MRCI development ordinance or plan includes adequate provisions to prevent erosion and sediment run-off during construction.

(J) The MRCI development ordinance or plan ensures that water supply demands can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(K) The MRCI development ordinance or plan provides necessary enforcement, funding, reporting, and implementation mechanisms and formal plan evaluations at intervals that do not exceed 5 years.

(L) The MRCI development ordinance and plan complies with all other state and Federal environmental and natural resource laws and permits.

(ii) The city, county or regional government provides NMFS with annual reports regarding implementation and effectiveness of the ordinances, including: any water quality monitoring information the jurisdiction has available; aerial photography (or some other graphic display) of each MRCI development or MRCI expansion area at sufficient detail to demonstrate the width and vegetation condition of riparian set-backs; information to demonstrate the success of stormwater management and other conservation measures; and a summary of any flood damage, maintenance problems, or other issues.

(iii) NMFS finds the MRCI development activity to be consistent with the conservation of threatened salmonids' habitat when it contributes to the attainment and maintenance of properly functioning habitat conditions. For this purpose, NMFS defines properly functioning habitat conditions as the sustained presence of a watershed's habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. To contribute to the attainment and maintenance of properly functioning habitat conditions, activities that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward achieving properly functioning habitat conditions. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the threatened species. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit so that take prohibitions would then apply to the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iv) Prior to approving any city, county, or regional government ordinances or plans as being within this limit, or approving any substantive change in an ordinance or plan as being within this limit, NMFS will publish notification in the **Federal Register** announcing the availability of the ordinance or plan or the draft changes for public review and comment. Such an announcement will provide for a comment period of not less than 30 days.

(c) *Affirmative Defense*. In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened species of salmonids listed in § 223.102 (a)(3), (a)(5) through (a)(10) and (a)(12) through (a)(22), any person claiming the benefit of any limit listed in paragraph (b) of this section or § 223.209(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

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Appendix A to §223.203 - List of Guidance Documents

The following is a list of documents cited in the regulatory text. Copies of these documents may be obtained upon request from the Northwest or Southwest Regional Administrators (see Table 1 in § 600.502 of this title).

1. Oregon Department of Transportation (ODOT) Maintenance Management System Water Quality and Habitat Guide (July, 1999).
2. Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act.
3. Fish Screening Criteria for Anadromous Salmonids, National Marine Fisheries Service, Southwest Region, 1997.
3. Fish Screening Criteria for Anadromous Salmonids, National Marine Fisheries Service, Southwest Region, 1997.

[FR Doc. 02–440 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334-1312-02; I.D. 091401B]

RIN 0648-AN88

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to clarify its authority to temporarily restrict the use of lobster trap and gillnet fishing gear within defined areas to protect North Atlantic right whales, and to establish criteria and procedures for implementing a Dynamic Area Management (DAM) program in areas north of 40o N. latitude, in order to further reduce risk of entanglement of right whales by such gear.

DATES: This final rule is effective February 8, 2002.

ADDRESSES: Copies of the Environmental Assessment (EA), its Regulatory Impact Review (RIR), and the

Final Regulatory Flexibility Analysis (FRFA), are available from the Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, progress reports on implementation of the ALWTRP, and a table of the changes to the ALWTRP may be obtained by writing to Diane Borggaard at the address above or Katherine Wang, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432. Copies of the EA, including the RIR and FRFA, can be obtained from the ALWTRP website listed under the Electronic Access portion of this document.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9145; Katherine Wang, NMFS, Southeast Region, 727–570–5312; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this final rule and the take reduction planning process can be downloaded from the ALWTRP web site at http://www.nero.nmfs.gov/whaletrp/. Copies of the most recent marine mammal Stock Assessment Reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at http://www.wh.whoi.edu/psb/sar2000.pdf. In addition, copies of the document entitled ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options'' are available by writing to Diane Borggaard, (see ADDRESSES) or can be downloaded from the Internet at http://www.nero.nmfs.gov/whaletrp/.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of four species of large whales (fin, humpback, minke, and North Atlantic right) in East Coast lobster trap and finfish gillnet fisheries. The background for the take reduction planning process and development of the ALWTRP is provided in the preambles to the proposed (62 FR 16519, April 7, 1997), the interim final (62 FR 39157, July 22, 1997), final (64 FR 7529, February 16, 1999), and interim final (65 FR 80368, December 21, 2000) rules implementing the ALWTRP. Copies of these documents and supporting Environmental Assessments are available from the NMFS, Northeast Region (see **ADDRESSES**).

This final rule implements approved modifications to the ALWTRP deemed by NMFS necessary to satisfy requirements of the Endangered Species Act (ESA) and MMPA. Details concerning the justification for and development of the DAM program and the implementing regulations were also provided in the preamble to the proposed rule (66 FR 50160, October 2, 2001) and are not repeated here.

DAM Trigger Mechanism

Areas that will be considered for DAM are limited to areas north of 40o N latitude. A DAM zone will be triggered by a single reliable report from a qualified individual of 3 or more right whales within an area (75 nautical miles (nm2) (139 km2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting based upon which a DAM zone would be triggered.

Procedures and Criteria to Establish a DAM Zone

NMFS will use the following procedures and criteria to establish a DAM zone:

1. A circle with a radius of at least 2.8 nm (5.2 km) would be drawn around each individual sighting (event). This radius would be adjusted for the number of right whales seen in the sighting such that the density of 4 right whales per 100 nm2 (185.3 km2) is maintained. The length of the radius would be determined by taking the inverse of the 4 right whales per 100 nm2 (185.3 km2) density, which is 24 nm2 (44.5 km2) per whale. This is equivalent to a radial distance of 2.8 nm (5.1 km) for a single right whale sighted, 3.9 nm (7.3 km) for two whales, 4.8 nm (8.9 km) for three whales, etc.

2. If any circle or group of contiguous circles includes 3 or more right whales, this core area and its surrounding waters would be a candidate DAM zone.

Criteria to Determine the Extent of the DAM Zone

Once NMFS identifies a core area containing 3 or more right whales, as described here, it would expand this initial core area to provide a buffer in which the right whales could move and still be protected. NMFS will determine the extent of the DAM zone as follows:

1. A larger circular zone will be drawn to extend 15 nm (27.8 km) from the perimeter of a circle around each core area.

2. The DAM zone will then be defined by a polygon drawn outside, but tangential to the circular buffer zone(s). The latitudinal and longitudinal coordinates of the corners of the polygon will then be identified.

Decision Factors for Implementing Restrictions in a DAM Zone

Once a DAM zone is identified, NMFS will determine whether to impose, in the zone, restrictions on fishing and/or fishing gear. This determination would be based on a variety of factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

Public Notification

If NMFS determines restrictions are necessary in the zone, NMFS may require removal of all gillnet and lobster trap gear from the zone within 2 days of the publication of a notice in the **Federal Register**. At this time, NMFS does not have criteria developed that would allow gillnet or lobster trap gear to be fished within a DAM zone. NMFS may allow fishing within a DAM zone with specified gear if that gear is determined to sufficiently reduce the risk of entanglement to right whales. NMFS may identify acceptable fishing practices and gear in a **Federal Register** document. Gear not in compliance with the imposed restriction may not be set in the DAM zone after the effective date of the restriction. NMFS will publish a document in the **Federal Register** and other appropriate media announcing the establishment of the zone with restrictions imposed. It will also announce them immediately upon filing the document with the Office of the **Federal Register**, which is generally 3 to 5 days before publication of the notice in the **Federal Register**.

If NMFS decides not to implement restrictions within a DAM zone, it will issue an alert to fishermen using

appropriate media to inform them of the fact that right whale density in a certain area has triggered a DAM zone. In addition, NMFS will provide detailed information on the location of the DAM zone and the number of animals sighted within it.

Duration of DAM Zones

NMFS will maintain a DAM zone for a minimum of 15 days from the date NMFS issues an alert (in the case of a zone where no restrictions are imposed), or the 15-day period from the effective date of restrictions (in the case where restrictions are imposed). At the conclusion of a 15-day period, the DAM zone would automatically expire, unless whales are still sighted in the DAM zone, in which case, NMFS will continue the zone to further protect concentrations of right whales. Each extension would be for up to 15 days unless NMFS extends the time frame based on additional sightings.

NMFS may remove restrictions on the DAM zone or rescind an alert prior to its automatic expiration if there are survey efforts and no confirmed sightings of right whales by qualified individuals for 1 week or if other credible evidence indicates that right whales have left the designated zone. NMFS will notify the public by issuing a notification in the **Federal Register** and through other appropriate media.

Comments and Responses

Approximately 58 letters of comment were received during the public comment period on the proposed rule, which ended on November 1, 2001. A complete summary of the comments and NMFS' responses is provided here.

Comment 1: Several letters were received from private individuals in support of NMFS' proposal to implement DAM. Most of those letters expressed serious concerns about the future survival of North Atlantic right whales. In addition, these comments encouraged NMFS to work closely with gillnet and lobster fishermen to protect right whales from future entanglements in fishing gear.

Response: NMFS will continue to work with the ALWTRT and members of the fishing industry to minimize interactions between right whales and fishing gear. NMFS believes that DAM will reduce serious injuries and mortalities to right whales from entanglements by temporarily restricting lobster trap and gillnet fishing gear in areas where right whales congregate to feed. *Comment 2*: Several comments questioned the DAM trigger mechanism. Many felt that it was inappropriate to base a DAM zone on a single sighting by one person. In addition, the Maine Department of Marine Resources requested that NMFS determine a clearer definition of ''qualified individual.'' It was suggested that NMFS establish a tiered process for judging whether or not a report is credible and further suggested that NMFS request corroborating information from the individual providing the report while continuing to verify the initial report during the 5-to 7-day period between filing notice with the **Federal Register** and publication. Furthermore, there were concerns that false sightings would be reported by disgruntled crew or competitors identifying themselves as ''qualified individuals'' wishing to cause hardship on fishermen by closing down their fishing grounds.

Response: NMFS anticipates that it may receive false or exaggerated reports of right whale sightings from people claiming to be ''qualified individuals.'' Therefore, NMFS intends to thoroughly investigate all reports for credibility and reliability. The definitions of ''qualified individual'' and ''reliable report'' were developed with this intent in mind. In addition, NMFS will require that the individual providing the report identify him or herself and the vessel from which the sighting was made. Anonymous reports will not be considered reliable and, therefore, cannot trigger a DAM zone. Furthermore, a document prepared by the Northeast Fisheries Science Center entitled, ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options,'' concluded that a single sighting is appropriate because foraging whales are at risk of entanglement whenever they are feeding, regardless of how quickly a food source is consumed. (Clapham and Pace, 2001). Therefore, to trigger a DAM zone, NMFS feels that a single report of right whales is an adequate trigger mechanism. Simply stated, as long as a single sighting can establish that the whales are feeding in an area, and not merely transiting through, no additional sightings would be necessary based on the understanding that feeding whales are at a greater risk of entanglement.

Comment 3: Many commenters questioned the implementation of a DAM zone based on the proposed trigger of three right whales. Comments from lobstermen and state agencies indicated that NMFS should adopt the trigger of eight whales sighted twice over 2 days, which was discussed at the ALWTRT meeting. Commenters encouraged NMFS to explore all other information available to ensure that the three-whale trigger is appropriate for the implementation of a DAM zone.

Response: The issue of the number of right whales that would trigger a DAM zone was discussed at the ALWTRT meeting. However, the ALWTRT did not produce any consensus recommendations on any one set of whale density criteria and/or triggering levels. NMFS determined that a trigger based on the sighting of three right whales was appropriate after considering the analysis of sighting data performed by the Northeast Fisheries Science Center. Foraging whales are assumed to be at risk of entanglement and DAM was designed to respond quickly to situations where feeding whales and fishing gear overlap in order to reduce the chances that a whale will get entangled. Therefore, the scientific research conducted on DAM sought to establish the smallest number of right whales that could be advanced as a reliable indicator that the animals were engaged in feeding behavior. The scientists concluded that a sighting of three or more right whales in an area was a reasonably good indicator that the animals were residing in an area to feed. (Clapham and Pace, 2001).

Comment 4: Comments were received expressing concern about the size of the DAM zone. In particular, several lobstermen felt that it would take months to remove their gear from a DAM area of 1,000 nm or more and suggested that DAM areas of 10 nm would be more realistic for compliance by the industry. One lobsterman estimated that it would take 12 trips, each lasting up to 10 days, to remove gear from a 1,000-nm DAM zone. In addition, many comments from fishermen explained that if all gear is removed from the DAM zone it will be reset around the boundary of the area, thus creating a wall around the DAM zone, which may create a greater risk of entanglement to right whales.

Response: NMFS appreciates the amount of effort that may be required to remove gillnet and lobster trap gear from a DAM zone. The analysis of sighting data presented in the document ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options,'' found that a 15-nm buffer around the initial core area would enclose all of the whales sighted, irrespective of their movements during the course of the event. (Clapham and Pace, 2001). The size of the DAM zone is dependent on the number of whales that would trigger an event.

Comment 5: Several comments were received that expressed concerns about the amount of time proposed for

compliance with gear restrictions within DAM zones. For example, a comment received from a lobsterman stated that it would be impossible to remove all lobster gear in the time allotted under the proposed rule and, furthermore, the chaos and confusion created would present a safety hazard.

Response: NMFS appreciates the time, effort, and risk involved in hauling fishing gear and removing it from an area that has been designated for DAM. In order to provide fishermen with time to respond to the implementation of gear restrictions within a DAM zone, NMFS will issue a notice at the time the notice is filed with the Office of the **Federal Register**, which is usually 3 to 5 days prior to the regulation being published in the **Federal Register**. Once the decision has been made to remove gear from a DAM zone, NMFS will notify the commercial fisheries affected as quickly and comprehensively as reasonably possible. In addition, when a right whale sighting meets the DAM trigger, NMFS will issue an alert via email to all ALWTRT members and post the alert on the website at www.nero.nmfs.gov/whaletrp/. NMFS hopes that members of the ALWTRT who receive an alert will circulate the information to other interested parties to help insure that the fishermen who may have to eventually remove gear from a DAM zone have time to respond. Fishermen, industry representatives, environmental groups, and all others interested in receiving alerts and notices over the Internet should provide their email address to the Northeast Regional Office (See **ADDRESSES** section). NMFS will also mail letters providing notice to those who request it by contacting the Northeast Regional Office (See **ADDRESSES** section). In addition, NMFS will investigate using a news bulletin service to provide notice through the local press.

Comment 6: Several comments were received that questioned the length of the restricted period. In particular, the Massachusetts Division of Marine Fisheries felt that the rule making process and the time required for fishermen to remove all of their gear from a DAM area would exceed the duration of most sighting ''events.''

Response: NMFS intends to respond to reports of right whale sightings that trigger a DAM as quickly as possible in order to insure that restrictions are implemented in a timely fashion to maximize protection for the animals. See NMFS' response to the previous comment. NMFS believes that an initial restricted period of 15 days with the ability for extension is an adequate and appropriate management measure for protecting right whales. Research conducted by the Northeast Fisheries Science Center concluded that a 15-day restricted period represented the average mean duration of the 13 documented events that began with an initial sighting of three or more right whales. (Clapham and Pace, 2001). Therefore, based on these findings, NMFS established an initial restricted period of at least 15-days with additional extensions to the restricted period if whales continue to meet the trigger for DAM.

Comment 7: A comment from an environmental group expressed concern with the automatic expiration of the DAM zone after 15 days and felt that NMFS should be required to lift restrictions, through notification in the **Federal Register**, once the whales are no longer sighted in the area.

Response: NMFS intends to provide protection for concentrations of right whales that remain present in the area after the conclusion of the 15-day period, if necessary and appropriate, by extending the restricted period, through notification in the **Federal Register**. NMFS believes that an initial restricted period of 15 days with the ability for extension is an adequate and appropriate management measure for protecting right whales. Research conducted by the Northeast Fisheries Science Center concluded that a 15-day restricted period represented the average mean duration of the 13 documented events that began with an initial sighting of three or more right whales. (Clapham and Pace, 2001). Therefore, based on these findings, NMFS established an initial restricted period of at least 15 days with additional extensions to the restricted period if whales continue to meet the trigger for DAM.

Comment 8: Several comments were received from fishermen who felt it is unnecessary to implement DAM because the gear they are currently utilizing is already considered ''whale safe''. Lobstermen fishing in Cape Cod Bay with sinking and neutrally buoyant line and weak links felt that this gear adequately reduces the risk of serious injury or mortality to right whales from entanglements without NMFS requiring further alterations or requiring the removal of gear from the area. Lobstermen also expressed concerns about the economic impact of DAM on their business and added that changing over to neutrally buoyant and sinking line has already been very costly, and expressed displeasure at what was perceived as NMFS' apparent disregard for the efforts of the ALWTRT towards developing gear that can coexist with whales without making closures necessary. In addition, the Massachusetts Division of Marine Fisheries (DMF) encouraged NMFS to adopt more universal ''whale safe'' gear modifications instead of implementing DAM because improving devices, such as buoy line breakaways, eliminates the need to completely remove gear from an area. Conversely, several environmental groups commenting on this issue recommended that NMFS require the removal of all lobster trap and gillnet gear from the DAM zone, in light of the fact that NMFS and the ALWTRT can not agree on gear modifications that sufficiently reduce the risk of entanglement.

Response: NMFS will continue to work with the ALWTRT to modify and develop fishing gear that adequately reduces the risk of entanglement to large whales and when such gear is deemed adequate, NMFS may allow it to be used for fishing within DAM zones. In addition, NMFS encourages fishermen to collaborate with the gear research team towards developing fishing gear that completely reduces the risk of entanglement to right whales. However, until then, the most reliable means for reducing the risk of entanglements to right whales within DAM zones is by requiring the complete removal of all lobster trap and gillnet fishing gear. See response to comment 18.

Comment 9: A comment from an environmental group questioned how NMFS planned to enforce voluntary compliance with gear restrictions within DAM zones.

Response: In the event that right whale sightings trigger a DAM zone, NMFS will determine whether to impose restrictions on fishing and/or fishing gear. This determination will be based on a variety of factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety to human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data. If NMFS determines restrictions are necessary in the zone, NMFS may require removal of all gillnet and lobster trap gear from the zone within two days of the publication of the notice in the **Federal Register**. If NMFS decides not to implement restrictions within the DAM zone, NMFS will follow the protocol developed cooperatively between NMFS and the ALWTRT for voluntary compliance. NMFS will issue an alert to fishermen using appropriate media to inform them of the fact that right whale density in a certain area has triggered a

DAM zone. In addition, NMFS will provide detailed information on the location of the DAM zone and the number of animals sighted within it. Furthermore, NMFS will request that fishermen voluntarily remove lobster trap and gillnet gear from the DAM zone and no additional gear be set inside it. NMFS believes providing this information to interested parties and requesting compliance with gear restrictions, which is in every fisherman's interest, is an appropriate means for maintaining communication with industry while providing protection for right whales.

Comment 10: Several comments suggested that the regulation of state waters would be better served if left to state agencies. Specifically, lobstermen fishing in Cape Cod Bay felt that NMFS should follow the Massachusetts DMF approach to developing rules to reduce entanglements. Other commenters from the lobster fishing industry expressed opposition to Federal regulations that would supersede rules already imposed within state waters because of the feeling that DMF knows the state waters better than NMFS. In addition, a comment received from a member of the lobster industry encouraged NMFS to allow the State of Maine to assess and provide the appropriate regulations in consideration of the unique variability and spacial distribution between right whales and fishing gear off the Maine coast. The Maine Department of Marine Resources echoed these concerns and also believed that the state whale protection plans offer the greatest chance of success.

Response: Although the MMPA provides NMFS with authority to regulate in State waters, states can develop equally protective or more protective restrictions if they choose, and NMFS encourages such action. Further, NMFS has cooperative agreements in place with a number of Atlantic states, which enable states to enforce requirements of the MMPA and its implementing regulations.

NMFS tries to coordinate with states on other issues as well. For example, with regard to gear markings that yield individual vessel information, many of the state and Federal fishery management plans currently require marking of buoys and/or traps with individual vessel identification. NMFS plans to continue to work with state fisheries agencies to investigate gear marking coast-wide and identify gaps in marking of surface gear, gillnets, and traps. This information will be presented to the ALWTRT for future consideration

Comment 11: Comments were received that expressed concerns about the procedure for providing notice to fishermen in the event of a DAM closure. For example, the Massachusetts DMF felt that the May 2001, DAM closure was a failure because NMFS did not contact all of the fishermen affected and questioned whether NMFS could dedicate the staff time to informing fishermen of future DAM closures. Another commenter questioned how NMFS would provide notification to fishermen prior to the publication in the **Federal Register**.

Response: Once the decision has been made to remove gear from a DAM zone, based on the criteria outlined in the preamble, NMFS will notify the commercial fisheries affected as quickly and comprehensively as possible. In order to provide fishermen with time to respond to the implementation of gear restrictions within a DAM zone, NMFS will issue a notice at the time the notice is filed with the Office of the **Federal Register**, which is usually 3 to 5 days prior to publication in the **Federal Register**. In addition, when a right whale sighting meets the DAM trigger, NMFS will issue an alert via email to all ALWTRT members and post the alert on the website at www.nero.nmfs.gov/whaletrp/. NMFS hopes that members of the ALWTRT who receive an alert will circulate the information to other interested parties to help insure that the fishermen who may have to eventually remove gear from a DAM zone have time to respond. Fishermen, industry representatives, environmental groups, and all others interested in receiving alerts and notices over the internet should provide their e-mail address to the Northeast Regional Office. (See the **ADDRESSES** section). NMFS will also mail letters providing notice to those who request it by contacting the Northeast Regional Office in addition to posting such notification on the Northeast Regional Office web site at www.nero.nmfs.gov. In addition, NMFS will investigate using a news bulletin service to provide notice through the local press.

Comment 12: Several commenters pointed out that the procedure for creating a DAM zone in the proposed rule differed from how the process is described in the document ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options.''

Response: NMFS agrees and this inconsistency has been corrected in this final rule. The justification and rationale for the correction can be found in the preamble of this final rule under ''Changes in the Final Rule from the Proposed Rule.''

Comment 13: Many comments received questioned the decision factors NMFS proposed when considering whether to impose restrictions on fishing and/or fishing gear within a DAM zone. In particular, several environmental groups felt that, except for the consideration of weather conditions as they relate to the safety of life at sea, the factors listed in the proposed rule should not influence the decision to impose restrictions on fishing because such restrictions should be automatic once a concentration of right whales triggers a DAM zone. It was also noted that NMFS should require the complete removal of all gear automatically once a DAM zone has been triggered. A letter from the Marine Mammal Commission also expressed concerns over the discretion reserved by NMFS with respect to whether to impose restrictions within a DAM zone and felt that the factors should only be considered for setting a deadline when gear should be removed.

Response: NMFS believes that the agency should be provided with some level of discretion when deciding whether to impose gear restrictions within a DAM zone. Therefore, NMFS will base its decision on the enumerated factors that are relevant based on the circumstances surrounding the implementation of a DAM zone.

Comment 14: Several comments from environmental groups expressed concerns over the proposed regulatory language which provides NMFS with the option of deciding whether or not to require the complete removal of lobster trap and gillnet gear from a DAM zone. For example, one commenter felt that this discretion merely maintains the status quo and, therefore, would not sufficiently reduce jeopardy. Another commenter felt that, because NMFS and the ALWTRT cannot agree on gear modifications that would sufficiently reduce the risk of entanglement to right whales, NMFS should require the complete removal of all lobster trap and gillnet gear from the DAM zone.

Response: NMFS believes that reserving the discretion to decide whether to implement gear restrictions within DAM zones gives the agency a reasonable amount of flexibility to respond to the vast multitude of scenarios under which a DAM zone may be triggered. NMFS feels that DAM, in combination with the proposed rules for Seasonal Area Management (SAM) and additional gear modifications, are collectively sufficient to remove the likelihood of jeopardy to the continued existence of North Atlantic right whales.

DAM was specifically included as one of the multiple management components to the Reasonable and Prudent Alternative (RPA) discussed in the four BOs on the Fishery Management Plans for spiny dogfish, monkfish, multispecies, and Federal regulations for the American lobster fishery. According to the RPA, DAM, SAM, and expanded gear modifications were developed to cumulatively eliminate serious mortality and serious injuries of right whales in gillnet and lobster trap gear, eliminate serious and prolonged entanglements, and significantly reduce the total number of right whale entanglements in gillnet and lobster trap gear. NMFS does not feel that reserving the discretion on deciding whether to implement gear restrictions within DAM zones implies that the agency will fail to respond when sightings of right whales trigger DAM. In addition, while NMFS feels that, at the current time, requiring the complete removal of gillnet and lobster trap gear from within a DAM zone is the appropriate means for reducing the risk of entanglement to right whales, the agency continues to encourage fishermen and gear researchers to work on innovating and developing ways to improve fishing gear to avoid serious injury and mortality from entanglements. In recognition of the fact that gear research and development is ongoing, NMFS felt it was important to maintain the option of allowing fishing with ''risk averse'' gear inside a DAM zone in the event that such gear is perfected and approved.

Comment 15: One commenter suggested that NMFS clarify the circumstances under which a DAM would continue and how it would be limited. The commenter expressed concern regarding a hypothetical situation where, during the 15-day restricted period for a DAM zone, a second grouping of whales triggered another separate DAM zone outside but adjacent to the initial zone specified in the notice. Based on this scenario, the commenter was concerned that the initial DAM zone would be enlarged to create a single, very large closure.

Response: In the event that right whales are sighted and a DAM zone is triggered, NMFS would maintain the area for at least 15 days. If a DAM zone is triggered, but no restrictions are implemented, the 15-day period would begin from the time NMFS issues the alert. If, on the other hand, NMFS implements gear restrictions within the DAM zone, the 15-day period would begin on the date the restrictions become effective (i.e., 2 days after publication in the **Federal Register**). In response to the hypothetical situation described, while it is possible that there may be some days that the successive DAM zones overlap, the first DAM zone will automatically expire after 15 days, unless NMFS decided to extend the restricted period to further protect concentrations of right whales. However, NMFS also has the option of removing restrictions prior to the 15-day automatic expiration if subsequent survey efforts confirm that right whales have left the designated area. The second DAM zone would be maintained separately with its own 15-day restricted period.

Comment 16: The U.S. Coast Guard commented on aerial patrols to assist in confirming sightings and enforcing restrictions within the DAM zone. Due to a re-prioritization of law enforcement missions, the Coast Guard will only be able to devote minimal aircraft hours to assist NMFS in the implementation and enforcement of DAM. In addition, surface patrols will be more limited than in the past. Finally, the U.S. Coast Guard stated that, if fishing gear is modified and approved for use within a DAM zone, the U.S. Coast Guard will not be able to assist in enforcement of those restrictions because they are not equipped or trained to haul fixed gear.

Response: NMFS greatly appreciates the support the U.S. Coast Guard has provided in the past for implementing and enforcing management programs designed to protect and conserve marine mammals. These two agencies have a strong commitment to cooperating in the development, implementation, and enforcement of programs for marine protected resources, including North Atlantic right whales and other marine mammals. NMFS acknowledges the fact that the duties of the U.S. Coast Guard have been re-prioritized in light of recent national events. NMFS notes, however, that other means of enforcing the DAM restrictions exist aside from pulling gear and that other law enforcement resources can be used to enforce DAM restrictions.

Comment 17: Several comments were received expressing concerns over the burden placed on American fishing to protect whales while only a token effort is directed towards ship strikes and Canadian fixed gear.

Response: NMFS acknowledges that ship strikes and entanglements with fishing gear of foreign flag vessels also cause serious injury and mortality to right whales. NMFS is currently addressing these threats through other means and policy discussions. NMFS is issuing this final rule specifically to address commercial fishery impacts from four fisheries. This final rule stems from a component of the RPA resulting from consultations required under the ESA on the continued operation of the monkfish, spiny dogfish, multispecies, and lobster fisheries. However, the ALWTRP is designed to respond to the threats posed by domestic fishing gear. NMFS appreciates the continued involvement of the gillnet and lobster trap fisheries in the ALWTRT and their efforts to reduce serious injury and mortality to marine mammals, especially right whales. NMFS understands that right whales are injured and killed by other sources and will continue to work toward reduction of those impacts. For example, NMFS is currently taking into consideration recommendations from the Northeast Implementation Team for the Recovery of the Northern Right whale and the Humpback whale and the Southeast U.S. Right Whale Recovery Plan Implementation Team on ways to reduce the impacts of ship strikes from the recreational and commercial shipping sectors. In addition, NMFS is working on a proposed rule to regulate whale watching. Finally, NMFS is working with representatives from the Canadian Department of Fisheries and Oceans to develop and implement protective measures for right whales in Canadian waters.

Comment 18: A comment received from an environmental groups requested that, if NMFS is planning on allowing gear to be fished within a DAM zone that is determined to sufficiently reduce the risk of entanglement to right whales, then NMFS should clarify what constitutes a ''sufficient'' reduction.

Response: Although NMFS is considering gillnet and lobster trap gear modifications as part of the proposed rule for the SAM program, at present, NMFS does not have criteria developed that would allow gillnet or lobster trap gear to be fished within a DAM zone. NMFS may allow fishing within a DAM zone with specified gear if that gear is determined to sufficiently reduce the risk of entanglement to right whales. The DAM program is designed for a rapid response to the presence of right whales in areas at times that are generally unpredictable. The regulatory text and preamble of the proposed rule notes that any gear modifications determined by NMFS to sufficiently reduce the risk of entanglement to right whales would be identified in the **Federal Register** notice implementing the DAM zone. To the extent practicable, NMFS will provide a separate notification in the **Federal Register**regarding any determination that gear modifications sufficiently reduce the risk of entanglement to right

whales in DAM zones in advance of imposition of any DAM zones with those gear modifications.

Comment 19: One commenter suggested that NMFS initiate inter-agency and international cooperation to assist in the development of programs to protect right whales.

Response: NMFS notes that under section 7 of the Endangered Species Act, Federal agencies must consult with NMFS to insure that any action authorized, funded, or carried out by such agency (referred to as the ''action agency'') is not likely to jeopardize the continued existence of any endangered or threatened species. After discussions with the action agency, if NMFS concludes in a biological opinion that an activity is likely to jeopardize the continued existence of any endangered or threatened species, NMFS must include in its opinion any RPAs to avoid the likelihood of jeopardy to the listed species from the Federal activity. Furthermore, NMFS has established Memoranda of Agreement between several Federal agencies, such as the U.S. Navy, U.S. Coast Guard, and U.S. Army Corps of Engineers, to help better protect and recover listed species. With respect to international cooperation, NMFS is continuing to work with the Canadian government to develop and implement protective measures for right whales in Canadian waters. In addition, NMFS is working with Canadian whale biologists and support teams to improve and expand disentanglement efforts in Canadian waters.

Comment 20: One commenter suggested that NMFS issue regulations to close portions of the Right Whale Critical Habitat Areas to gillnet and lobster fishing and completely prohibit the use of ''high risk'' types of fishing gear in critical habitat during periods of known use by the whales.

Response: Although NMFS has not specifically defined or designated ''high risk'' types of fishing gear, data collected from past entanglements indicates that serious injuries and mortalities to right whales have occurred from interactions with gear used by the anchored gillnet and lobster trap fisheries. As a result, NMFS has implemented regulations that restrict the use of these gear types within right whale critical habitat during the months that the whales are present in these areas. For example, from April 1 to June 30, no lobster trap or anchored gillnet gear may be set in the Great South Channel Critical Habitat. In addition, from January 1 to May 15, anchored gillnetting is prohibited within the Cape Cod Bay Critical Habitat. Lobster trap fishing is permitted during this restricted period within Cape Cod Bay Critical Habitat, but the gear must be set with weak links and sinking lines that reduce the risk of serious injury and mortality from entanglements.

Comment 21: NMFS should develop take reduction plans (TRPs) that would mitigate bycatch of all strategic stocks of marine mammals in commercial fisheries.

Response: NMFS has chosen to develop TRPs on particular stocks. NMFS manages multiple stocks through some TRPs such as the ALWTRP. Decisions on whether a TRP addresses single or multiple stocks is dependent on the similarities of the fisheries that impact these stocks. No take reduction team can be tasked with suggesting recommendations to mitigate bycatch of all strategic marine mammal stocks in commercial fisheries, and NMFS does not have the funds to develop additional take reduction teams at this time. Presently, NMFS is considering the take reduction teams currently formed, and the success of each TRP toward reaching the goals of the MMPA, in order to determine whether funds could be redirected to support additional take reduction teams.

Comment 22: One commenter noted that NMFS must undertake an adequate program of research and development for the purpose of devising improved fishing methods and gear so as to reduce the incidental taking of right whales in commercial fishing.

Response: NMFS is committed to gear research and development, and will expand this program as funding allows. NMFS has gear laboratories and research teams that specifically focus on gear development and testing. Additionally, NMFS contracts with researchers, individuals and companies to develop gear solutions. Many of the current TRP measures are based on the outcome of such gear research (e.g. weak links) conducted and/or funded by NMFS. The gear modifications are important to reduce interactions between right whales (and other large whales) and fishing gear to further reduce serious injury and mortality of large whales due to entanglement in fishing gear. In addition, NMFS intends to continue to support the contributions made by the ALWTRT's Gear Advisory Group. NMFS is collaborating with other organizations to host a gear workshop, tentatively scheduled for February 2002, to investigate additional options and gear enhancements for gillnet and lobster trap gear. The results of this workshop will be distributed to the ALWTRT for consideration of future gear recommendations to NMFS.

Comment 23: Several commenters expressed concerns over the lack of notification regarding the publication of the proposed rules.

Response: Time constraints prevented NMFS from holding public hearings on the current regulations; however, NMFS used other ways to let the public know that public comments were being sought on a proposed rule to address commercial fishery/large whale interactions. In addition to publication of the proposed rule in the **Federal Register**, efforts included distributing the information to ALWTRT members who represent various stakeholder groups and provide valuable links to distribute information to the public, NOAA press release, announcement in NOAA's FishNews, and communications with state managers. NMFS will consider other means of communicating with the public and welcomes recommendations on ways to disseminate such information such as through letters to permit holders.

Comment 24: One commenter suggested that NMFS use emergency publication to expedite the process for implementing DAM.

Response: NMFS is not planning on using emergency publication to implement DAM based on the following reasons. Once the agency has determined to implement gear restrictions within a DAM zone, NMFS intends to forward the signed document to the Office of the **Federal Register** with a request for ''file immediately'' status. As soon as the notification is filed, NMFS will begin to notify interested parties. NMFS has found that requesting emergency publication does not significantly expedite the process for providing notice above what is being provided in this final rule. However, NMFS will consider requesting emergency publication if the particular facts of a situation indicate that doing so would be warranted.

Changes in the Final Rule from the Proposed Rule

This final rule will correct and clarify one of the criteria used to determine the extent of a DAM zone. The description of the criterion presented in the proposed rule did not accurately reflect NMFS' intent in establishing the size of a DAM zone. At issue is the location of the 15 nm (27.8 km) radius that is used to determine the size of a DAM zone.

As published in the preamble of the proposed rule, a 15-nm (27.8 km) radius from the ''event epicenter'' would be used to draw a larger circular zone around each core area encompassing a concentration of right whales. The event epicenter was defined in the proposed rule as the geographic center of all

sightings on the first day of an event. However, the criterion described in the proposed rule does not clearly describe the intent contained in the reference document. The reference document used to establish this criterion, ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options'' (see **ADDRESSES** for copies), describes the DAM zone buffer as the boundary of a circle that extends 15 nm (27.8 km) from the perimeter of a circle around the initial whale sightings or core area. The DAM zone will then be defined by a polygon drawn outside but tangential to the circular buffer zone(s). The latitudinal and longitudinal coordinates of the corners of the polygon will then be identified.

Therefore, § 229.32(g)(3)(ii) is revised to identify the DAM zone as a larger circular zone drawn to extend 15 nm (27.8 km) from the perimeter of a circle around each core area.

Classification

NMFS prepared a FRFA for this rule. A copy of this analysis is available from NMFS (see ADDRESSES). Five alternatives were evaluated, including a status quo or no action alternative, the preferred alternative (PA), and three other alternatives. A summary of that analysis follows:

(1) The ''No Action'' alternative would leave in place the existing regulations promulgated under the ALWTRP, but specific criteria and procedures for DAM would not be included in the regulations. The no action alternative would result in no additional economic burden on the fishing industry, at least in the short-term. However, if the status quo is maintained now, more restrictive and economically burdensome measures than those in this final rule may be necessary in the future to protect endangered right whales. The No Action alternative was rejected because it would not enable NMFS to meet the RPA measures of the BOs required under the ESA.

(2) NMFS considered but rejected an alternative that would require different triggers within each respective state jurisdiction as discussed by the ALWTRT. None of the proposals offered by the states were supported by data. No information has been presented to demonstrate the potential for these triggers to result in DAM zones that would reduce the risk of entanglement to right whales. The ALWTRT discussed having different triggers within each respective state jurisdiction. This could only be considered if the state trigger was found to be more restrictive than the Federal trigger, which is not the case with the triggers suggested by Maine, Massachusetts and/or Rhode Island. The state triggers were evaluated as if they would apply consistently to all waters - federal and state.

(3) NMFS considered but rejected an alternative that would trigger a DAM zone using the observation of one right whale on a single day. In addition, a buffer of 15 nm would be drawn around each individual animal observed. The observation of one or two right whales does not appear to be a good indicator of residency. The trigger in this alternative is not effective at predicting residency, and thus may trigger DAM zones more often than necessary.

(4) NMFS considered but rejected an alternative in which the trigger and buffer would generally be the same as in the preferred alternative (PA)(i.e., the observation of four right whales in a 100-nm2 area and the buffer would be 15 nm), however, instead of imposing a restriction requiring removal of all lobster gear, a 50-percent reduction in vertical lines would be required for lobster gear. The restrictions for gillnet gear would be the same as in the PA which requires complete removal. Based on right whale sightings data in 2000, six areas could potentially be closed. Because this alternative would require the removal of only 50 percent of vertical lines for lobster gear rather than all vertical lines (i.e. all gear), NMFS is concerned that this alternative may not be consistent with statutory objectives.

(5) The PA will temporarily restrict lobster trap and gillnet fisheries when NMFS receives a single reliable report from a qualified individual of three or more right whales within an area (75 nm2) such that right whale density is equal to or greater than 0.04 right whale per nm2. Based on right whale sightings data from 1999 and 2000, a DAM zone would have been triggered four times in 1999 and six times in 2000. NMFS accepted this alternative as these DAM zones are appropriate to avoid jeopardizing the continued existence of North Atlantic right whales and enable NMFS to meet a portion of the RPA in the BO's.

The action is part of the RPA that resulted from the BOs issued by NMFS, in accordance with section 7 of the ESA, to remove the likelihood of jeopardy of North Atlantic right whales posed by the continued operation of the multispecies, spiny dogfish, monkfish and lobster fisheries. The objective of this action is to reduce the level of serious injury to and mortality of North Atlantic right whales in East Coast lobster trap and finfish gillnet fisheries.

NMFS has taken steps to minimize the significant economic impact on small entities through this PA by reserving discretion to issue an alert or impose gear restrictions, rather than closing DAM areas, if these measures would be sufficient to protect concentrations of right whales. The small entities affected by this final rule are gillnet and lobster trap fishermen. The geographic areas for consideration for DAM are limited to areas north of 40° N latitude. Since DAM will be used to respond to unusual and unexpected sightings of right whales, it is difficult for NMFS to predict exactly where DAM zones may be implemented in the future. It is difficult to quantify the economic impacts of NMFS using its discretion in implementing 50 CFR 229.32(g)(2) as the restrictions that will be are unknown at this time in addition to the unknowns of the particular event such as the time and location of the restrictions and the level of fishing effort at that time and location. Therefore, providing an accurate estimate of the number of small entities that will be affected is problematic. Based on the available data, a maximum of 7,539 state and federally permitted lobster vessels and 310 gillnet vessels, which includes federally permitted vessels and may include state permitted vessels, could be affected by this action. However, NMFS does not expect that number of vessels to be affected by any one DAM closure because of the limited size of a DAM zone. For example, the retrospective analysis of the April-May 2000 DAM Area 1 estimated that 210 lobster vessels and 42 gillnet vessels would have been affected by the hypothetical closure.

NMFS received two public comments relating to the economic impacts of this final rule. These comments were considered by NMFS before it approved this final rule and are characterized and responded to by NMFS in the ''Comments and Responses'' section of the preamble to this final rule, as comment/response numbers four and eight. No changes to the rule were made as a result of these comments.

This action contains no new reporting or record keeping requirements. There are no relevant Federal rule actions that duplicate, overlap, or conflict with this action.

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed

with our conclusion that the rule is consistent with the enforceable policies of the approved coastal management program for that state.

This final rule contains policies with federalism implications that were sufficient to warrant preparation of a federalism assessment under Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate official(s) of affected state, local and/or tribal government in October 2001. No comments on the federalism implications of the proposed action were received in response to this notification. However, one affected state did respond on the federalism implications during the comment period for the proposed rule. The comment is characterized and responded to by NMFS in the ''Comments and Responses'' section of the preamble to this final rule, as comment/response number 10. No changes to the rule were made as a result of the comment received.

This final rule implements a portion of the RPA, which resulted from ESA section 7 consultations on three FMPs for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. This final rule implements a component of the RPA contained in the BOs issued by NMFS on June 14, 2001. Therefore, no further section 7 consultation is required.

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

References

ALWTRT. 2001. Draft Atlantic Large Whale Take Reduction Team Meeting Summary. Summary prepared by RESOLVE, Inc. and submitted to the National Marine Fisheries Service July 16, 2001.

Bisack, K. 2001. Economic analysis of Wilkinson Basin closure. Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA. 02543.

Bisack, K. 2001. (Draft) Economic analysis of dynamic area management (DAM). Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA. 02543.

Clapham, P.J. and R.M. Pace, III. 2001. Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options. Northeast Fisheries Science Center Reference Document 01-06. April 2001.

National Marine Fisheries Service. 2000. Environmental Assessment of the Atlantic Large Whale Take Reduction Plan and Implementing Regulations. NMFS. Northeast Region. December 2000.

National Marine Fisheries Service. 2001. Preliminary estimates of the revenue losses to the gillnet and lobster fleet in 1999 due to potential dynamic area closures to protect right whales. NMFS. Northeast Region. March 2001.

National Marine Fisheries Service. 2001. Endangered Species Act section 7 consultation. Biological opinion regarding Fishery Management Plans for monkfish, spiny dogfish, and multispecies and Federal regulations for American lobster. June 14, 2001.

Dated: December 31, 2001.

Rebecca Lent,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

List of Subjects in CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and record keeping requiremnts.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.2, a definition of ''Qualified individual'' and ''Reliable report'' are added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Qualified individual means an individual ascertained by NMFS to be reasonably able, though training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS.

* * * * *

Reliable report means a credible right whale sighting report based upon which a DAM zone would be triggered.

* * * * *

3. In § 229.32, paragraph (g)(3) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g)***

(3) For the purpose of reducing the risk of fishery interactions with right whales, NMFS may establish a temporary Dynamic Area Management (DAM) zone in the following manner:

(i) *Trigger.* Upon receipt of a single reliable report from a qualified individual of three or more right whales within an area NMFS will plot each individual sighting (event) and draw a circle with a 2.8 nm (5.2 km) radius around it, which will be adjusted for the number of right whales sighted such that a density of at least 0.04 right whales per nm2 (1.85 km2) is maintained within the circle. If any circle or group of contiguous circles includes 3 or more right whales, NMFS would consider this core area and its surrounding waters a candidate DAM zone.

(ii) *DAM zone.* Areas for consideration for DAM zones are limited to areas north of 40o N latitude. Having identified any circle or group of contiguous circles including 3 or more right whales as candidates for protection, as identified in paragraph (g)(3)(i) of this section, NMFS will determine the extent of the DAM zone as follows:

(A) A larger circular zone will be drawn to extend 15 nm (27.8 km) from the perimeter of a circle around each core area.

(B) The DAM zone will then be defined by a polygon drawn outside but tangential to the circular buffer zone(s). The latitudinal and longitudinal coordinates of the corners of the polygon will then be identified.

(iii) *Requirements and prohibitions within DAM zones.* Notice of specific area restrictions will be published in the **Federal Register** and will become effective 2 days after publication. Gear not in compliance with the imposed restrictions may not be set in the DAM zone after the effective date. NMFS may either:

(A) require owners of gillnet and lobster gear set within the DAM zone to remove all such gear within 2 days after notice is published in the **Federal Register**, or

(B) allow fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement to right whales. Acceptable fishing practices and gear modifications would be identified in the **Federal Register** notification implementing the DAM zone.

(C) The determination of whether restrictions will be imposed within a DAM zone would be based on NMFS' review of a variety of factors, including but not limited to: the location of the

DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

(iv) *Restricted period*. Any DAM zone will remain in effect for a minimum period of 15 days. At the conclusion of the 15-day period, the DAM zone will expire automatically unless it is extended by subsequent publication in the **Federal Register**.

(v) *Extensions of the restricted period*. Any 15-day period may be extended if NMFS determines that the trigger established in paragraph (g)(3)(i) of this section continues to be met.

(vi) *Reopening of restricted zone*. NMFS may remove any gear restriction or prohibition and reopen the DAM zone prior to its automatic expiration if there are no confirmed sightings of right whales for at least 1 week, or other credible evidence indicates that right whales have left the DAM zone. NMFS will notify the public of the reopening of a DAM zone prior to the expiration of the 15-day period by issuing a document in the **Federal Register** and through other appropriate media.

[FR Doc. 02–272 Filed 1–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 011120279–1311–02; I.D. 092401E]

RIN 0648–AP68

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Interim final rule.

SUMMARY: NMFS is issuing an interim final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to provide further protection for large whales, with an emphasis on North Atlantic right whales, through a Seasonal Area Management (SAM) program. The SAM program defines two areas based on the annual predictable presence of North Atlantic right whales in which gear restrictions for lobster trap and anchored gillnet gear will be required. This action is necessary due to the critical status of the North Atlantic right whale population. The intent of this action is to reduce interactions between North Atlantic right whales and fishing gear and to reduce serious injury and mortality of North Atlantic right whales due to entanglement in fishing gear.

DATES: Effective March 1, 2002. Comments on this interim final rule must be postmarked or transmitted via facsimile by 5 p.m. Eastern Standard Time, on February 8, 2002. Comments transmitted via e-mail will not be accepted.

ADDRESSES: Send comments on this interim final rule to the Chief, Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries and progress reports on implementation of the ALWTRP may be obtained by writing to Gregg LaMontagne, NMFS/Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Gregg LaMontagne, NMFS, Northeast Region, 978–281–9291 or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this proposed rule and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.nmfs.gov/whaletrp/*. Copies of the most recent marine mammal Stock Assessment Reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.nmfs.noaa.gov/prot_res/mammals/sa_rep/sar.html*. Information on disentanglement events is available on the web page of NMFS' whale disentanglement contractor, the Center for Coastal Studies, *http://www.coastalstudies.org/*.

Background

This interim final rule implements modifications to the ALWTRP as deemed necessary by NMFS to satisfy requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). On June 14, 2001, NMFS issued four Biological Opinions (BOs) as the result of ESA section 7 consultations on the three Fishery Management Plans (FMP) for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. The BOs concluded that the fisheries conducted pursuant to the three FMPs and the lobster regulations are likely to jeopardize the continued existence of right whales. In response to the section 7 consultation's jeopardizing finding, NMFS developed a Reasonable and Prudent Alternative (RPA) with multiple management components. As part of its RPA, NMFS developed gear restrictions for the anchored gillnet and lobster trap fisheries based on predictable annual concentrations of right whales. Details concerning the justification for and development of the SAM program and the implementing regulations were also provided in the preamble to the proposed rule (66 FR 59394, November 28, 2001) and are not repeated here.

Approved Measures

SAM Areas

The SAM program is established to protect predictable annual congregations of North Atlantic right whales in the waters off Cape Cod and out to the Exclusive Economic Zone line (see figure 1) as observed in aerial surveys from 1999–2001 (Merrick, et al. 2001). NMFS has defined two areas, called SAM West and SAM East, in which gear restrictions for lobster trap and anchored gillnet gear are required. These requirements are more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Northern Inshore Lobster Waters and Other Northeast Waters (gillnet area description). SAM West and SAM East will occur on an annual basis for the period March 1 through April 30 and May 1 through July 31, respectively. The dividing line between SAM West and SAM East is at the 69° 24′ W. longitude line. See table 1 for the spatial and temporal definitions of the areas.

TABLE 1.—SEASONAL AREA MANAGEMENT AREAS

Point	Latitude (north)	Longitude (west)	Comment
SAM West Polygon—In effect from March 1–April 30			
1	42° 04.8′	70° 10′	NE landfall of Cape Cod Bay (CCB) Critical Habitat (CH) at shoreline.
2	42° 12′	70° 15′	NE corner CCB CH.
3	42° 30′	70° 15′	NW Corner SAM West.
4	42° 30′	69° 24′	NE Corner SAM West.
5	41° 48.9′	69° 24′	NW side of GSC CH.
6	41° 45′	69° 33′	Runs along GSC CH.
7	41° 45′	69° 55.8′	SW landfall at Cape Cod return along shoreline to point 1.
SAM East Polygon—In effect from May–July 31			
1	41° 48.9′	69° 24′	NW side of GSC CH.
2	42° 30′	69° 24′	NW corner of SAM East.
3	42° 30′	67° 27′	NE corner SAM East.
4	41° 45′	66° 48′	SE corner SAM East.
5	41° 45′	68° 17′	Runs to GSC.
6	42° 10′	68° 31′	Runs along NE side GSC CH return along NW side of GSC CH to point #1.

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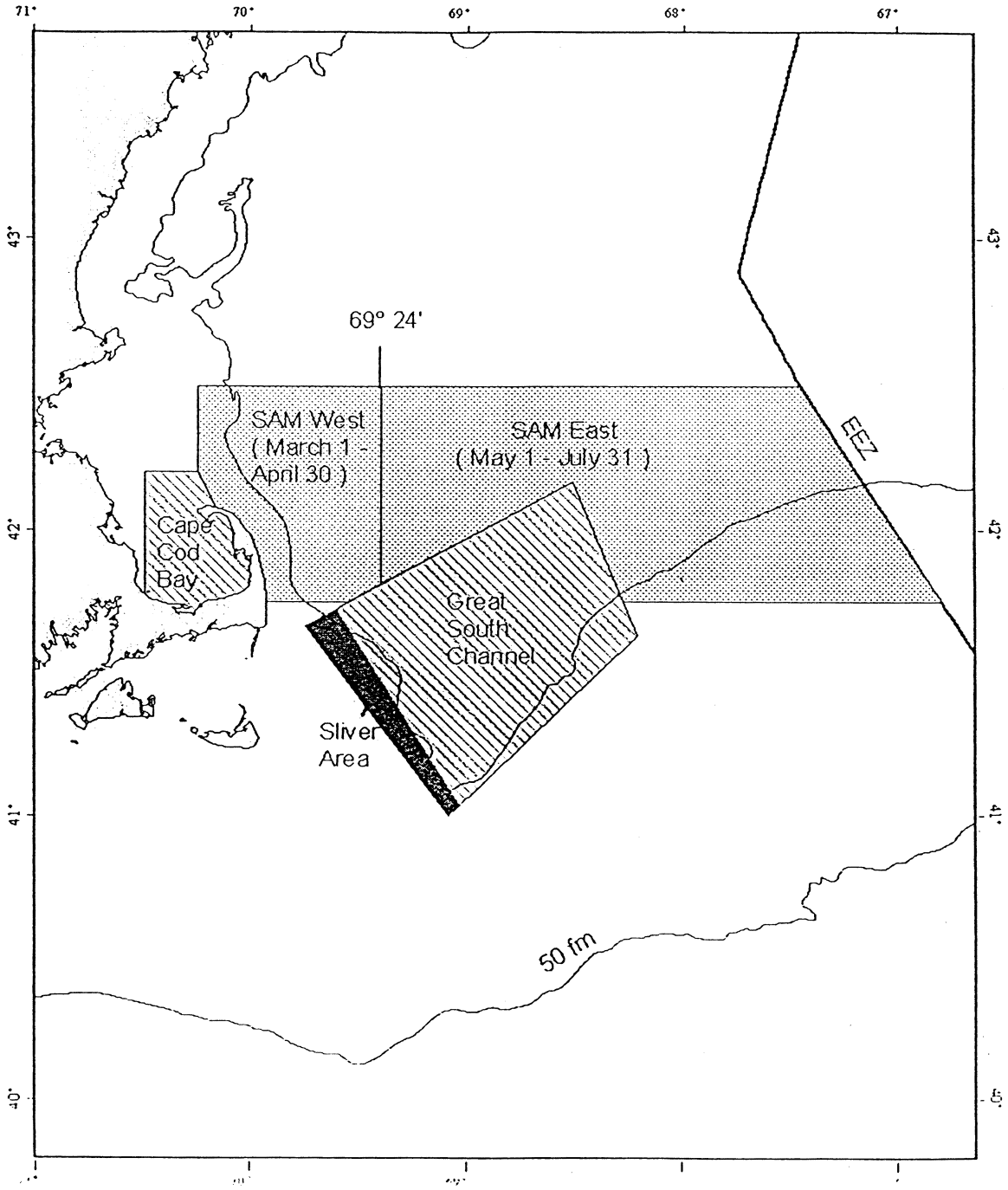
Figure 1

Atlantic Large Whale Take Reduction Plan Seasonal Area Management (SAM)



Lobster Trap Gear

Fishermen utilizing lobster trap gear within the portions of the Northern Nearshore and Northern Inshore State Lobster Waters that overlap with a SAM area must utilize all the following gear modifications when a SAM area is in effect:

1. Groundlines and buoy lines must be made entirely of either sinking or neutally buoyant line. Floating groundlines and buoy lines are prohibited;

2. A weak link must be placed at all buoys with a maximum breaking strength of 600 lb (272.2 kg) at each buoy. Each weak link must be installed as close to each individual buoy as operationally feasible (See figure 1); and

3. Fishermen utilizing lobster trap gear within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the trawl string depending on the direction of the set.

Fishermen utilizing lobster trap gear within the portion of the Offshore Lobster Waters Area that overlaps with a SAM area must utilize all the following gear modifications when a SAM area is in effect:

1. Groundlines and buoy lines must be made of either sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

2. A weak link must be placed at all buoys with a maximum breaking strength of 1,500 lbs (680.4 kg). Each weak link must be installed as close to each individual buoy as operationally feasible (See figure 2);

3. Fishermen utilizing lobster trap gear within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the trawl string depending on the direction of the set.

Figure 2

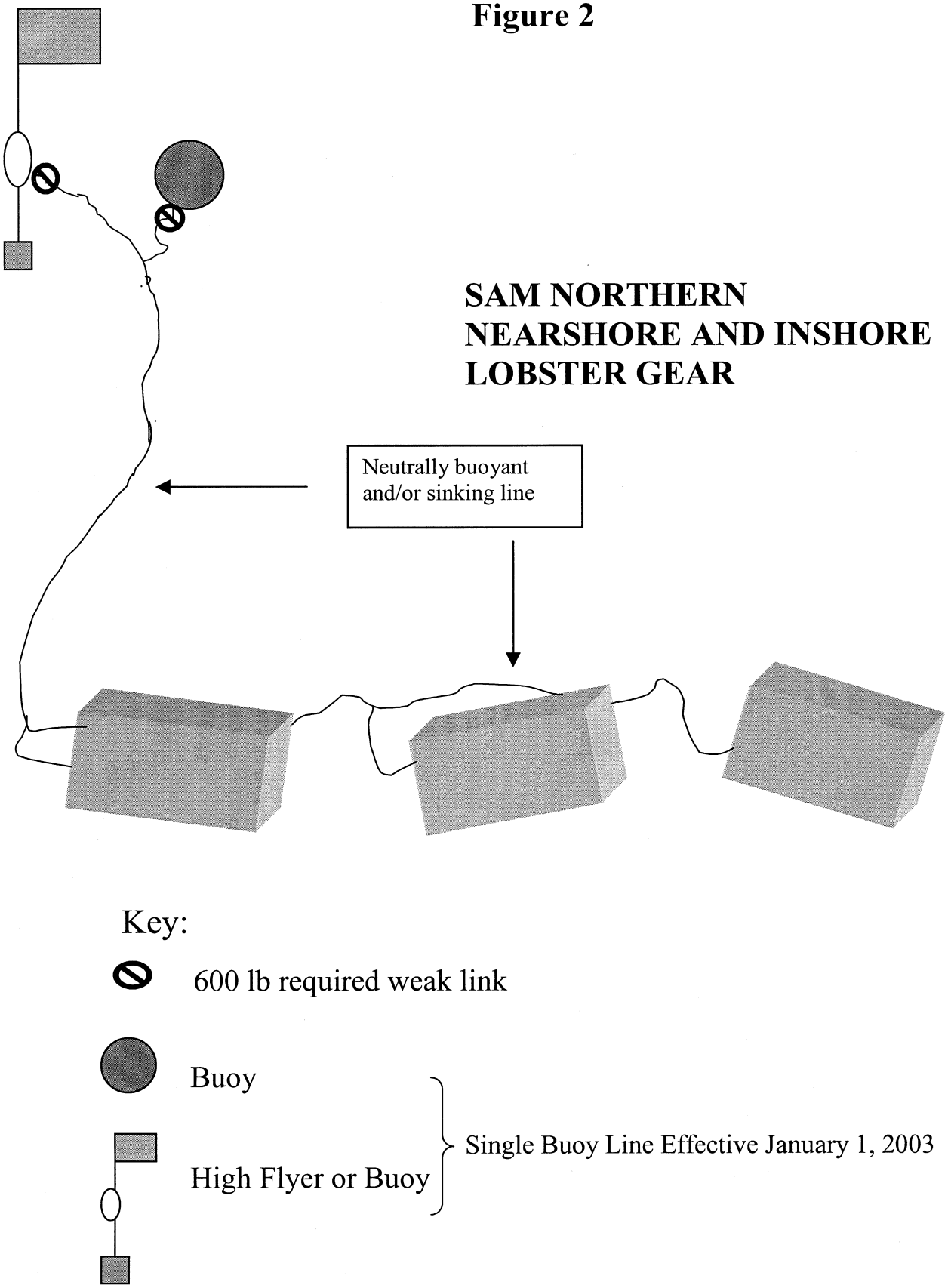
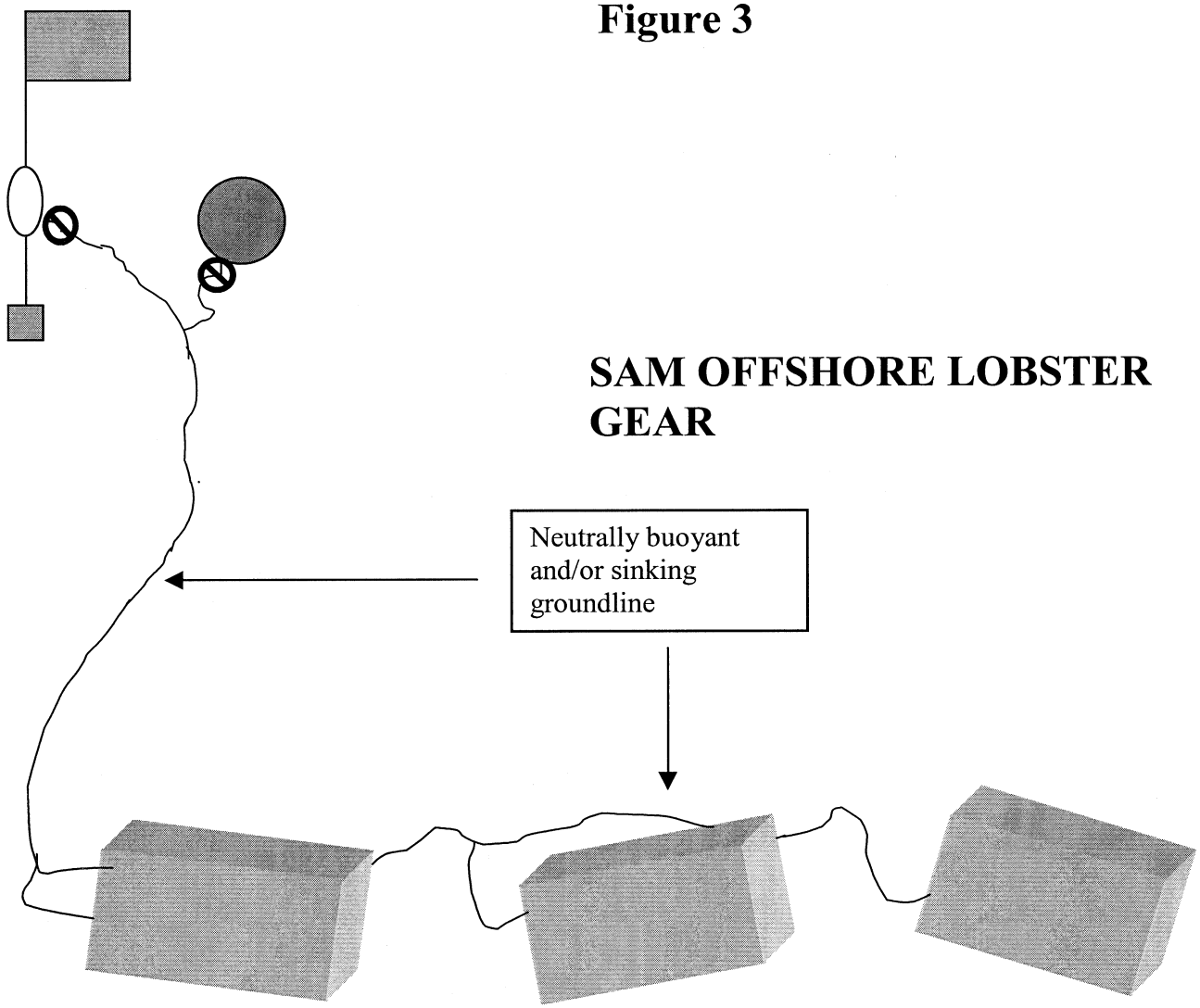

SAM NORTHERN
NEARSHORE AND INSHORE
LOBSTER GEAR
Neutrally buoyant
and/or sinking line
Key:
600 lb required weak link
Buoy
High Flyer or Buoy
Single Buoy Line Effective January 1, 2003

Figure 3



Key:

1500 lb required weak link

Buoy

High Flyer

Single Buoy Line Effective January 1, 2003

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Waters Area that overlaps with a SAM area must utilize all the following gear modifications when a SAM area is in effect:

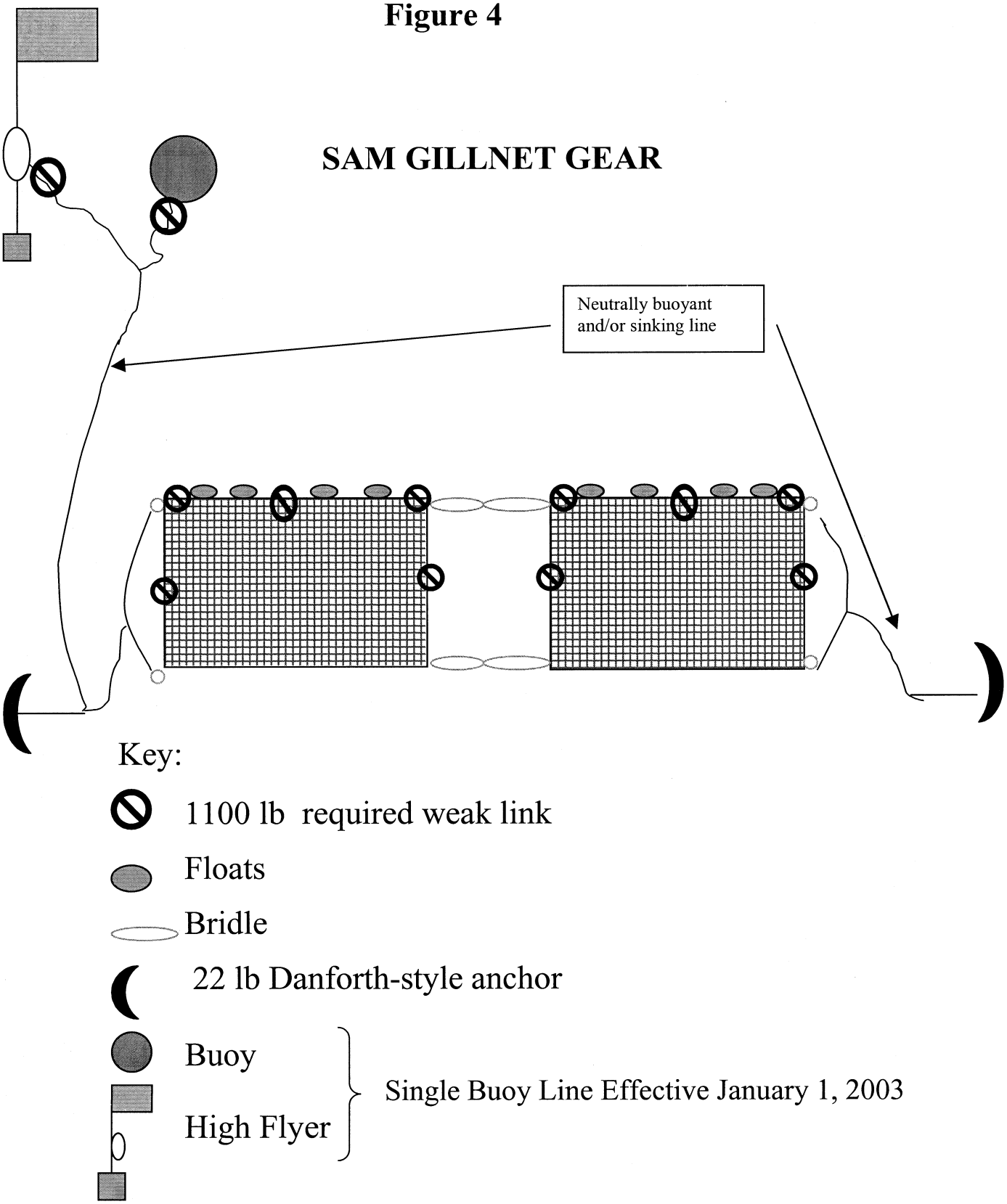
1. Groundlines (the lines between the net bridle and the anchors) and buoy lines must be made of sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

2. Each net panel must have a total of 5 weak links with a maximum breaking strength of 1,100 lbs (498.9 kg). Net panels are typically 50 fathoms in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be, one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends (See figure 4);

3. Fishermen utilizing gillnets within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the gillnet string depending on the direction of the set; and

All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (9.9 kg) Danforth style anchor at each end of the net string.

Figure 4



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Interaction With Other Restrictions

The gear restrictions required for the SAM areas do not preempt existing restrictions within Cape Cod Bay and the Great South Channel critical habitat for North Atlantic right whales. As described in the proposed rule to implement the Dynamic Area Management (DAM) program (66 FR 50160, October 2, 2001), NMFS maintains its authority to implement the DAM program, if conditions warrant such action. DAM is designed to respond to unexpected aggregations of North Atlantic right whales outside of critical habitat and other regulated waters, such as the proposed SAM areas. NMFS anticipates that the DAM program will be implemented as a final rule no later than December 31, 2001. Because SAM areas would protect areas of known North Atlantic right whale aggregations, NMFS does not anticipate that DAM areas will be established within SAM areas. However, the DAM program allows NMFS to implement DAM within SAM areas if conditions warrant such action. NMFS anticipates that the DAM program could be necessary during the times and in the areas when SAM is not in effect. NMFS will consider comments received on this interim final rule on SAM to further refine the relationship between DAM and SAM.

Comments and Responses

On October 3, 2001, NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) and a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for SAM (66 FR 50390). As discussed in the preamble to the proposed rule for this action (66 FR 59394, November 28, 2001), the Federal District Court for the District of Massachusetts ordered NMFS to have a signed proposed SAM rule by November 23, 2001. Consequently, NMFS published a proposed rule and requested public comments regarding the proposed action. Approximately 168 letters of comment were received during the public comment periods for the ANPR and proposed rule. NMFS considered the comments received on both the ANPR and proposed rule as part of its decision making process. A complete summary of the comments and NMFS' responses is provided here.

ANPR Comments

NMFS received 14 sets of comments on the SAM ANPR. The comment period for the ANPR ended November 2, 2001.

General Comments

Comment 1: Seven commenters generally supported additional regulations or management measures, including Seasonal Area Management (SAM), to protect North Atlantic right whales (right whales). Four of these commenters further stated that fixed gear fisheries should be allowed to continue operating in SAM areas with modified fixed gear and practical regulations.

Response: NMFS believes SAM is necessary as an element of the Reasonable and Prudent Alternative (RPA) required under the Endangered Species Act (ESA) to protect the right whales. NMFS acknowledges the preference for a management plan that facilitates continued fishing with gear modifications that address both the goal of reducing the total number of entanglements and the goal of avoiding serious injury or mortality to North Atlantic right whales.

Comment 2: One commenter was opposed to any regulatory changes.

Response: Due to the endangered status of the North Atlantic right whale population, there is a need to further reduce serious injury and mortality caused by the multispecies, spiny dogfish, monkfish, and lobster fisheries as currently prosecuted. NMFS believes SAM is necessary as an element of the RPA required to protect the right whales. NMFS has determined that the additional regulatory measures included in SAM, DAM and the additional gear modifications are necessary to meet the objectives of the ESA and the MMPA. The ESA requires that the NMFS ensure that activities it authorizes, including commercial fishing, do not jeopardize the continued existence of right whales. The MMPA provides that the immediate goal of a take reduction plan is to reduce incidental mortality or serious injury of marine mammals taken in the course of commercial fishing to levels less than the potential biological removal level and the long-term goal is to reduce such incidental mortality or serious injury to insignificant levels approaching a zero rate. Because the potential biological removal level for right whales is zero, these goals are essentially the same for right whales. These regulatory changes are necesssary to attain these goals.

Comment 3: One commenter stated strong opposition to removal of lobster gear from a SAM zone as a management measure.

Response: NMFS did consider closure to lobster and gillnet gear in the proposed rule and selected gear modification as the management measure of choice. In selecting the approach of gear modifications, we determined that it was consistent with the reasonable and prudent alternative (RPA) in the biological opinions for the gillnet, Northeast multispecies, and monkfish fishery management plans and the Federal regulations for the lobster fishery. The Management Action identified in the RPA is to utilize data to ''effect annual restrictions to minimize interactions between fishing gear and right whales.'' Area restrictions that could be included in the management scheme as specified in the RPA include closing areas to fishing gear or restricting the areas to only modified gear that has been proven to prevent serious injury or mortality to right whales. It is important to note that the language in the RPA did not direct NMFS to eliminate interactions between fishing gear and right whales but to minimize the interaction. Another factor in NMFS' identification of gear modifications rather than closures as the preferred option was the concern that closures would result in concentration of gear at the edges of the SAM management area. Since that gear would not include the additional gear modifications that NMFS is requiring within the SAM zone, it would pose a greater risk to right whales. Additional conservation benefit gained through the adoption of a gear modification approach is obtained due to the fact that once fishermen re-rig their gear to comply with the SAM gear modifications, it is likely that they will maintain these gear modifications even while fishing outside of the SAM restricted zone.

Comment 4: One commenter expressed a preference for measures such as SAM versus management measures contained in the Dynamic Area Management (DAM) proposed rule. The commenter's interpretation is that SAM would include the widespread use of practical whale safe gear.

Response: NMFS acknowledges the preference for SAM over DAM given that SAM is predictable and allows for fishing activity to continue with the use of modified gear. DAM and SAM are both elements of the RPA's management plan and as such both must be utilized to provide protection to right whales. NMFS anticipates that the need to utilize DAM will be significantly decreased through the implementation of SAM since the vast majority of sightings of right whale concentrations occur during the time and area identified in the SAM.

Comment 5: One Commenter stated that the input and support of the fishing industry is critical to the success of these regulations in meeting the

objectives. There was further concern expressed that the comment and response process NMFS utilized did not allow adequate time for response.

Response: NMFS values the input and support of the fishing industry in developing measures to protect right whales. NMFS is engaged in the Atlantic Large Whale Take Reduction Team (ALWTRT) process as a means to incorporate the knowledge and experience of the constituents early in the regulatory process. Some of the recommendations contained in this interim final rule are a product of the ALWTRT. Though NMFS may not always implement ALWTRT recommendations exactly as stated, NMFS does consider this information when developing regulations. The comments and response process was expedited in this interim final rule due to a court order to finalize rulemaking by December 31, 2001 associated with the critical status of the North Atlantic right whale population.

Comment 6: One commenter indicated that NMFS should immediately identify at-sea enforcement as a high priority and develop protected resource penalty schedules for the ALWTRP.

Response: NMFS agrees that at-sea enforcement is important to the success of the ALWTRP and will conduct enforcement activities as the budget allows. NMFS also relies on its partnership with the U.S. Coast Guard and state agencies to monitor compliance with the ALWTRP. NMFS has existing penalty schedules for violations of the MMPA and the ESA, and regulations pursuant to those statutes. In addition, NMFS enforcement has entered into agreements with many states to encourage and facilitate joint enforcement of regulations.

Gear Modification Comments

Comment 7: Three commenters stated that lobster gear modifications for use in the SAM area should correspond to what is currently used and proposed for use in Cape Cod Bay Critical Habitat (CCBCH). These gear modifications would include neutrally buoyant and/or sinking line for groundlines and weak links for buoy lines. Two commenters also endorsed neutrally buoyant line as a gear modification to be employed in SAM areas. One of these commenters is already using neutrally buoyant line and weak links and believes this gear is ''whale safe''.

Response: NMFS does endorse the measures currently employed in CCBCH and acknowledges that some fishermen are already using gear similar to what is proposed for use in SAM areas. NMFS has included neutrally buoyant line and/or sinking line as well as weak links as gear modifications for lobster trap gear to be used in SAM areas.

Comment 8: Two commenters endorsed the use of neutrally buoyant line for gillnet bridles in SAM areas. One of these commenters endorsed the expanded use of weak links in the net panels of gillnets.

Response: NMFS has prohibited the use of floating line for gillnet bridles in SAM areas and increased the number of weak links in the gillnet panels as a part of this rule. Neutrally buoyant or sinking line are methods of complying with this prohibition.

Comment 9: One commenter indicated that NMFS should prohibit fishing in SAM areas until such time as whale safe or low risk gear, as defined at the June 27–28, 2001, ALWTRT meeting, is developed. This commenter further indicated that the ANPR did not specify gillnet gear modifications and as such gillnets should be prohibited from any SAM.

Response: NMFS has included a description of gillnet and lobster trap gear which NMFS believes does meet the low risk definition. Lobster trap and gillnet gear that meets the definition is described in this rule. Gear research and testing will continue to identify ways to further reduce risk and to make progress toward the goal of identifying ''whale safe gear.''

Rulemaking Process Comments

Comment 10: Two commenters indicated that the full administrative process, including an Environmental Impact Statement (EIS) as required under the National Environmental Policy Act, should be carried out prior to the final determinations of SAM area boundaries. These commenters also wanted the conservation equivalencies of closures required under the Harbor Porpoise Take Reduction Plan and existing groundfish closures to be considered in determining management actions and the SAM boundaries.

Response: NMFS has completed an Environmental Assessment (EA) for the SAM interim final rule which is available to the public (see Addresses section). NMFS did consider other management actions in the Gulf of Maine when drafting these regulations. The closures/restrictions referenced by the commenter will impact gillnet activities but not lobster trap activities in the SAM areas and as such other management measures may or may not contribute to the protection of right whales.

SAM Implementation Comments

Comment 11: One commenter indicated that the SAM area should encompass the Jeffreys Ledge area which is reported to be a seasonal high use area in a recent paper titled: Right Whales (*Eubalaena glacialis*) on Jeffreys Ledge: A Habitat of Unrecognized Importance. This commenter supports designating areas that encompass approximately 90 percent of seasonal sightings as SAM areas.

Response: NMFS utilized the Dynamic Area Management (DAM) trigger and associated protective zones to define the SAM zones in terms of time and space (Clapham and Pace, 2001). The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, *et al.* 2001). NMFS utilized the criteria that the animals were sighted in sufficient density, as described in the DAM trigger document, in at least 2 survey seasons. This approach was utilized to impose predictable restrictions in areas and times where animals were sighted while also accounting for inter-annual variation. NMFS will continue aerial survey efforts in 2002 and should animals appear in sufficient density in the Jeffreys Ledge area, NMFS could implement a DAM closure to provide further protection for North Atlantic right whales. Additional survey data could also support expansion of the SAM area or delineation of additional separate SAM areas.

Comment 12: One commenter favored the implementation of the entire area for the entire time period rather than dividing the area.

Response: NMFS did not believe that data supported a SAM area for the entire area over a 5-month period. NMFS did employ a divided polygon to define the SAM areas. The SAM West and East designation was determined based on the distribution (spatially and temporally) of North Atlantic right whales.

Comment 13: Three commenters preferred ''rolling restrictions'' running from west to east as the animals moved east and the season progressed. This concept would result in no initial restrictions until right whales were sighted, followed by the lifting of restrictions as the animals depart the area. One commenter indicated that an initial restriction date with sequential openings to follow as the animals departed an area would be preferred.

Response: NMFS did consider this approach in developing this rule. The

approach was not employed due to the logistical difficulties inherent in the regular monitoring and surveillance of right whales over such a large area. The areas defined in this interim final rule support sufficient right whale density to trigger a management action, as demonstrated by data for the last three consecutive years. NMFS will continue survey efforts to refine the boundaries of SAM as required. In addition, a programmed restriction, at a predetermined time and location, which the industry is aware of in advance, is reported to be preferred by the fishing industry thereby increasing the likelihood of compliance. The gear modifications required to fish in a SAM area are extensive and NMFS believes fishermen will not be able to change gear quickly to comply with SAM. NMFS believes that fishermen who want to fish in a SAM area will need to plan months in advance to have their gear in compliance. These factors were considered in using programmed restrictions. An additional logistical difficulty in using sightings to impose or lift SAM regulations is that it requires regular monitoring and surveillance of right whales over such a large area. NMFS has determined that there is sufficient survey data to support the SAM area in this rule; additional survey data may provide insights into other candidate SAM areas.

Comment 14: One commenter indicated that additional survey effort is urgently needed to assure that seasonal management zones are adequate in time and area.

Response: NMFS agrees that additional survey data is necessary to refine management initiatives for right whales. NMFS will continue aerial survey efforts in the Gulf of Maine/New England area in 2002 in pursuit of this goal.

SAM Timing Comments

Comment 15: One commenter indicated that a SAM zone east of Cape Cod for the period April–June 30 might be a reasonable measure.

Response: NMFS utilized aerial survey data from the last 3 field seasons (1999–2001) to determine the time and areal extent of the SAM areas. The SAM West and SAM East areas represent times and areas where right whales were sighted in all 3 survey seasons. This area is east of Cape Cod and covers the time period from March 1–July 31.

Comment 16: One commenter indicated that the SAM area should be in effect beginning in January of every year to protect right whales as they arrive from the southern wintering areas and any animals that wander out of the Cape Cod Bay Critical Habitat Area.

Response: NMFS utilized the DAM trigger and associated protective zones to define the SAM zones in terms of time and space (Clapham and Pace, 2001). The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, *et al.* 2001). Should animals appear in sufficient density in the geographic area defined as SAM prior to the effective dates of the restriction, DAM would be implemented thus providing protection for the animals. NMFS will continue to conduct surveys to refine management measures such as SAM for the protection of right whales. SAM was not intended to encompass every right whale sighting, but to provide additional protection to feeding aggregations of right whales due to their increased vulnerability.

Comment 17: Two commenters suggested a specific area be defined as an Offshore Lobster SAM area. The suggestion was an area east of a point defined by the easternmost location of a whale aggregation that met the DAM trigger as shown during the June 27–28 ALWTRT and reflected on page 4 of the meeting summary prepared by Resolve, Inc. This commenter indicated that fishermen in this area would fish with neutrality buoyant or sinking line and weak links at the buoy of not more than 1500 lbs (680.4 kg) breaking strength.

Response: NMFS believes this area corresponds to an area east of 68°15′ W. long. out to the Hague Line. NMFS did include these gear modifications for the area specified as well as all Offshore Lobster Waters (as defined by the ALWTRP, 50 CFR 229.32(c)(5)(i)) within a SAM area. It is important to note that at the time of the ALWTRT meeting, NMFS presented only preliminary data that included only 2001 sightings. Many commenters discuss the SAM area and refer only to the preliminary data that was presented at the ALWTRT meeting. The analysis that was conducted following the ALWTRT meeting included sightings data from 1999, 2000 and 2001. The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, *et al.* 2001).

Comment 18: One commenter stated that the ANPR/NOI was inadequate to meet the RPA and that all three actions (DAM, SAM and gear modifications) must be in place simultaneously.

Response: NMFS recognizes the concern expressed by the commenter. NMFS followed the ANPR with a proposed rule which provided additional information. This interim final SAM rule addresses the concern that a rule implementing SAM be in place with the DAM and gear modification rules, which are also being published in final form.

Comment 19: One commenter indicated that SAM is a poor substitute for stronger regulations in critical habitat and that critical habitat should be extended to the areas determined to be appropriate for SAM.

Response: NMFS recognizes the concern expressed by the commenter. The designation of an area as critical habitat does not automatically add regulations stronger than those in place for SAM areas. NMFS will consider designating SAM areas as critical habitat as part of the comprehensive EIS planned for 2002.

Proposed Rule Comments

NMFS received a total of 168 sets of comments on the proposed rule for SAM. Approximately 150 of these were of a standard format. The comment period ended December 13, 2001.

General Comments

Comment 1: Four commenters stated that the SAM regulations as proposed do not provide the protection necessary to achieve the reasonable and prudent alternative under the ESA or constitute an effective take reduction plan under the MMPA.

Response: NMFS believes that the SAM program in combination with other measures in the RPA constitute the level of protection necessary to meet the requirements under the ESA and coupled with the other elements of the ALWTRP does constitute an effective take reduction plan under the MMPA. NMFS is implementing a strategy for addressing the threat posed by commercial fishing practices to right whales which includes the following components: Adoption of broad based gear modifications to reduce the risk of serious injury or mortality of right whales; specific, more restrictive, gear modifications in areas and at times of greater concentration of right whales (SAM); specific, more restrictive, restrictions in areas which contain physical or biological features essential to the conservation of North Atlantic right whales (and, therefore, designated as critical habitat under the ESA); an ability to impose restricts in areas and at times when concentrations of right whales are observed (DAM); support for implementation of a disentanglement

program to respond to observed entangled marine mammals; and investigation and testing of additional gear modifications to further reduce the risk of entanglement and serious injury or mortality of rights whales. Collectively, this approach is designed to avoid jeopardy to right whales from commercial fishing practices and supports the achievement of a zero mortality rate goal.

Comment 2: One commenter stated that management initiatives based on the distribution and occurrence of right whales may have little or no impact on the entanglement rate of other large whales species the ALWTRP is charged with protecting.

Response: NMFS disagrees with the commenter and does believe that the management initiatives implemented by this interim final rule will benefit other species of large whales that NMFS is charged with protecting. Obviously right whale distribution was the principal driving force in the delineation of the SAM area. However, the additional gear modifications reduce the risk posed by this gear to large whales, including but not limited to right whales. Since we expect that fishermen who modify their gear to be able to fish within the SAM zone will likely fish that same modified gear outside the time and area of the SAM restriction, additional benefits to right whales and to other large whales outside of SAM will be realized.

Comment 3: All commenters supported the concept of SAM which facilitates continued fishing coupled with gear modifications which reduce entanglements and hence serious injury or mortality. Several commenters wanted to see specific changes to the implementation of the measure or questioned the overall conservation benefits of the SAM program as described in the proposed rule.

Response: NMFS has responded to the comments received and adopted some specific recommendations shown in this interim final rule. The conservation benefit of the SAM program is that it offers increased protection to anticipated concentrations of right whales at a time when they may be more vulnerable to entanglement, i.e. when they are feeding. NMFS has used past sightings data to predict right whale concentrations in time and in space and has identified and required modified fishing gear that poses a low risk to right whales of serious injury or mortality. This SAM program is a very important component in the overall NMFS strategy for the protection and recovery of right whales.

Comment 4: One commenter supported SAM in concept but indicated that all gillnet and lobster fishing should be prohibited in the SAM area until such time as fishing gear proven to be unlikely to seriously injure or kill right whales has been developed. Three commenters supported gear modifications as opposed to total closures.

Response: NMFS considered the concept of a total closure to lobster trap and gillnet gear in the SAM areas and determined that gear modifications developed through the TRT process would result in more conservation benefits to the animals. The basis for this determination is that total closures refocus fishing efforts to other areas and may result in an edge effect where gear is concentrated around the periphery of a closure posing a greater risk of entanglement. NMFS believes that the gear modifications required in this interim final rule prevent entanglements where possible and reduce the severity of entanglements when they do occur and will alleviate the threat of serious injury or mortality. NMFS maintains that the data available and presented in the proposed rule provides sufficient evidence that fishing within the SAM area with the gear modifications required is unlikely to result in serious injury or mortality of a right whale.

Comment 5: Two commenters identified at-sea enforcement as a priority and requested a schedule of protected resources penalties be developed for the ALWTRP regulations.

Response: See comment and response 6 in the ANPR Comments and Responses.

Comment 6: Two commenters stated that ship strikes remain a major problem for right whales. One of the two wanted to know how DAM and SAM would impact vessel traffic.

Response: NMFS agrees that ship strikes remain an issue and is addressing the issue under the Northeast Implementation Team for the Recovery of the Northern Right Whale and the Humpback Whale and the Southeast U.S. Right Whale Recovery Plan Implementation Team, including their Ship Strike Committees. The shipping industry has been responsive in this forum and the agency is actively seeking solutions to the problem. DAM and SAM are management actions directed at the commercial lobster and gillnet fisheries in the SAM area and will not impact vessel traffic.

Comment 7: One commenter indicated that NMFS should seek out additional historical data other than the 1999–2001 aerial survey data in developing the SAM boundaries as the SAM area may be overstated.

Response: The aerial survey efforts of 1999–2001 were partially based on the historical presence of right whales such as the data used to support the critical habitat designation in Great South Channel. Historical data is not available in suitable quantity for the areas in question and as such could not be utilized in this analysis. There is no reason to expect that the observations of right whales in 1999, 2000 and 2001 are not representative of the future presence of right whales.

Comment 8: Four commenters stated that NMFS should develop broad based gear modifications for regional use based on the tracking data from several right whales observed during the 2001 field season which demonstrated these animals can range far and wide and may not remain in the areas defined as critical habitat. A broad based gear requirement would also be less complex to implement and more readily enforced.

Response: NMFS agrees with the concept of broad based gear modifications but the experience to date is that unique physical environments require unique gear modifications. Different breaking strength weak links for the Offshore Lobster Waters versus Nearshore Lobster Waters is an example of such unique environmental requirements. The fishing industry has objected to gear modifications in areas that are not documented to support whales as an unnecessary economic burden with no perceived benefit to the animal. NMFS recognizes the economic impact on industry and has strived, through the ALWTRT process and outreach, to minimize economic impact while maximizing conservation benefit from the management measures implemented. The gear modifications required in the SAM areas are over and above broad based gear modifications; however, NMFS believes that the additional burden to comply with these more restrictive gear modifications is justified based on the increased potential for interactions between right whales and fishing gear in the SAM area (due to the observed concentrations of right whales).

Comment 9: One commenter indicated that the rulemaking process did not facilitate a full and open process to include public hearings and industry feedback on the management plan.

Response: See comment and response 5 and in the ANPR Comments and Responses.

Comment 10: Two commenters indicated that a regulation with gear modifications of this magnitude will require time. One of the commenters indicated that NMFS should develop a

phase-in schedule to change over all lobster and gillnet gear that is fished in waters where right whales occur routinely.

Response: NMFS appreciates the comments which address the need for manufacturers and suppliers to manufacture the neutrally buoyant and/or sinking line in sufficient quantity and time for the fishermen to replace the existing gear. In fact, the limitation on supply, as well as the increased economic cost, is one of the reasons why it is not reasonable at this time to impose these gear modifications more broadly. Due to the critically endangered status of right whales, and agency mandates under the ESA and MMPA, however, we must take immediate action within SAM areas to decrease the risk to right whales. Fishermen who cannot comply with the gear requirements in the allotted timeframe still have the option of fishing outside of the SAM areas.

Comment 11: One commenter encourages NMFS to utilize passive acoustics and aerial surveys to detect right whales for DAM actions.

Response: NMFS will continue to conduct aerial and shipboard surveys to detect right whales for research and monitoring purposes. The use of passive acoustics appears promising based on a presentation at the 2001 Right Whale Consortium held in October and its use may be more prevalent in the future.

Comment 12: Three commenters indicated that NMFS should continue survey efforts to modify SAM boundaries and effective dates. One commenter indicated that survey efforts may have been inadequate to detect aggregations in areas such as Jeffreys Ledge.

Response: See response to comment 15 in the ANPR Comments and Responses.

SAM Timing Comments

Comment 13: One hundred and fifty commenters indicated that the proposed rule for SAM should be strengthened to protect right whales. The commenters recommended that restrictions in the entire SAM area should be in effect from January 1 through July 31st with areas only open to unrestricted fishing after the whales have left the area. Sixty of these commenters also stated that they are willing to pay more for products if it will ensure the protection and survival of whales.

Response: NMFS appreciates the large response to this important rulemaking process. The level of support from the general public for additional measures to protect right whales is encouraging. The rationale provided for having the SAM areas in effect beginning March 1st as opposed to January 1st, are stated in the proposed rule. NMFS is aware of the migration of right whales into the CCBCH, but believes these animals are transiting the area and not aggregating to feed as described in the DAM trigger document (Clapham and Pace 2001). As stated previously in this document, the SAM area is not intended to encompass every right whale, but rather to offer increased protection to concentrations of feeding right whales, which we believe may be at higher risk of entanglement. Should animals appear in sufficient density in the geographic area defined as SAM prior to the effective dates of the restriction, DAM could be implemented thus providing protection for the animals. NMFS will continue to conduct surveys to refine management measures such as SAM for the protection of right whales. NMFS appreciates the fact that these commenters recognize that conservation comes at some economic cost to fishermen, which may be passed on to the consumer in the form of higher prices for seafood products.

Comment 14: Four commenters indicated that the timing for the SAM West and SAM East was incorrect and should be expanded. The comments generally supported SAM West from January–May 31 and SAM East from March 1–July 31. This expansion of time was considered necessary to protect animals arriving into the Cape Code Bay Critical Habitat and animals that may wander out of the critical habitat as evidenced by two specific animals during the 2001 season.

Response: See response to comment 16 under ANPR section above.

SAM Area Division/Extent Comments

Comment 15: Two commenters stated that the division between SAM West and SAM East was incorrect based on discussions at the ALWTRT meeting on June 27–28, 2001. These commenters indicated the dividing line between these two areas should be in the vicinity of the western most side of the eastern most DAM circle shown on the figure on page 4 of the meeting summary (Resolve 2001). This division would be at approximately the 68° 15′ W. long. line.

Response: NMFS agrees that the dividing line between SAM West and SAM East is not as recommended in the ALWTRT meeting summary. NMFS welcomes such recommendations from the TRT process through the recommendations are not always implemented for a variety of reasons. At the time of the ALWTRT meeting, NMFS presented only preliminary data from 2001 sightings. The discussion at the ALWTRT meeting and any recommendations made at that time were based only on the limited preliminary data presented for general discussion purposes. Following the ALWTRT meeting, NMFS conducted an analysis of the distribution of animals from the aerial surveys conducted from 1999–2001 to determine the appropriate division in time and space of the SAM area. NMFS uses the best available scientific data in developing its regulations which would include all three years of survey data. The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, et al. 2001). NMFS based the areas on this analysis and overlaid it on the existing ALWTRP areas.

Comment 16: Three commenters stated that the SAM area is too large and the eastern end of the SAM East area should be at 67° 45′ W. long. as there are infrequent sightings of animals east of this longitude line. Two of these commenters indicated that right whales do not appear south of the 50-fathom line on the Georges Bank Northern Edge and, therefore, the polygon should be adjusted to exclude waters south of the 50-fathom line that occur east of the Great South Channel Critical Habitat.

Response: NMFS extended the SAM area out to the Hague Line based on the sightings of right whales as reported in the document titled: Identification of SAM Zones for North Atlantic right whale conservation (Merrick, et al. 2001). Figure 9 of that document shows whale aggregations clustered around the Hague Line in all three survey years, 1999–2001. The portion of the SAM East area south of the 50 fathom line is necessary to encompass the 15 nautical mile buffer, as described in Clapham and Pace 2001, which provides a margin of protection to encompass the movement of the animals during an aggregation.

Comment 17: Two commenters opposed the boundaries as presented in the proposed rule and indicated that states should be able to manage whale issues in their waters. One of the commenters indicated that the SAM area should not extend into state waters located east of Cape Cod, MA due to the fact that right whales are only seen on occasion in that area during March and April and furthermore that fishing gear is rarely seen close to shore in that area. The commenter indicated that there was not sufficient risk to the animals to justify federal regulations that would preempt state regulations.

Response: The data presented in Merrick, *et al.,* 2001 demonstrates that aggregations of right whales do occur east of Cape Cod in March and April. While these aggregations have not been observed in state waters, within 3 nautical miles of the shore, the 15-nautical mile protective buffers from the sightings do encompass state waters. NMFS has determined that Federal regulations are required in order to achieve the mandates and goals of the ESA and MMPA.

Comment 18: Two commenters indicated that the Jeffreys Ledge area should be included as part of the SAM program. One of the commenters acknowledged that NMFS has proposed DAM in order to address such aggregations, but they lack confidence in DAM and therefore stated that the agency should not rely on that measure.

Response: See comment and response 11 above in the ANPR Comments and Responses. NMFS does believe that DAM is a meaningful management measure which will result in real protection for right whales. Furthermore, NMFS maintains that sufficient data is needed to confidently identify an area of predictable right whale concentration prior to designating it as a SAM area. Sufficient data is not currently available for Jeffreys Ledge.

SAM Gear Modifications Comments

Comment 19: One hundred and fifty commenters stated that, within a SAM area buoy lines extending from the fishing gear to the surface should break at no more than 1,100 lbs (498.8 kg.) to allow right whales to break free in the event of an entanglement. Other commenters questioned the value of this additional weak link at all.

Response: NMFS appreciates the large response to this important rulemaking process. The level of support from the general public for additional measures to protect right whales is encouraging. NMFS interprets these comments to mean that all lobster and gillnet gear allowed to fish in the SAM areas should utilize a weak link with a maximum breaking strength of 1100 lbs (498.8 kg). This comment appears to be in response to the 3780-lbs (1714.3-kg) weak link proposed for the Offshore Lobster Waters and Other Northeast Waters, as defined by the ALWTRP (50 CFR 229.32 (c)(5)(1)), for lobster and gillnet fishermen operating within a SAM area. NMFS proposed this 3780-lbs (1714.3-kg) maximum breaking strength ''system'' weak link based on the analysis of an entanglement, and subsequent successful disentanglement, which occurred on July 20, 2001, in the area of Jeffreys Ledge. This proposal was to introduce an additional weak link at a new location (between the surface and subsurface gear), not to increase the breaking strength of any of the existing required weak links. NMFS did consider setting the breaking strength of the system weak link at the same level as the buoy link (which is required at the buoy itself). The buoy weak links for gillnet buoys are 1100 lbs (498.8 kg), and for lobster trap buoys are 1500 lbs (680.4 kg) for SAM in Offshore Lobster Waters and 2000 lbs (906.9 kg.) for Offshore Lobster Waters outside of SAM. The values of 1100, 1500 and 2000 lbs (498.8, 680.4, 906.9 kg) have all been exceeded in load cell testing measurements. If a weak link of any of these breaking strengths was introduced between the surface and subsurface system, it would likely break when gear was being hauled, potentially leading to a dangerous situation and also contributing to ghost gear. These load cell measurements exceeded the 2800 lbs (363.2 kg) limit of the load cell and clearly demonstrate that loads in excess of 1100, 1500 and 2000 lbs (498.8, 680.4, 906.9 kg) have occurred in these gear types. Based on this load cell data, NMFS cannot require a weak link with a breaking strength below values we have measured in the buoy line section of the gear. Based on the comments received regarding this analysis NMFS believes that this system weak link proposal requires further discussion and development in the take reduction team arena. The proposal for a system weak link was completely removed from the interim final rule and will be discussed further with the ALWTRT.

NMFS proposed the weak link between the surface and subsurface system with the intention of introducing another point where the gear could break away from a right whale. Many of the comments questioned the value of the proposed weak link. The theory behind this proposal was that if a right whale encountered the vertical line in the buoy/end line reaching to the surface it could exert sufficient drag on the line to part it. The right whale would then be able to swim freely with little or no gear attached. Several commenters stated that the effectiveness of a weak link at this location is severely compromised by the fact that there would not be resistance on either side of the weak link to exert the pressure needed to break this weak link. Given these concerns, we will table this requirement for now and discuss it further with the ALWTRT and also at the upcoming gear workshop.

Comment 20: Nine commenters indicated that dropping an endline or the use of only a single buoy line is operationally problematic throughout the SAM areas. Four of these nine commenters stated that this measure raised safety issues as well. The basis of the safety contention is that extreme tides and weather from Cape Cod to the Hague Line are a major factor in determining which end of a trawl line to haul from in order to minimize strain on the lines, assuming there are two buoys/high flyers per lobster trap trawl/gillnet string. These commenters further indicated that a single mark, buoy/highflyer, will lead to gear conflicts and an increase in lost gear resulting in increased ghost gear and a resulting potential increase in entanglement risk. Three commenters offered strong support for the reduction in endlines as a step resulting in a tangible decrease in vertical line in the water column.

Response: NMFS acknowledges the comments concerning potential safety issues. NMFS also acknowledges that a 50 percent reduction in endlines/buoy lines furthers the goal of eliminating entanglements as indicated in the comments. NMFS further recognizes the potential for gear conflicts and other fishery management regulations which require both ends to be marked.

NMFS continues to support this measure as an acceptable risk reduction measure due to the very real decrease in the volume of line in the water column. The operational difficulties will require the industry to work together to come up with coordinated procedures to reduce gear conflicts. NMFS has required the single buoy to be at the northern or western end of the trawl string depending on the direction of the set as a standard procedure. NMFS will work with the industry to define more suitable standard practices if the industry has a better approach to this issue. As noted earlier in this rule, NMFS is accepting comments regarding this interim final rule (see **DATES** Section of this interim final rule) and is seeking additional comments on this measure.

Four of the nine commenters indicated their operation is partly based on safety. As this was not a universal concern NMFS interprets this to mean that the issue may be fishery specific (offshore versus inshore) and, as noted, is seeking additional comment during the 30-day comment period for this interim final rule which may lead to unique solutions in the fisheries/areas where safety is an issue.

In 2002, NMFS will pursue resolution of the safety and gear conflict issues at a gear workshop in February and also at the next meeting of the ALWTRT. Representatives from the environmental community and the fishing industry will participate in these meetings.

Comment 21: One commenter indicated that weak link characteristics need to be more clearly and uniformly defined.

Response: The Atlantic Large While Take Reduction Plan Regulations (50 CFR 229.32) define a weak line as a breakable component of gear that will part when subject to a certain tension load. The regulations further provided a variety of known weak link configurations and offer that other material or devices may be approved in writing by the Assistant Administrator for Fisheries of NMFS. NMFS believes the regulations adequately define various methods of compliance with the weak link requirements and offer a process for innovative techniques to be developed and introduced for consideration.

Comment 22: One commenter indicated that they disagreed with NMFS' conclusion regarding the entanglement of right whale #2427 which occurred on July 20, 2001, in the area of Jeffreys Ledge. NMFS concluded in the proposed rule that the gear measures required for SAM would have likely allowed the animal to free itself of all gear.

Response: NMFS agrees with the commenter and has decided to eliminate the requirement for the 3780 lb weak link, which was based on the conclusion regarding the entanglement of right whale #2427. NMFS has provided its basis for this change under changes in the Interim Final Rule from the Proposed Rule.

Comment 23: Two commenters indicated that weak links, as they are employed in the proposed rule, do not prevent entanglement of whales in the fishing gear remaining in the water or provide sufficient risk reduction to render gear ''whale safe'' and further are not proven to meet the criteria of ''low risk'' gear as defined in the proposed rule.

Response: NMFS recognizes that weak links in and of themselves do not constitute ''whale safe'' gear. However, NMFS does believe the weak links are an important component of the low risk gear determination. The weak links are intended to facilitate the animal's escape from gear should an entanglement occur in SAM gear or any gear in which weak links are required. The ability to escape from gear quickly and relatively easily is very important to avoid serious injury or mortality. As illustrated by the load cell and testing data presented in the proposed rule. NMFS does believe that there is sufficient data to demonstrate that weak links do break when sufficient strain is exerted on them. Breaking of line at the point of the weak links reduces the likelihood that a whale will become wrapped in the gear and will either not be able to freely swim away from the gear or only be able to swim away with a significant portion of the gear remaining attached. The weak links allow an entangled whale to break away from the gear with little or no gear attached minimizing the potential for the entanglement episode to have any significant adverse effects on the individual right whale.

Comment 24: Three commenters indicated that it is technically feasible to remove all vertical lines from the water column in gillnet and lobster fisheries using a corrodible link (link which corrodes in sea water at a known rate) with a bundled or coil buoy line and a hard float.

Response: NMFS recognizes these techniques exist and are reported to be used in some Caribbean pot fisheries. The NMFS Gear Research Team presented data on field tests using corrodible links as part of the June 27–28 ALWTRT. This technique has not been employed in the fixed gear fisheries which occur along the Eastern seaboard due to the potential for gear conflicts which are expected to result in lost gear further resulting in increased ghost gear with associated entanglement risks. The observations of these commenters are correct that it is technologically feasible to elimiante endlines/buoy lines for part of the time that fixed gear is in the water. NMFS has determined it is not practical at this time for the reasons stated earlier. NMFS will seek further discussion of these techniques and resolution of the gear conflict issues in the upcoming gear workshop and the 2002 meeting of the ALWTRT.

Comment 25: One commenter indicated that the fixed gear (lobster trap and gillnet) and mobile gear fisheries (trawling) should be segregated to specific parts of the ocean to reduce gear conflicts.

Response: NMFS acknowledges that this management approach would alleviate gear conflicts between fixed and mobile gear fisheries, but has determined that conflicts within the fixed gear fishery are also a problem of considerable magnitude. Lobster and gillnet fisheries rely on the visual or radar reflector reference to an endline/buoy line when setting out and retrieving gear to prevent gear conflicts and subsequent gear loss. Without this visual guide, one lobster fishermen could set his gear directly on top of another set of traps. Segregation of mobile and fixed gear types does not appear to solve the problem of gear conflicts.

Comment 26: One commenter indicated that NMFS should develop a ghost gear recovery program, similar to the program in the Commonwealth of Massachusetts, in conjunction with the states to remove gear that may entangle whale from the water.

Response: NMFS acknowledges the comment and will discuss the viability of ghost gear programs with state managers in an effort to remove ghost gear as an entanglement risk. The concept will also be suggested as a discussion item at the next ALWTRT Meeting.

Comment 27: One commenter indicated that states should reduce the number of recreational lobster pots allowed which would result in a reduced number of vertical lines in the water column.

Response: NMFS does not have jurisdiction over state managed recreational fisheries through the ALWTRT. The concept has merit and NMFS will suggest it as a discussion item with the participating states at the next ALWTRT Meeting.

Comment 28: Two commenters endorsed the concept of SAM which allows modified gear into an area in lieu of a complete closure based on the fact that a complete closure results in an edge effect. The commenter described an edge effect as a situation where a concentration of gear is set along the periphery of the closed area.

Response: NMFS acknowledges the comment in support of the SAM program and has experienced the edge effect as a result of other commercial fishery closures. For the reasons specified in the proposed rule, in the response to comments and elsewhere in this interim final rule, NMFS believes that greater conservation benefit is realized from gear restrictions within SAM areas as compared to a complete closure.

Comment 29: One commenter indicated that NMFS should provide estimates of the amount of actual lobster trap and gillnet gear which will be displaced in the event of a total closure or if fishermen decide the gear modifications are not feasible and consequently decide to fish elsewhere.

Response: NMFS has completed an EA for the SAM interim final rule which is available for public review. NMFS has identified impacts on the fishing industry, including the number of vessels impacted, in that document.

Comment 30: Four commenters indicated that NMFS should modify the requirement for a weak link between the surface and subsurface system. These

commenters indicated the proposed weak link should be at the same breaking strength as the buoy weak link or be completely removed. The basis for removal or replacement was that the proposed maximum breaking strength of 3780 lbs (1714.3 kg) provided no benefit to entangled animals as it may actually prevent the animal from physically reaching the lower breaking strength buoy weak link(s) thus reducing the ability of an animal to free itself from an entanglement.

Response: NMFS proposed this 3780-lb (1714.3-kg) maximum breaking strength ''system'' weak link based on the analysis of an entanglement, and subsequent successful disentanglement, which occurred on July 20, 2001, in the area of Jeffreys Ledge. NMFS did consider setting the breaking strength of the system weak link at the same level as the buoy weak link, but the buoy weak links are 1100 lbs (498.8 kg) for gillnet buoys and 1500 lb (680.4 kg) (SAM in Offshore Lobster Waters maximum) and 2000 lb (906.9 kg) (Offshore Lobster Waters maximum for non-SAM use) for lobster trap buoy weak links. The values of 1100, 1500 and 2000 (498.8, 680.4, 906.6 kg.) have all been exceeded in load cell testing measurements. These load cell measurements exceeded the 2800 lb (363.2 kg.) limit of the load cell and clearly demonstrate that loads in excess of 1100, 1500 and 2000 lbs (498.8, 680.4, 906.6 kg.) have occurred in these gear types. Based on this load cell data NMFS cannot require a weak link with a breaking strength below values we have measured in the buoy line section of the gear. Based on the comments received regarding this analysis NMFS believes that this system weak link proposal requires further discussion and development in the take reduction team arena. The proposal for a system weak link was completely removed from the attached interim final rule and will be discussed further with the ALWTRT.

Comment 31: Four commenters indicated that NMFS did not propose a 600-lbs (272.4-kg) weak link in all SAM areas west of the proposed offshore SAM area agreed to by the offshore lobster fishery representative at the June 27–28, 2001, ALWTRT meeting. This proposed division was at approximately 68° 15′ W. long.

Response: NMFS recognizes that a 600-lb (272.4-kg) weak link west of the proposed offshore SAM area was not proposed. The entire SAM area includes 4 distinct areas which have year round gear requirements in place already per the ALWTRP (50 CFR 229.32). These areas, from west to east, are the Northern Inshore Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Waters (gillnet area description). The intent of the SAM program is to leave these distinct areal definitions in place and require additional gear modifications for the portions of these areas that have a SAM area overlaid on them. This approach is clarified in this rulemaking. Given that this is the approach, a subdivision of the Offshore Lobster Waters area into two areas with a 600-lb (272.4-kg) buoy weak link for one area and a 1500-lb (680.4-kg) buoy weak link for the other area during a SAM period was determined by NMFS to be too complex. Complex regulatory structure can result in confusion which may lead to unintended non-compliance.

Comment 32: Three commenters indicated that NMFS should require gillnet weak link breaking strengths at values less than 1100 lb (498.8 kg) based on NMFS testing reported in the proposed rule.

Response: NMFS did conduct research with 1100 lb (498.8 kg) and reduced strength weak links, 600 lb (272.4 kg), in gillnets as reported in the proposed rule and continues to work towards reducing weak link breaking strengths to the lowest possible value which will allow fishing and provide an increased probability that an entangled animal will be able to break free from gear should an entanglement occur. The difficulty with going to a 600-lb (272.4-kg) breaking strength weak link at this point in time is that the Other Northeast Waters (as defined by the ALWTRP, 50 CFR 229.32) includes waters out to the Hague Line. The expansive area covered by the gillnet ALWTRP includes physical environments that require that the 1100-lb (498.8-kg) breaking strength weak link be maintained. As stated previously, NMFS will continue gear research to determine the lowest possible value which will allow fishing to continue safely and provide a higher probability that an entangled animal will be able to free itself in the event of an entanglement.

Neutrally Buoyant Line Issues

Comment 33: Five commenters specifically indicated their support for the use of neutrally buoyant or sinking line for ground lines and buoy lines to reduce the risk of entanglement.

Response: NMFS acknowledges the general support for the use of neutrally buoyant line to reduce the probability of entanglement. This measure was included in the interim final rule based on the support of the fishing industry and the environmental community and NMFS' belief that this measure will provide considerable benefits in the elimination of entanglements.

Comment 34: Four commenters expressed concern over the cost of neutrally buoyant line for replacement of ground lines and buoy lines in the lobster and gillnet fisheries. Commenters estimated costs ranging from $6,000 for inshore fishermen to $65,000 for offshore fishermen to change over from their present gear to neutrally buoyant line. One of these commenters indicated that the SAM East would impact one particular company quite hard in that they operate five offshore lobster vessels in that area. Due to the territorial nature of lobster fishing, these fishermen cannot relocate their gear as a general matter. Two of these commenters also referenced the poor quality of neutrally buoyant line available and cited a usable life of 6 months for some of this neutrally buoyant line recently tested in the field.

Response: NMFS is aware that the cost of compliance with these regulations will be greater than any previous whale plan gear modifications. The status of the animals is such that a measure of this magnitude is required to continue prosecuting the fishery. The higher cost and burden on the industry in order to be able to fish within the SAM areas is justified by the increased risk posed of entanglement in this area due to the presence of concentrations of feeding right whales. NMFS acknowledges that some of the neutrally buoyant line which was field tested by NMFS in cooperation with the fishing industry was of inferior quality and would not be suitable for use. NMFS does believe that other manufacturers of neutrally buoyant line have performed well and the manufacturer that had difficulty is working to improve their product through the information gained during these experimental gear deployment with the industry.

Comment 35: Three commenters opposed the measure that endlines/buoy lines be composed of entirely neutrally buoyant line or sinking line due to operational difficulties associated with the buoy line snagging on the fishing gear or other bottom materials. These commenters requested that the requirement be modified to require that the top two-thirds of the buoy line be composed of neutrally buoyant and/or sinking line and that the bottom section of line be allowed to be floating line, not to exceed one-third the length of the buoy line.

Response: NMFS recognizes the operational difficulty of a buoy line composed entirely of neutrally buoyant and/or sinking line as well as the industry practice of splicing in floating

line at the base of the buoy line to prevent snags. NMFS also recognizes that existing winter restricted period regulations for fishing in the Cape Cod Bay Restricted Area (CCBRA) allows a section of floating line not to exceed one-third the overall length of the buoy line. However, the status of the North Atlantic right whale is such that a measure of this magnitude is required to continue prosecuting the fishery. The BOs provide that the Conservation Significance of the SAM component of the RPA is ''reducing the potential for interactions between North Atlantic right whales and fishing gear''. NMFS believes that the gear restrictions for SAM reduce the potential for interaction to occur and also reduce the potential for interaction between North Atlantic right wales and fishing gear that would otherwise result in serious injury and/or mortality.

Changes in the Interim Final Rule From the Proposed Rule

NMFS proposed to require the installation of weak links with a maximum breaking strength of 3,780 lb in the offshore lobster trap and anchored gillnet gear between the surface system (all surface buoys, the high flyer, and associated lines) and the buoy line leading down to the trawl and gillnet, respectively. This proposed measure was the result of analysis conducted by NMFS from a successful disentanglement of a 7-year-old male North Atlantic right whale, catalog #2427, on July 20, 2001. NMFS' analysis concluded that the gear recovered during the disentanglement and the description of the owner's typical gear configuration indicated that the surface system was separated from the buoy line going to the trawl by a weak link with a breaking strength of 3,780 lb. It was felt that the presence and location of this weak link in the gear may have prevented the animal from becoming further entangled in the buoy line.

However, since the publication of this proposed measure, NMFS technical experts have re-evaluated this proposed measure. Although in theory the proposed measure would add an extra level of protection to potentially prevent the risk of serious injury to North Atlantic right whales should they become entangled in the buoy line, this measure is not practical from a mechanical standpoint. Operationally, having any weak link below the float system will essentially be ineffective. In order to break, a link would need to have adequate resistance from the relevant end of the gear. Given that any whale that is caught below the link would be pulling against nothing more than the surface system and the buoy, one cannot reasonably conclude that the resistance involved would be sufficient to trigger the break of the weak link. Therefore, NMFS has reconsidered this measure and is not requiring the use of weak links between the surface system and the buoy line for the offshore lobster trap and anchored gillnet gear within the SAM areas.

A technical change was also made to correct and clarify the intent of the regulations. ALWTRP gear requirements are described for designated areas which include: Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Waters (gillnet area). These areas require specific gear modifications to meet the ALWTRP regulations. As proposed, the SAM gear modifications are required in addition to or in place of existing requirements based on the fishery specific area defined by the ALWTRP.

Although the proposed rule discussed the relationship between the proposed SAM restrictions and the current gear requirements within the ALWTRP, the description of the lobster trap gear and anchored gillnet gear requirements in the proposed rule did not explicitly articulate the specific gear requirements for the portions of the Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, and Other Northeast Waters (gillnet area) that are overlapped by the SAM areas. this interim final rule will correct and clarify the regulations to explicitly define the gear requirements for each of these areas that are overlapped by SAM Areas.

Classification

This interim final rule has been determined to be significant for the purposes of Executive Order 12866, because the proposal is controversial.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this rule. A copy of this analysis is available from NMFS (*see* **ADDRESSES**). Five alternatives were evaluated, including a status quo or no action alternative, the preferred alternative (PA), and three other alternatives. A summary of the analysis follows:

1. NMFS considered but rejected a ''no-action'' alternative that would result in no changes to the current measures under the Atlantic Large Whale Take Reduction Plan. The ''no-action'' alternative would result in no additional economic burden on the fishing industry, at least in the short-term. However, if the status quo is maintained now, more restrictive and economically burdensome measures than those in this interim final rule may be necessary in the future to protect endangered right whales from the fisheries. The no action alternative was rejected because it would not enable NMFS to meet the RPA measures of the BO required under the ESA.

2. NMFS considered but rejected an alternative that would implement one SAM zone comprised of the two separate SAM zones with gear restrictions throughout the designated time frame. From the data collected during the 3 years of aerial surveys, it was determined that the core SAM area, in combination with the existing Cape Cod Bay and Great South Channel Restricted Areas, encompassed 134 (90 percent) of the 149 events from 1999–2001. The analysis of this data also led to the finding that, within the core SAM area, right whale events occur more frequently in the western part of the zone (near Cape Cod Bay and the Great South Channel) in March–April than in June–July. For example, 13 of the 15 events outside of the Cape Cod Bay and Great South Channel Restricted Areas occurred in the area NMFS has defined as SAM West, which lies west of 69° 24″ W. long.

Conversely, during May–July, all of the events within the area defined as SAM East, which were not in the Great South Channel Restricted Area, were east of 69° 24″ W. long. This analysis strongly suggests that right whales migrate from west to east within the SAM core area between the months of March and July. Therefore, NMFS does not believe that the scientific data supported a single SAM zone covering the entire area for the duration of the 5 month period.

3. NMFS considered but rejected an alternative that would implement a single SAM zone based on gear restrictions initially required throughout the zone, but lifted sequentially over time as concentrations of right whales move across the zone from west to east. This alternative is similar to the one described in section 5.3 of the EA with the only differences being the sequential lifting of gear restrictions as right whales migrate across the SAM zone from west to east instead of maintaining gear restrictions for the 5 month duration of the SAM zone. The analysis of the aerial surveys found that, during the 3 years data was collected, right whales consistently migrated across the core SAM area from west to east between the months of March and July. Therefore, this alternative acknowledges and responds to the most recent scientific study of right whale distribution and abundance in the Gulf of Maine.

However, although sequential openings would make this alternative somewhat less burdensome than sustaining restrictions over the entire area for a 5 month period, implementation of this alternative presents significant logistical difficulties inherent in the regular monitoring and surveillance of right whales over such a large area.

4. NMFS considered but rejected an alternative that would implement a single SAM zone based on the same criteria as the preferred alternative (PA) with no initial gear restrictions required until concentrations of right whales begin to appear in the area and then lifted as the animals leave the area. This alternative would be extremely difficult if not impossible to implement, as NMFS would need to continuously monitor for the presence of right whales and then inform industry in a timely manner.

5. The PA would protect predictable annual congregations of North Atlantic right whales in the waters off Cape Cod and out to the exclusive Economic Zone line. NMFS has defined two areas (SAM East and SAM West), where gear restrictions for lobster trap and anchored gillnet gear are required. These requirements are more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Northern Inshore Lobster Waters and Other Northeast Waters (gillnet area description).

The time/area restrictions are based on the annual predictable presence of North Atlantic right whales as observed in aerial surveys from 1999–2001. SAM West will occur on an annual basis for the period March 1–April 30. SAM East will occur on an annual basis for the period May 1–July 31. NMFS accepted this alternative as these gear modifications are necessary to avoid jeopardizing the continued existence of North Atlantic right whales and enable NMFS to meet a portion of the RPA in the BOs.

The small entities affected by this interim final rule are gillnet and lobster trap fishermen. The geographic range of the gear modifications will include the Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, and Other Northeast Waters (gillnet area). Under the preferred alternative, 49 vessels are affected, of which 18 are lobster vessels and 31 are sink gillnet vessels. This action contains no new reporting or record-keeping requirements. However, it does require modifications to lobster and sink gillnet gear. There are no relevant Federal rules that duplicate, overlap, or conflict with this interim final rule except the requirements related to no more than one buoy line per trawl being allowed in the SAM area. These requirements supersede the requirements at 50 CFR 697.21, which require one radio reflector at each end of a trawl with more than three traps.

NMFS received only one public comment relating to the economic impacts of this interim final rule. This comment was considered by NMFS before it approved this action, and is characterized and responded to by NMFS in the ''Comments and Responses'' section of the preamble to this interim final rule. No changes to the rule were made as a result of the comment received.

NMFS has taken steps to minimize the significant economic impact on small entities through this PA. The PA meets a portion of the EPA designed to remove jeopardy, consistent with the requirements of the ESA, while allowing fishing to continue and, therefore, reduces economic impacts compared to fishery closures.

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that this interim final rule is consistent with the enforceable policies of the approved coastal management program for that state.

This interim final rule implements a portion of the RPA, which resulted from section 7 consultations on three FMPs for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. This interim final rule implements a component of the RPA contained in the BOs issued by NMFS on July 14, 2001. Therefore, no further section 7 consultation is required.

This interim final rule contains policies with federalism implications that were sufficient to warrant preparation of a federalism assessment under Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate official(s) of affected state, local and/or tribal government in October 2001. No comments on the federalism implications of the proposed action were received in response to the October 2001 letter.

References

Merrick, R.L.; Clapham, P.J.; Cole, T.V.N.; Gerrior, P.; Pace, R.M., III. 2001. Identification of seasonal area management zones for North Atlantic right whale conservation. Northeast Fisheries Science Center Reference Document 01–14. October 2001.

Clapham, P.J.; Pace, R.M., III. 2001. Defining triggers for temporary area closures to protect right whales from entanglements: issues and options. Northeast Fisheries Science Center Reference Document 01–06. April 2001.

Resolve. 2001. Meeting Summary Atlantic Large Whale Take Reduction Team Meeting, June 27–28, Portland, Maine. October 22, 2001.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: December 31, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.32, paragraph (g)(4) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g) * * *

(4) Seasonal Area Management (SAM) Program. All vessels deploying anchored gillnet or lobster trap gear may fish in the SAM Areas as described in paragraphs (g)(4)(i)(A) and (g)(4)(ii)(A) of this section, provided the vessel complies with the gear requirements during the times specified in paragraphs (g)(4)(i)(B) and (g)(4)(ii)(B) of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(i) *SAM West.* (A) *Area.* SAM West consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM WEST

Point	N. Lat.	W. Long.
SAM1	42°04.8′	70°10′
SAM2	42°12′	70°15′

SAM WEST—Continued

Point	N. Lat.	W. Long.
SAM3	42°30′	70°15′
SAM4	42°30′	69°24′
SAM5	41°48.9′	69°24′
SAM6	41°45′	69°33′
SAM7	41°45′	69°55.8′

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator for Fisheries, NMFS, in accordance with paragraph (g)(2) of this section, from March 1 through April 30, no person may fish with anchored gillnet or lobster gear unless that person's gear complies with the following gear characteristics:

(*1*) *Anchored gillnet gear.* (*i*) Ground line—All ground lines area made entirely of sinking or neutrally buoyant line.

(*ii*) Buoy weak links—All buoy lines are attached to the buoy with a weak link having a maximum breaking strength of up to 1,100 lb (498.9 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*iii*) Net panel weak link—Each net panel must have a total of five weak links. The breaking strength of these weak links must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Three of the five weak links must be located on the floatline. One floatline weak link must be placed at the center of the net panel, and two weak links must be placed as close as possible to each of the bridle ends of the net panel. The remaining two of the five weak links must be placed in the center of each of the up and down lines at either end of each panel.

(*iv*) Buoy line—No more than one buoy line per net string may be used, and it must be deployed at the northern or western end of the gillnet string depending on the direction of the set.

(*v*) Gillnet anchor—All anchored gillnets, regardless of the number of net panels, must be securely anchored with a holding power of at least a 22-lb (9.9-kg) Danforth-style anchor at each end of the net string.

(*2*) *Lobster Trap gear.* (*i*) Sinking ground line—All ground lines must be made entirely of sinking or neutrally buoyant line.

(*ii*) Offshore Lobster buoy weak links—All buoy lines must be attached to the buoy with a weak link having a maximum breaking strength of up to 1,500 lb (680.4 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*iii*) Buoy line—No more than one buoy line per trawl is allowed. The buoy line must be attached to the northern or western end of the trawl string depending on the direction of the set. These requirements supersede the requirements found at § 697.21, which require one radar reflector at each end of a trawl with more than three traps.

(ii) *SAM East.* (A) *Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM EAST

Point	N. Lat.	W. Long.
SAM5	41°48.9′	69°24′
SAM4	42°30′	69°24′
SAM8	42°30′	67°26′
SAM9	42°30′	66°50′
SAM10	41°45′	66°50′
SAM11	41°45′	68°17′
SAM12	42°10′	68°31′

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator for Fisheries, NMFS, in accordance with paragraph (g)(2) of this section, from May 1 through July 31, no person may fish with anchored gillnet or lobster gear unless that person's gear complies with the gear characteristics found at paragraph (g)(4)(i)(B) of this section.

[FR Doc. 02–274 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 121701E]

Fisheries of the Exclusive Economic Zone off Alaska; Bycatch Rate Standards for the First Half of 2002

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

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 2002. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program (VIP). This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to avoid excessive prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 20, 2002, through 2400 hours, A.l.t., June 30, 2002. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., February 7, 2002.

ADDRESSES: Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, fax 907–586–7465, e-mail mary.furuness@noaa.gov.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and ''other trawl'' fisheries, and the BSAI yellowfin sole and ''bottom pollock'' fisheries. Vessel operators also must not exceed red king crab bycatch rate standards specified for the BSAI

yellowfin sole and ''other trawl'' fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21 (f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the Federal Register. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Because the Alaskan groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23 (c)), the Administrator, Alaska Region, NMFS (Regional Administrator), is promulgating bycatch rate standards for the first half of 2002 effective from January 20, 2002, through June 30, 2002.

As required by § 679.21 (f)(4), bycatch rate standards are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under §§ 679.21(d) and (e);

(D) Anticipated groundfish harvests for that fishery;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

At the October 2001 Council meeting, NMFS staff presented an analysis of recent bycatch rates of Pacific halibut and red king crab in the groundfish trawl fisheries to provide the Council with a basis for setting bycatch rate standards for the first half of 2002. The analysis showed that since 1999, actual bycatch rates experienced by vessels participating in the groundfish trawl fisheries were lower than the established bycatch rate standards with the exception of vessels participating in the BSAI yellowfin sole and the GOA ''other trawl'' fisheries. Based on this information, NMFS suggested to the Council that an upward adjustment of the bycatch rate standard in the yellowfin sole fishery may be warranted and that downward adjustments of the halibut bycatch rate standards in the BSAI and GOA midwater pollock fisheries and the red king crab bycatch rate standards in the BSAI yellowfin sole and ''other trawl'' fisheries may be warranted. Specifically, for the BSAI yellowfin sole fishery, the analysis indicated that an increase of the halibut bycatch rate standard to 15 kg/mt of groundfish would encompass 73 percent of the vessels participating in the yellowfin sole fishery. For the BSAI and GOA midwater fisheries, the analysis indicated that a decrease of the halibut bycatch rate standard to 0.5 kg/mt of groundfish would encompass 99 percent of the vessels participating in the BSAI midwater pollock fishery and 90 percent of the vessels in the GOA midwater pollock fishery. Finally, for the BSAI yellowfin sole fishery and ''other trawl'' fisheries, the analysis indicated that a decrease of the BSAI Zone 1 red king crab bycatch rate standard to 1.0 kg/mt of groundfish would encompass 82 percent of the vessels participating in the BSAI yellowfin sole fishery and 92 percent of the vessels participating in the BSAI ''other trawl'' fishery.

The Advisory Panel recommendation and public testimony did not agree. The public testified that upward adjustments of the rates appeared to reward violators of the rates while downward adjustments appeared to penalize fishermen for their effort in avoiding prohibited species. The public also testified that the Council should pursue the development of alternative incentive programs such as an individual vessel bycatch allowance or similar program in which the costs or benefits of excess or reduced bycatch would be limited to the vessel conducting the fishing.

After considering public testimony, the Council recommended that the same rates used in the first half of 2001 be used for the first half of 2002. Further, the Council requested that NMFS consider the effects of observer sampling procedures and changing fishing practices due to the American Fisheries Act, improved retention/improved utilization, and Steller sea lion protection measures on prohibited species bycatch rates. Until such an assessment is conducted, the Council recommended that the existing bycatch rate standards adequately meet the intent of the VIP. The Council's recommended bycatch rate standards are listed in Table 1.

TABLE 1—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 2002 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

Fishery and quarter	2002 by-catch rate standard
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch	
BSAI Midwater pollock	.....

TABLE 1—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 2002 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.—Continued

Fishery and quarter	2002 by-catch rate standard
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch	
Qt 1	1.0
Qt 2	1.0
BSAI Bottom pollock	.....
Qt 1	5.0
Qt 2	5.0
BSAI Yellowfin sole	.....
Qt 1	5.0
Qt 2	5.0
BSAI Other trawl	.....
Qt 1	30.0
Qt 2	30.0
GOA Midwater pollock	.....
Qt 1	1.0
Qt 2	1.0
GOA Other trawl	.....
Qt 1	40.0
Qt 2	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole	
Qt 1	2.5
Qt 2	2.5
BSAI Other trawl	.....
Qt 1	2.5
Qt 2	2.5

Bycatch Rate Standards for Pacific Halibut

In 2001, BSAI pollock combined A/B season was January 20 through June 10. In 2001, the inshore and offshore component fisheries for pollock ended 6 to 10 weeks prior to June 10, depending on the processing component and area. Directed fishing for pollock by the inshore and offshore component fisheries reopened June 10, the start of the 2001 pollock combined C/D season. Also, the community development quota pollock fishery ended 7 weeks before the end of the combined A/B season and did not resume until mid-June. In 2002, the proposed A season allowance for Bering Sea pollock (60 percent of the directed fishing allowance) would be available January 20 through June 10, with the remainder available June 10 through November 1. As in past years, the directed fishing allowances specified for the first 2002 pollock season likely will be reached before June 10.

As in past years, the halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock

fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The average halibut bycatch rates for the BSAI 2001 first and second calendar quarter fisheries are equal to 0.13 and 0.15 kg halibut/mt groundfish, respectively, and the average halibut bycatch rates for the GOA 2001 first and second calendar quarter fisheries are equal to 0.36 and 0.17 kg halibut/mt groundfish, respectively. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations.

Since 1999, the use of nonpelagic trawl gear has been prohibited in the BSAI non-CDQ directed pollock fishery (§ 679.24 (b)(4)). Even with this prohibition, a vessel using pelagic trawl gear may be assigned to the BSAI bottom pollock fishery defined at § 679.21 (f)(2) because assignment to a fishery for purposes of the VIP is based on retained catch composition during a weekly period instead of gear type. If the majority of the catch is pollock, but pollock comprises less than 95 percent of the catch, then a haul is assigned to the BSAI bottom pollock fishery. The prohibition on the use of nonpelagic trawl gear has reduced the number of hauls assigned to the BSAI bottom pollock fishery. Since the prohibition became effective, the halibut bycatch rates for this fishery are low compared to the halibut bycatch rate standards established for this fishery with an average halibut bycatch rate for the 2001 first and second calendar quarter fisheries equal to 0.89 and 1.89 kg halibut/mt groundfish, respectively.

Other factors that could affect the spatial and temporal distribution of the directed pollock fishery include the allocations of pollock among the inshore and offshore fleets under the American Fisheries Act and the implementation of conservation measures that are necessary under the Endangered Species Act to mitigate pollock fishery impacts on Steller sea lions. At this time, the effects of these changes on halibut bycatch rates in the pollock fishery are unknown.

Data available on halibut bycatch rates in the BSAI yellowfin sole fishery during the first and second quarters of 2001 showed an average bycatch rate of 19.74 and 18.54 kg halibut/mt of groundfish, respectively. These rates are significantly higher than in past years. One explanation of relatively higher rates might include changes in the physical or biological conditions driving the rate of bycatch in the yellowfin sole fishery. A second explanation might be that vessels are using larger mesh gear to reduce discards and comply with increased retention/utilization standards for pollock and Pacific cod. A third explanation might be that with the decline of trawl Pacific cod catch, halibut mortality historically assigned to the trawl Pacific cod target has not been used by that fishery and instead has been made available to the flatfish fisheries. The availability of ''extra'' halibut mortality could allow vessels catching flatfish to be less concerned about avoiding halibut bycatch. Thus, although the amount of groundfish catch may be decreased in a haul, the amount of halibut retained in the net may remain the same and result in an increase in the bycatch rate of halibut. The Council's recommendation to use the same bycatch rates in 2002 as was used in 2001 should work as a deterrent to these higher rates given the explanation that increased bycatch rates caused by the perception of ''extra'' halibut and is consistent with the intent of the VIP in that vessels should avoid halibut bycatch regardless of whether there is more halibut bycatch available to a fishery.

For the ''other trawl'' fisheries, the Council supported a 30 kg halibut/mt of groundfish bycatch rate standard for the BSAI and a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA. Observer data collected from the 2001 BSAI ''other trawl'' fishery show first and second quarter halibut bycatch rates of 11.02 and 23.79 kg halibut/mt of groundfish, respectively. Observer data collected from the 2001 GOA ''other trawl'' fishery show first and second quarter halibut bycatch rates of 10.89 and 56.84 kg halibut/mt of groundfish, respectively.

Since 1997, with the exception of the GOA second quarter ''other trawl'' fishery, the average bycatch rates experienced by vessels participating in the GOA and BSAI ''other trawl'' fisheries have been lower than the specified bycatch rate standards for these fisheries. The Council and NMFS have determined that the recommended halibut bycatch rate standards for the ''other trawl'' fisheries, including the second quarter GOA fishery, would continue bycatch rate standards that represent an acceptable level of halibut bycatch in these fisheries and will encourage vessel operators to avoid high halibut bycatch rates while participating in these fisheries. Furthermore, these standards will provide some leniency to those vessel operators who choose to use large mesh trawl gear or other device as a means to reduce groundfish discard amounts or are forced to fish in different seasons or fishing grounds under measures implemented to mitigate fishing impacts on Steller sea lions and their critical habitat.

Bycatch Rate Standards for Red King Crab

For the BSAI yellowfin sole and ''other trawl'' fisheries in Zone 1 of the Bering Sea subarea, the Council's recommended red king crab bycatch rate standard is 2.5 crab/mt of groundfish. This standard is unchanged since 1992. The red king crab bycatch rates experienced by the BSAI yellowfin sole fishery in Zone 1 during the first and second quarters of 2001 averaged 0.57 and 0.08 crab/mt of groundfish, respectively. Although these rates are lower than the standards, the first quarter's rate is higher than bycatch rates experienced in previous years. The average bycatch rates of red king crab experienced in the BSAI ''other trawl'' fishery during the first and second quarters of 2001 were 0.09 and 0.00 crab/mt groundfish, respectively. The low 2001 red king crab bycatch rates primarily were due to trawl closures in Zone 1 that were implemented to reduce red king crab bycatch.

For the period January through October 2001, the total bycatch of red king crab by trawl vessels fishing in Zone 1 is estimated at 32,856 crab, considerably less than the 97,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 2002 red king crab bycatch in Zone 1 will be similar to 2001 because the crab bycatch reduction measures will remain the same.

In spite of anticipated 2001 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended the red king crab bycatch rate standards be maintained at these levels. These levels continue to provide protection against unacceptably high rates of bycatch in these fisheries while providing some leniency to those vessel operators who choose to use large mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that the recommended bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21 (f). Therefore, the Regional Administrator establishes the halibut and red king crab bycatch rate standards for the first half of 2002 as set forth in Table 1. These bycatch rate standards may be revised and these revisions published in the Federal Register when deemed appropriate by the Regional Administrator pending his

consideration of the information set forth at § 679.21 (f)(4).

As required in regulations at §§ 679.2 and 679.21 (f)(5), the 2002 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through February 2;

Month 2: February 3 through March 2;

Month 3: March 3 through March 30;

Month 4: March 31 through April 27;

Month 5: April 28 through June 1;

Month 6: June 2 through June 29;

Month 7: June 30 through August 3;

Month 8: August 4 through August 31;

Month 9: September 1 through September 28;

Month 10: September 29 through November 2;

Month 11: November 3 through November 30; and

Month 12: December 1 through December 31.

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under Executive Order 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: January 3, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–552 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 091301C]

RIN 00648–AL98

Fisheries of the Exclusive Economic Zone Off Alaska; Revision of Overfishing Definitions for the Salmon Fishery

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

ACTION: Approval of fishery management plan amendment.

SUMMARY: NMFS announces the approval of Amendment 6 to the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone Off the Coast of Alaska (salmon FMP). This amendment is necessary to implement overfishing definitions for the salmon fishery authorized under the salmon FMP. This action is intended to ensure that conservation and management measures continue to be based on the best scientific information available and to advance the Council's ability to achieve, on a continuing basis, the optimum yield from fisheries under its jurisdiction.

DATES: The amendment was approved on January 2, 2002.

ADDRESSES: Copies of Amendment 6 to the salmon FMP, and the Environmental Assessment (EA) prepared for the amendment are available from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS published a notice of availability for Amendment 6, which described the proposed amendment and invited comments from the public, in the Federal Register on October 5, 2001 (66 FR 51001). Comments were invited until December 4, 2001. NMFS received no public comments.

The Council and NMFS prepared an EA for Amendment 6 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and the socio-economic impacts of the alternatives. A copy of the EA can be obtained from NMFS (see **ADDRESSES**).

Amendment 6 to the salmon FMP implements overfishing definitions in compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act defines the terms ''overfishing'' and ''overfished'' to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield (MSY) on a continuing basis, and requires that all fishery management plans:

> specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery (Section 303 (a)(10)).

Section 301 (a) of the Magnuson-Stevens Act establishes national standards for fishery conservation and management, and requires that all fishery management plans contain management measures consistent with those standards. National standard 1 requires that conservation and management measures shall ''prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.'' Pursuant to section 301(b) of the Magnuson-Stevens Act, NMFS issued national standard guidelines to provide comprehensive guidance for the development of fishery management plans and amendments that comply with the national standards (May 1, 1998, 63 FR 24212). These guidelines are codified in Title 50, Code of Federal Regulations, part 600 (50 CFR 600.305–600.355).

The salmon FMP allows a commercial troll fishery in the exclusive economic zone (EEZ) off southeast Alaska (SEAK EEZ), and closes the remaining EEZ in central and western Alaska to commercial salmon fishing. All other salmon fishing occurs either in waters of the State of Alaska (State) or in one of three historical State-managed net fishing areas that extend into the EEZ. The fisheries in these three historical fishing areas are not covered by the salmon FMP. The salmon FMP defers management of the commercial troll fishery to the State and the U.S.-Canada Pacific Salmon Commission (PSC).

Through the salmon FMP, the Council intends to conserve and manage the salmon resources in the North Pacific Ocean and to allow the fisheries in State and EEZ waters to be managed as one fishery. Regulations for the Alaska salmon fishery are made by the Alaska Board of Fisheries (Board) consistent with State and Federal laws and with negotiated agreements of the PSC. The State manages the fishery inseason and issues emergency regulations to achieve conservation objectives and to implement allocation policies established by the Board.

The SEAK troll fishery is a mixed-stock, mixed-species fishery that primarily targets chinook salmon (*Oncorhynchus tshawytscha*) and coho salmon (*O. kisutch*), with pink salmon (*O. gorbuscha*), chum salmon (*O. keta*), and sockeye salmon (*O. nerka*) taken incidentally. The catch in this fishery represents approximately 6 percent of the total chinook and coho salmon landed by all salmon fisheries in Southeast Alaska (1991-1996 average). This fishery harvests less than 1 percent of the total harvest of pink, chum, and sockeye salmon occurring in Southeast waters. The chinook salmon originate in the waters of British Columbia and the coho salmon originate mainly in Alaska waters. The chinook salmon stocks that originate in Canada or pass through U.S-

Canada boundaries are managed by the PSC under the Pacific Salmon Treaty.

In June 1998, the Council adopted Amendment 6 to the salmon FMP. In October 1998, the NMFS Alaska Fisheries Science Center (AFSC) stated it could not certify that the overfishing definitions comply with the national standard guidelines (50 CFR 600.310) without a considerably more explicit analysis. NMFS worked with scientists from the State to analyze how the State's policies comport with the national standard guidelines.

In consultation with the Council and the State, NMFS revised the preferred alternative to include the status determination criteria recommended by the national standard guidelines. Using the State's sustainable salmon fisheries policy and salmon escapement goal policy and the June 1999 Amendment to the Pacific Salmon Treaty, NMFS developed an MSY control rule, fishing mortality rate, maximum fishing mortality threshold, and minimum stock size threshold for the chinook salmon and coho salmon stocks caught in the troll fishery in the SEAK EEZ. The chinook and coho stocks serve as indicator stocks for the stock complex of salmon caught in this fishery. These status determination criteria specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished or when overfishing is occurring. This analysis is presented in the EA for Amendment 6 (see **ADDRESSES**).

In June 2001, the Council and its Scientific and Statistical Committee reviewed the revised preferred alternative. The Council concurred that the revised preferred alternative is consistent with the alternative recommended by the Council in June 1998 in that it is consistent with State policies.

Amendment 6 amends the salmon FMP by providing overfishing definitions, consistent with the national standard guidelines and the salmon FMP's policy of Federal/State coordination. The overfishing definitions are based on State salmon management and the Pacific Salmon Treaty. The State's policy for management of mixed-stock salmon fisheries is consistent with sustained yield of wild fish stocks and is sufficiently conservative to satisfy the Magnuson-Stevens Act.

The Director of the AFSC, NMFS, has certified without reservations that the proposed definitions of overfishing: (1) have sufficient scientific merit, (2) contain the criteria for stock determination specified in 50 CFR 600.305 (d)(2), (3) provide a basis for objective measurement of the status of the stock against the criteria, and (4) are operationally feasible.

NMFS determined that Amendment 6 to the salmon FMP is consistent with the Magnuson-Stevens Act and other applicable laws and, therefore, approved Amendment 6 on January 2, 2002. Additional information is contained in the October 5, 2001, notice of availability (66 FR 51001). No regulatory changes are necessary to implement this FMP amendment.

Dated: January 3, 2002.

Jonathan M. Kurland,

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

[FR Doc. 02–554 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 6
Wednesday, January 9, 2002

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–165–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, and –83 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes. This proposal would require an inspection to verify proper installation of the support clamp of the alternating current (AC) power relay feeder cables at the aft inboard side of the electrical power center, and corrective actions, if necessary. This action is necessary to prevent the AC power relay feeder cables from chafing against the aft inboard side of the electrical power center due to improper installation, which could result in electrical arcing and damage to adjacent structures, and consequent smoke and/or fire in the electrical power center area. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–165–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; 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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–165–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that one operator discovered several instances of the alternating current (AC) power relay feeder cables chafing against the aft inboard side of the electrical power center on a McDonnell Douglas Model DC–9–82 series airplane. The cause of such chafing has been attributed to the support clamp of the AC power relay feeder cables not being properly installed during production of the airplane. These conditions, if not corrected, could result in electrical arcing and damage to adjacent structures, which could result in smoke and/or fire in the electrical power center area.

The AC power relay feeder cables on certain Model DC–9–81 and -83 series airplanes, and Model MD–88 airplanes are identical to those on the affected Model DC–9–82 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–24A145, Revision 01, dated June 22, 2000, which describes

procedures for a general visual inspection to verify proper installation of the support clamp of the AC power relay feeder cables at the aft inboard side of the electrical power center; and corrective actions, if necessary. The corrective actions include performing a general visual inspection of the power relay feeder cables for chafing; repairing of the cables, if necessary; and installing the clamp, grommet, and sta-strap. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Cost Impact

There are approximately 162 airplanes of the affected design in the worldwide fleet. The FAA estimates that 90 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,400, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2000–NM–165–AD.

Applicability: Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin MD80–24A145, Revision 01, dated June 22, 2000.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the alternating current (AC) power relay feeder cable from chafing against the aft inboard side of the electrical power center, which could result in electrical arcing and damage to adjacent structures, and consequent smoke and/or fire in the electrical power center area, accomplish the following:

Inspection

(a) Within 1 year from the effective date of this AD, do a general visual inspection to verify proper installation of the support clamp of the alternating current (AC) power relay feeder cables (includes the clamp, grommet, and sta-strap) at the aft inboard side of the electrical power center, per McDonnell Douglas Alert Service Bulletin MD80–24A145, Revision 01, dated June 22, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Proper Installation: No Further Action

(1) If the installation of the clamp, grommet, and sta-strap is correct, no further action is required by this AD.

Improper Installation: Corrective Actions

(2) If any installation of the clamp, grommet, or sta-strap is not correct, before further flight, do the actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Do a general visual inspection of the power relay feeder cables for chafing, per the service bulletin. If any chafing is found, before further flight, repair per the service bulletin.

(ii) Install the clamp, grommet, and sta-strap, per the service bulletin.

Note 3: Accomplishment of the actions specified in McDonnell Douglas MD80–24–145, dated December 15, 1992, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 2, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–458 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–40–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Powered by General Electric (GE) CF6–45/50, Pratt & Whitney (P&W) JT9D–70, or JT9D–7 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes powered by GE CF6–45/50, P&W JT9D–70, or JT9D–7 series engines. This proposal would require repetitive inspections to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead, and repair, if necessary. For certain airplanes, this proposal provides for an optional terminating modification for the inspections of the outboard nacelle struts. This action is necessary to find and fix cracks and broken fasteners of the inboard and outboard nacelle struts, which could result in possible loss of the bulkhead load path and consequent separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–40–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–40–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that fatigue cracking of the inboard and outboard nacelle struts of the rear engine mount bulkhead was found on certain Boeing Model 747 series airplanes powered by General Electric CF6–45/50 and Pratt & Whitney (P&W) JT9D–3, –7, and –70 series engines. Cracking found on airplanes powered by P&W JT9D–3 and –7 series engines was located in the frame webs at the inner angles, extending in a radial direction. Cracking also was found in the inner flange radius and web. Cracking found on airplanes powered by GE CF6–45/50 and P&W JT9D–70 series engines was located in the frame flange common to the strut skin. Such cracking, if not found and fixed, could result in possible loss of the bulkhead load path and consequent separation of the engine from the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000, which describes procedures for repetitive detailed visual and high frequency eddy current (HFEC) inspections to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead, and repair, if necessary. For certain airplanes with web doublers installed per the Boeing service bulletins listed below, an HFEC inspection is to be done in the stop-drilled holes or around the fasteners, if installed. The service bulletin specifies contacting Boeing for repair instructions if discrepancies (cracks, broken fasteners) are found.

The FAA also has reviewed and approved Boeing Service Bulletins 747–54–2033, Revision 2, dated July 29, 1977, and 747–54–2065, Revision 6, dated May 29, 1997. These service bulletins describe procedures for a detailed visual inspection for cracks and broken fasteners, and modification of

the outboard nacelle struts of the rear engine mount bulkhead. These service bulletins are referenced in Boeing Alert Service Bulletin 747–54A2202.

Explanation of Requirements of Proposed Rule

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

Differences Between Alert Service Bulletin and This Proposed AD

The alert service bulletin specifies that the manufacturer must be contacted for repair of certain conditions, but this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

This is considered to be interim action. At this time, the FAA is considering a separate rulemaking action to mandate accomplishment of the optional terminating modification for certain outboard struts, and the manufacturer has advised that it currently is developing a terminating modification for the inboard struts and the remaining outboard struts.

Cost Impact

There are approximately 456 airplanes of the affected design in the worldwide fleet. The FAA estimates that 165 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to accomplish the proposed detailed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $39,600, or $240 per airplane, per inspection cycle.

It would take approximately 32 work hours per airplane to accomplish the proposed high frequency eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed high frequency eddy current inspection on U.S. operators is estimated to be $316,800, or $1,920 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the optional terminating modification that would be provided by this AD action, it would take approximately 368 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $20,000 per airplane. Based on these figures, the cost impact of the optional terminating action is estimated to be $42,080 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2001–NM–40–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) 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 find and fix cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead, which could result in possible loss of the bulkhead load path and consequent separation of the engine from the airplane, accomplish the following:

Detailed Visual Inspections

(a) Do a detailed visual inspection to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Do the inspection per Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000. Repeat the inspection at least every 350 flight cycles until paragraph (b) of this AD has been done.

(1) For airplanes on which the inspections specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, HAVE NOT been done: Within 120 days after the effective date of this AD.

(2) For airplanes on which the inspections specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, HAVE been done: Within 1,600 flight hours after doing the last inspection with no crack finding, or within 600 flight hours after doing the last inspection with a crack finding.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by

the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Detailed Visual/High Frequency Eddy Current Inspections

(b) Within 1,200 flight cycles or 18 months after the effective date of this AD, whichever is first: Do detailed visual and high frequency eddy current (HFEC) inspections to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead per Part 1 and Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000, as applicable. Doing the inspections required by this paragraph terminates the inspections required by paragraph (a) of this AD.

(1) For airplanes on which the modification of the inboard struts specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, HAS NOT been done: Repeat the applicable inspection at least every 1,200 flight cycles or 18 months, whichever is first.

(2) For Groups 3 and 4 airplanes on which the modification of the inboard struts specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, HAS been done: Repeat the applicable inspection at least every 1,200 flight cycles.

(c) For Groups 1 and 5 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000, with web doublers and angle chords installed to repair cracking, as specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997; or Boeing Service Bulletin 747–54–2033, Revision 2, dated July 29, 1977: Within 1,200 flight cycles or 18 months after the effective date of this AD, whichever is first, do an HFEC inspection of the stop-drilled holes per Figure 1, Flag Notes 1 and 2, of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000. Repeat the inspection at least every 600 flight cycles.

Note 3: Accomplishment of the actions specified in paragraphs (b)(1), (b)(2), and (c) of this AD before the effective date of this AD, per Boeing Service Bulletin 747–54–2033, dated September 13, 1974; or Revision 1, dated November 14, 1975; or Boeing Service Bulletin 747–54–2065, dated October 30, 1981; Revision 1, dated December 19, 1983; Revision 2, dated October 23, 1984; Revision 3, dated March 14, 1986; or Revision 5, dated November 2, 1989; is considered acceptable for compliance with the applicable actions specified in this AD.

Repair

(d) Except as provided by paragraph (e) of this AD: Before further flight, repair any discrepancy (crack or broken fastener) found during any inspection required by this AD, per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(e) Web cracks in the existing bulkhead frames repaired with the web doublers and angle chords are acceptable, provided they are stop drilled and are within the limits specified in Figure 1, Flag Notes 1 and 2, of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000.

Optional Terminating Modification

(f) For Groups 3, 4, and 5 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000: Accomplishment of the modification of the outboard nacelle struts, as specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, terminates the repetitive inspections required by paragraphs (a) and (b) of this AD for the outboard nacelle struts only.

Note 4: Accomplishment of the modification of the outboard nacelle struts before the effective date of this AD per Boeing Service Bulletin 747–54–2065, dated October 30, 1981; Revision 1, dated December 19, 1983; Revision 2, dated October 23, 1984; Revision 3, dated March 14, 1986; or Revision 5, dated November 2, 1989; is considered acceptable for compliance with paragraph (e) of this AD.

Alternative Methods of Compliance

(g) 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, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

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

Issued in Renton, Washington, on January 2, 2002.

Lirio Liu Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–457 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, and –83 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes. This proposal would require an inspection of the electrical power feeder cables in the aft cargo compartment sidewall for chafing and/or preloading, and corrective actions, if necessary. This action is necessary to prevent possible arcing of the electrical power cables in the aft cargo compartment sidewall and consequent damage to equipment and the adjacent structure, which could result in smoke and/or fire in the cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–164–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–

0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Airframe Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; 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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–164–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that chafed electrical power feeder cables in the aft cargo compartment sidewall were found during a ''C'' check on a McDonnell Douglas Model DC–9–82 series airplane. Investigation has revealed that cables rubbing against a floor support cutout due to a preload condition was the cause. This condition, if not corrected, could result in possible arcing of the electrical power feeder cables in the aft cargo compartment sidewall and consequent damage to equipment and the adjacent structure, which could result in smoke and/or fire in the cargo compartment.

The existing design of the electrical power feeder cables on certain McDonnell Douglas Model DC–9–81 and –83 series airplanes, and Model MD–88 airplanes is identical to that on the affected Model DC–9–82 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–24A124, Revision 01, dated August 24, 2000. The service bulletin describes procedures for a one-time general visual inspection of the electrical power feeder cables on each side of the floor support strut at station Y=1231.000 for chafing and preloading against the adjacent floor support cutout, and corrective actions, if necessary. The corrective actions include repairing the cables; installing a shim on the bracket; and repositioning the cables; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Cost Impact

There are approximately 112 airplanes of the affected design in the worldwide fleet. The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,420, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2000–NM–164–AD.

Applicability: Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin MD80–24A124, Revision 01, dated August 24, 2000.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent possible arcing of the electrical power cables in the aft cargo compartment sidewall and consequent damage to equipment and the adjacent structure, which could result in smoke and/or fire in the cargo compartment, accomplish the following:

Inspection and Corrective Action, if Necessary

(a) Within 1 year after the effective date of this AD, perform a general visual inspection of the electrical power feeder cables on each side of the floor support strut at station Y=1231.00 for chafing and preloading against the adjacent floor support cutout, in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A124, dated Revision 01, dated August 24, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: Accomplishment of the actions required by this AD, before the effective date of this AD, in accordance with McDonnell Douglas MD–80 Service Bulletin 24–124, dated September 26, 1991, is considered acceptable for compliance with the requirements of this AD.

(1) Condition 1. If no chafing and preloading of the electrical power feeder cables are found, no further action is required by this AD.

(2) Condition 2. If any chafing of the electrical power feeder cable is found, before further flight, repair the cable, install a shim on the bracket, and reposition the cable; in accordance with the service bulletin.

(3) Condition 3. If any preloading of the electrical power feeder cable is found, before further flight, install a shim on the bracket and reposition the cable, in accordance with the service bulletin.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles ACO.

Special Flight Permits

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

Issued in Renton, Washington, on January 2, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–456 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC92

Oil and Gas and Sulphur Operations on the Outer Continental Shelf; Suspension of Operations for Exploration Under Salt Sheets

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: MMS proposes to modify regulations that govern suspensions of operations for oil and gas leases on the Outer Continental Shelf (OCS). There are instances where oil and gas lessees begin timely analysis of geophysical data early in the lease term, but the analysis proves inconclusive because of problems caused by the existence of salt sheets underlying the seabed and overlying possible hydrocarbon deposits. In such cases, the proposed rule would allow lessees to apply for a suspension of operations (SOO) to complete the necessary geophysical analysis before drilling a well. To qualify for a suspension of operations, the lessee must show it has made and will continue to make substantial efforts and financial commitment to process and reprocess its geophysical data.

DATES: MMS will consider all comments received by February 8, 2002. MMS may not fully consider comments received after February 8, 2002.

ADDRESSES: You may mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: John Mirabella, Engineering and Operations Division, (703) 787–1598.

SUPPLEMENTARY INFORMATION: When a lessee obtains an oil and gas lease on the OCS, MMS regulations allow the lessee flexibility to schedule activities during the primary term. At the end of the primary term, the lease can continue in force only by production, suspension, drilling, or well reworking operations as approved by the Secretary. MMS regulations authorize suspensions before discovery of oil or gas in paying quantities only in limited circumstances. Generally, when a lease reaches the end of the primary term, the lessee must conduct drilling operations until it has made a discovery of oil or gas and a commitment to proceed to development and production.

Although lessees have made great progress in imaging potential objectives in areas under salt sheets, processing, analyzing, and interpreting geophysical, geological, and other relevant data and information is complex and time-consuming. As a result, lessees have been faced with the end-of-lease-term decisions to either allow the lease to expire or drill a well without sufficient geophysical information.

On December 21, 2000, MMS issued Notice to Lessees (NTL) 2000–G22, Subsalt Lease Term Extension. That NTL provides for extension of lease terms for subsalt exploration in cases where the lessee has drilled a well on the lease during the primary term but needs additional time to process geophysical data before drilling another well. The NTL did not provide

additional time to process geophysical data in cases where a well had not been drilled. This rule would authorize MMS to grant a suspension for a lease when the operator has conducted timely analysis and interpretation of the geophysical data that may ultimately lead to a drilling objective but, due to the complexity of the salt sheet, needs additional time to complete the geophysical analysis before drilling. The provision requires the lessee to conduct timely analysis of geophysical information before the lessee may be granted additional time because of complications associated with the presence of the salt sheet. In considering whether the analysis of geophysical information is timely, MMS will require the lessee to have collected and analyzed geophysical information (i.e., full 3–D depth migration beneath the salt sheet and over the entire lease area) before the end of the third lease year and to have completed additional data reprocessing before MMS will grant a suspension. MMS finds that this provision will address those special circumstances and that appropriate suspensions may lead to improved opportunities for effective exploration, development, and production.

Procedural Matters

Public Comment Procedure

Comments on the proposed rule, including names and home addresses of respondents, are available for public review during regular business hours. Individual respondents may request that we withhold their home address or identity from the rulemaking record to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all comments from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under Executive Order 12866.

Over the next 5 years, MMS anticipates that companies would make 3 to 5 requests each year under the proposed rule. We estimate that in three of the cases each year, this new rule will prevent unnecessary compelled drilling of wells that may not otherwise have been drilled had the geophysical analysis been sufficient. Depending on the water depth and the well depth, we estimate that drilling each well, on average, would have cost $10 million. Selective suspensions will help reduce potential environmental impact and produce approximately $30 million in private sector savings.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Issuance of a suspension for a lease does not interfere with the ability of other agencies to exercise their authority.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*).

This rule may directly or indirectly affect lessees and operators of leases on the OCS. This includes about 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Based on these criteria, we estimate that about 70 percent of these companies are considered small. We expect few, if any, of the small companies to apply for a suspension under this rule. Some small companies may be included in partnerships with larger companies that are exploring in the subsalt areas.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

We do not expect this rule to have a significant effect because, as discussed above, this rule will have a positive effect on the private sector of approximately $30 million per year in avoided costs.

Paperwork Reduction Act (PRA) of 1995

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The proposed revisions to 30 CFR part 250, subpart A, refer to, but do not change, information collection requirements in current regulations. OMB has approved the referenced information collection requirements under OMB control numbers 1010–0114, current expiration date of September 30, 2002. The rule proposes no new reporting or recordkeeping requirements, and an OMB form 83–I submission to OMB under the PRA is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule does not affect that role.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the proposed rule does not have significant Takings implications. A Takings Implication Assessment is not required. The proposed rulemaking is not a governmental action capable of

interfering with constitutionally protected property rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. The rule may have a small positive effect on energy supplies.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The Department of the Interior has established that ''issuance and/or modification of regulations'' is considered a categorically excluded action as it results only in administrative effects causing no significant impacts on the environment and, therefore, will not require preparation of an environmental assessment or impact statement. MMS has determined that this action does not represent an exception to the categorical exclusion. A detailed statement under NEPA is not required.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: December 21, 2001.

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. In § 250.175, redesignate the existing text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 250.175 When may the Regional Supervisor grant an SOO?

* * * * *

(b) The Regional Supervisor may grant an SOO not to exceed 3 years in the Western Gulf of Mexico when all of the following conditions are met:

(1) The lease was issued with an initial lease term of 5 years, or with an initial term of 8 years with a requirement to drill within 5 years;

(2) The lessee has collected and analyzed appropriate geophysical information prior to the end of the third lease year;

(3) The geophysical information confirms the presence of a salt sheet as well as evidence that a drillable objective may exist beneath the salt sheet;

(4) The applicant has completed additional reprocessing prior to submitting the application for suspension; and

(5) The applicant demonstrates that additional time is necessary to gather new geophysical data or to reprocess or reinterpret existing data to further define drilling objectives beneath a salt sheet.

[FR Doc. 02–521 Filed 1–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[NM–042–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico proposes revisions to and additions of rules about definitions, general environmental resource information, operations that may have an adverse impact on publicly owned parks or places listed on the National Register of Historic Places, bond release applications, termination of jurisdiction, prime farmland reclamation, inspection frequency of abandoned sites, hearings for charges of violation, the qualifying criteria for assistance under the small operator's program, areas where mining is prohibited or limited, criteria for designating areas unsuitable for surface coal mining, applications for and approval of coal exploration operations of more than 250 tons, criteria for permit approval or denial, application and approval criteria for demonstrating valid existing rights, the one square mile criterion in the definition of intermittent streams, and miscellaneous non-substantive editorial revisions. New Mexico intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA and improve operational efficiency.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t., February 8, 2002. If requested, we will hold a public hearing on the amendment on February 4, 2002. We will accept requests to speak until 4 p.m., m.s.t., on January 24, 2002.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to Willis L. Gainer at the address listed below.

You may review copies of the New Mexico program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Albuquerque Field Office.

Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW, Suite 1200, Albuquerque, New Mexico 87102, Telephone: 505–248–5096.

Director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 1120 South St.

Francis Drive, Santa Fe, New Mexico 87505, Telephone: 505–476–3400.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: 505–248–5096.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Description of the Proposed Amendment

By letter dated November 28, 2001, New Mexico sent us a proposed amendment (administrative record No. NM–853) to its program under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment in response to the June 19, 1997, and April 2, 2001, letters (administrative record Nos. NM–796 and NM–851) that we sent to New Mexico in accordance with 30 CFR 732.17(c); in response to the required program amendments at 30 CFR 931.16(e), (u) and (v); and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, New Mexico proposes, in response to the June 19, 1997, 30 CFR part 732 letter, to:

1. Revise 19.8.1.7.O(5) NMAC, the definition of ''other treatment facilities,'' to include chemical treatments or mechanical structures that have a point-source discharge and are utilized to comply with all applicable State and Federal water-quality laws and regulations;

2. Revise 19.8.1.7.P(12) NMAC, the definition of ''previously mined areas,'' to mean land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the requirements of SMCRA, the Act, and the New Mexico regulatory standards;

3. Revise 19.8.1.7.Q(1) NMAC, the definition of ''qualified laboratory,'' to specify, in addition to the listed services, those services allowed under the small operator assistance program (SOAP) at 19.8.32.3203 NMAC;

4. Revise 19.8.8.801.B, concerning general environmental resources information in a permit application, to require (1) at paragraph B(1), a description (based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies) of the nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed permit and adjacent areas, and (2) at paragraph B(2), further evaluation of important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses;

5. Revise 19.8.9.912 NMAC, concerning proposed operations that may have an adverse effect on any publicly owned parks or any places listed on the National Register of Historic Places, to (1) require a plan to either (a) describe the measures to be used to prevent adverse impacts, or (b) minimize adverse impacts when valid existing rights exist or joint agency approval must be obtained, and (2) require the applicant to prevent or minimize impacts to any historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures, which may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

6. Revise 19.8.14.1412 NMAC, concerning general requirements for bonding, by adding paragraph (2)(h) that requires an operator to include in an application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of SMCRA, the Act, the regulatory program, and the approved reclamation plan;

7. Add 19.8.14.1415.A and B NMAC, concerning termination of jurisdiction, stating that the Director (1) may terminate regulatory jurisdiction over a reclaimed surface coal mining and reclamation operation upon a written finding that all reclamation requirements have been successfully completed or the performance bond has been released and (2) must reassert jurisdiction over a site if it is demonstrated that either the written finding to release a performance bond or regulatory jurisdiction was based upon fraud, collusion, or misrepresentation of a material fact;

8. Revise 19.8.20.2057.A NMAC, the definition of ''thin overburden,'' to allow a variation from backfilling to the approximate original contour when the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and the coal bed prior to removing the coal;

9. Revise 19.8.20.2058.A NMAC, the definition of ''thick overburden,'' to allow a variation from backfilling to the approximate original contour when the overburden thickness times the swell factor exceeds the combined thickness of the overburden and the coal bed prior to removing the coal;

10. Revise 19.8.24.2400 NMAC, concerning performance standards for operations on prime farmlands, by adding paragraph C requiring that the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining; water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area; and the creation of any such water bodies must be approved by the regulatory authority with the consent of all affected property owners within the permit area;

11. Add 19.8.29.2900.G and H NMAC that define ''abandoned site'' to mean a surface coal mining and reclamation operation for which the Director has made specified written findings and allow for a reduced inspection frequency determined by specified conditions at the site, but no less frequently than one complete inspection per quarter;

12. Revise 19.8.31.3107.A NMAC, concerning a request for a hearing by a person charged with a violation, to allow 30 rather than 15 days from the date of service of the conference officer's action for the person to contest

the proposed penalty or alleged violation;

13. Revise 19.8.32.3200.B NMAC by allowing an applicant to be eligible for assistance under SOAP if he establishes that his probable total actual and attributed production from all locations during any consecutive 12-month period either during the permit term or during the first 5 years after issuance of his permit, whichever period is shorter, will not exceed 300,000 rather than 100,000 tons;

14. Revise 19.8.32.3203.A and B NMAC, concerning the small operators assistance program, to allow funding for additional services performed by a qualified laboratory including engineering analyses and designs necessary for the determination of probable hydrologic consequences, drilling, development of cross-section maps and plans, collection of archaeological and historic information and related plans, pre-blast surveys, and collection of site specific resources information and production of protection and enhancement plans for fish and wildlife habitats; and

15. Revise 19.8.32.3206.A and A(2) and (3) NMAC to clarify that the SOAP applicant shall reimburse the Director for the costs of the services rendered if either the applicant's actual and attributed annual production of coal for all locations exceeds 300,000 tons (rather than 100,000 tons) or the permit is sold, transferred or assigned to another person and the transferee's total actual attributed annual production of coal for all locations exceeds 300,000 tons (rather than 100,000 tons) during any consecutive 12-month period either during the permit term or during the first 5 years after issuance of his permit.

In response to the April 2, 2001, 30 CFR part 732 letter, New Mexico proposes revisions and additions of rules concerning valid existing rights (VER). Specifically, New Mexico proposes to:

1. Revise 19.8.2.201.C NMAC, concerning areas where mining is prohibited or limited, to prohibit mining within 300 feet of any occupied dwelling unless, among other things, an access or haul road connects with an existing public road on the side of the public road opposite the dwelling;

2. Revise 19.8.2.201.E NMAC, concerning areas where mining is prohibited or limited, to prohibit mining within 100 feet of a cemetery, unless the cemetery is relocated in accordance with all applicable laws and regulations;

3. Add 19.8.2.201.F.(5) NMAC, concerning areas where mining is prohibited or limited, to prohibit mining on federal lands within a national forest, unless the U.S. Secretary of the Department of the Interior finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations and any surface operations or surface impacts will be incidental to an underground coal mine, or, with respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the U.S. Secretary of Agriculture has determined that the surface mining operation is in compliance with several Federal acts;

4. Revise 19.8.2.202 NMAC, concerning areas designated unsuitable for mining, to incorporate new procedures for determining whether an applicant proposes surface coal mining operations on lands protected under 19.8.2.201 NMAC and, if proposed, whether the applicant has valid existing rights to disturb protected lands;

5. Add 19.8.2.203 NMAC, concerning criteria for designating areas unsuitable for mining, to identify when the prohibitions and limitations of 19.8.2.201 NMAC do not apply;

6. Revise 19.8.3.300.C, concerning criteria for designating lands unsuitable for mining, to add a statement that all lands protected under 19.8.2 NMAC, concerning areas designated unsuitable for surface coal mining, are subject to designation as unsuitable for all or certain types of surface coal mining operations pursuant to the appropriate petitions;

7. Revise 19.8.6.602.A(9), concerning an application for coal exploration of more than 250 tons and lands designated as unsuitable for mining, to add the requirements that an applicant (1) demonstrate that the proposed exploration will minimize interference with values for which the land was designated unsuitable and (2) include documentation of consultation with the owner of the feature causing the land to be protected and, when applicable, the agency with the primary jurisdiction over the feature;

8. Add 19.8.6.603.B(4) NMAC, concerning approval of coal exploration for more than 250 tons, to require that the Director of the New Mexico program approve an application only if he finds that the activities on any lands protected under 19.8.2.201 NMAC will minimize interference with the values for which the lands were designated as unsuitable for mining. Prior to making this finding, the Director must provide reasonable opportunity to the owner of the features and, when applicable, to the agency with primary jurisdiction over the features, to comment on whether the finding is appropriate;

9. Revise 19.8.7.704.C, concerning application requirements for identification of areas with a proposed permit that are within areas designated unsuitable for mining, to require that when an applicant proposes to conduct surface coal mining operations within 100 feet of a public road, an applicant must meet the requirements concerning the necessary approvals and public notice and hearing provided for at 19.8.2.202.D;

10. Revise 19.8.11.1106.D(3), concerning the criteria for permit approval or denial, to require that the Director find that the proposed permit area is not within an area designated as unsuitable for surface coal mining operations under 19.8 NMAC Parts 3 and 4, or within an area subject to the prohibitions of 19.8.2.201 NMAC; and

11. Add a new part at 19.8.35.1 NMAC through 19.8.35.14 NMAC, concerning the definition of ''valid existing rights'' (VER), the requirement for an applicant to demonstrate compliance with the ''good faith/all permits standard'' or the ''need for and adjacent standard'' with respect to areas with VER, roads and VER, the submission and processing of requests for VER determinations, the requirements for a VER property rights demonstration, the initial review of a VER request, the public notice and comment requirements and procedures for processing a VER request, how decisions on a VER request will be made, opportunities for administrative and judicial review of VER determinations, and the availability of records for VER requests and determinations.

In response to required program amendments at 30 CFR 931.16(e), (u) and (v), concerning the inclusion of a one square mile criterion in the definition of intermittent streams, New Mexico proposed an explanation of how the existing New Mexico rules governing ephemeral streams provide environmental protection for drainages of one square mile that is as effective as the Federal regulations. New Mexico's justification is based on unique regional characteristics of low rainfall in an arid environment and implementation of performance standards for diversions of ephemeral streams requiring use of site-specific designs that take into account the local watershed and rainfall conditions, use of the best technology currently available; protection against material damage both on and off-site; and, minimization of impacts to the hydrologic balance.

In addition, at its own initiative, New Mexico proposes to revise the following rules:

1. 19.8.1.7.(2) NMAC, concerning the definition of ''fixed assets,'' to clarify the meaning by adding ''facilities and equipment not used for the production, transportation or processing of coal;''
2. 19.8.1.7.(5) NMAC, concerning the definition of ''fixed assets,'' to clarify that fixed assets and land or coal in place shall not be considered assets for the purposes of calculating net worth;
3. 19.8.8.802.A(1) NMAC, concerning application requirements for hydrology and geology, to replace the word ''by'' with ''to;''
4. 19.8.13.1307.A.(1)(d) NMAC, concerning transfer, assignment or sale of permit rights, to delete an inappropriate rule reference;
5. 19.8.19.1900.A and B NMAC, concerning coal exploration, to correct a referenced rule citation;
6. 19.8.19.1902.C.(2) NMAC, concerning coal exploration, to correct reference rule citations; and
7. 19.8.20.2009.E and E(5) NMAC, concerning protection of the hydrologic balance, to correct referenced rule citations.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the New Mexico program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see Dates). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Albuquerque Field Office may not be logged in.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t., on January 24, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that state programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 5, 2001.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 02–481 Filed 1–8–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–070]

RIN 2115–AE46

Special Local Regulations for Marine Events; Western Branch, Elizabeth River, Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for marine events held on the waters of the Western Branch of the Elizabeth River, Portsmouth, Virginia. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in portions of the Western Branch of the Elizabeth River during the events.

DATES: Comments and related material must reach the Coast Guard on or before March 11, 2002.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Operations Oversight Branch, Auxiliary and Recreational Boating Safety Section, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–01–070), 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 proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The City of Portsmouth, Ports Events, Inc., and other event organizers sponsor marine events throughout the year on the waters of the Western Branch of the Elizabeth River. These marine events are held adjacent to the Portsmouth City Park. A fleet of spectator vessels traditionally gathers near the event site to view the marine events. To provide for the safety of event participants, spectators and transiting vessels, the Coast Guard proposes to temporarily restrict the movement of all vessels operating in the event area during the marine events.

Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent regulated area on specified waters of the Western Branch of the Elizabeth River. The proposed special local regulations will restrict general navigation in the regulated area during the events. Except for persons or vessels authorized by the Coast Guard Patrol

Commander, no person or vessel will be allowed to enter or remain in the regulated area. The proposed regulated area is needed to control vessel traffic during the marine events to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Western Branch of the Elizabeth River during the events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety necessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Although this regulation prevents traffic from transiting a portion of the Western Branch of the Elizabeth River during the events, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial and 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We prepared an ''Environmental Assessment'' in accordance with

Commandant Instruction M16475.1D, and determined that this proposed rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

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

PART 100—MARINE EVENTS

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

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

2. § 100.525 is added to read as follows:

§ 100.525 Western Branch, Elizabeth River, Portsmouth, Virginia.

(a) *Definitions*—(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Regulated Area.* The regulated area includes all waters of the Western Branch, Elizabeth River bounded by a line connecting the following points:

Latitude	*Longitude*
36°50′18″ North	076°23′ 10″ West, to
36°50′18″ North	076°21′42″ West, to
36°50′12″ North	076°217prime;42″ West, to
36°50′12″ North	076°23′10″ West, to
36°50′18″ North	076°23′10″ West

All coordinates reference Datum NAD 1983.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign; and

(ii) Proceed as directed by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective Dates.* This section is effective annually from 6 a.m. to 6 p.m. local time on the fourth Friday and fourth Saturday in March, the fourth Friday and fourth Saturday in April, the second Friday and second Saturday in May, and the second Saturday and second Sunday in October.

Dated: December 11, 2001.

Thad W. Allen,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–545 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 725

[OPPTS–50645; FRL–6809–2]

RIN 2070–AD43

Burkholderia Cepacia Complex; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for *Burkholderia cepacia* complex (Bcc), a group of naturally-occurring microorganisms. Bcc microorganisms, when encountered in sufficient numbers through an appropriate route of exposure by a member of a sensitive population, such as a cystic fibrosis (CF) patient, have the potential to cause a severe infection, resulting in significantly increased rates of mortality. This proposed rule would require persons who intend to manufacture, import, or process Bcc for a significant new use to notify EPA at least 90 days before commencing the manufacturing(including import) or processing of Bcc for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

DATES: Comments, identified by docket control number OPPTS–50645, must be received on or before March 11, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50645 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics (7405M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (including import), process, or use products that contain living microorganisms subject to jurisdiction under TSCA, especially if you know that your products contain or may contain Bcc. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Chemical manufacturers	325	Persons manufacturing, importing, or processing products for commercial purposes containing Bcc for biofertilizers; biosensors; biotechnology reagents; commodity or specialty chemical production; energy applications; and other TSCA uses
Waste management and remediation	562	Waste treatment or pollutant degradation

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the list of substances excluded by TSCA section (3)(2)(B), and the applicability provisions at 40 CFR 725.105(c) for SNUR related obligations. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 725 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr725_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–50645. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50645 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50645. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This proposed rule would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of Bcc, a group of naturally occurring microorganisms, for any use other than research and development in the degradation of chemicals via injection into subsurface groundwater.

B. What is the Agency's Authority for Taking this Action?

TSCA section 5(a)(2) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' See also, 40 CFR part 725, Subparts L–M. EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Section 5(a)(2) of TSCA lists the following as potentially relevant factors for EPA to consider: (A) the projected volume of manufacturing and processing of a chemical substance, (B) the extent to which a use changes

the type or form of exposure to human beings or the environment to a chemical substance, (C) the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance, and (D) the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

Once EPA promulgates a rule designating ''significant new uses'' for a given chemical substance, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 725.105(c).

EPA has interpreted the TSCA section 3(2) definition of ''chemical substance'' as authorizing EPA to regulate microorganisms under TSCA. See the **Federal Register** of April 11, 1997 (62 FR 17910 and 17913) (FRL–5577–2). Microorganisms that are not intergeneric are implicitly included on the TSCA Inventory, which would include naturally-occurring microorganisms such as Bcc (40 CFR 725.8(b)). Thus, such microorganisms are only subject to TSCA section 5 notification requirements upon promulgation of a SNUR, pursuant to TSCA section 5(a)(2).

C. Which General Provisions Apply?

General provisions for SNURs appear under subpart L of 40 CFR part 725. These provisions describe persons subject to the proposed rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the proposed rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of Microbial Commercial Activity Notices (MCANs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the conditions necessary to qualify for the exemptions under TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), as codified in the regulations at 40 CFR part 725. In contrast to the provisions of 40 CFR part 721, under 40 CFR part 725, EPA has adopted a narrow interpretation of the TSCA section 5(h)(3) exemption for small quantities used in research. Under 40 CFR 725.3, EPA has defined small quantities solely for research and development as ''quantities of a microorganism manufactured, imported, or processed or proposed to be manufactured, imported, or processed solely for research and development that meet the requirements of § 725.234.'' Any other research and development activity of a microorganism subject to a SNUR must comply with the section 5(a)(1)(A) notification requirements unless that activity has been excluded from coverage under the SNUR. See, 40 CFR 725.3, Subparts E and F of 40 CFR part 725, and the **Federal Register** of April 11, 1997 (62 FR 17921–17926).

Once EPA receives an MCAN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the MCAN notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy addressing the import certification appears at 40 CFR part 707.

III. Summary of the Proposed Rule

On July 31, 2001, The Cystic Fibrosis Foundation submitted a petition under section 21 of TSCA which requested EPA to ''establish regulations prohibiting the manufacture, processing, distribution in commerce, use, and improper disposal of bacterial species within the *Burkholderia cepacia* complex.'' The Bcc was defined by the petitioner as nine species including *B. cepacia*, *B. multivorans*, *B. stabilis*, *B. vietnamiensis*, *B. ambifaria*, *B. pyrrocinia*, and three as yet unnamed species referred to as *B. cepacia* genomovars III, VI, and VIII. The petitioner stated that ''exposure of individuals with CF to Bcc frequently results in life-threatening infections'' and ''these actions are necessary to address the significant threat that these microorganisms pose to individuals with CF and other diseases that compromise the immune system.'' On November 6, 2001 (66 FR 56105) (FRL–6808–7) EPA published in the **Federal Register** a notice denying that petition. EPA also stated in the notice that it intended to issue a SNUR for Bcc.

It is well established that when encountered in sufficient numbers through an appropriate route of exposure by a member of a sensitive population, such as a CF patient, Bcc has the potential to cause a severe infection, resulting in significantly increased rates of mortality. There is also the possibility of increased exposure from several potential commercial uses especially for bioremediation where EPA has identified environmental research and development of Bcc that has already occurred. EPA believes that there is currently no general commercial use of Bcc. Therefore, EPA is proposing to designate any use of Bcc other than research and development in the degradation of chemicals via injection into subsurface groundwater as a significant new use.

This proposed rule, when finalized, would require persons, who intend to manufacture, import, or process Bcc for a significant new use to notify EPA, through submission of an MCAN or TSCA Experimental Release Application (TERA), at least 90 days before commencing the manufacture or importation of any of these microorganisms for any use other than research and development in the degradation of chemicals via injection into subsurface groundwater. The required notice would provide EPA with the opportunity to evaluate the intended use, and, if necessary, to prohibit or limit that use before it occurs.

IV. Hazard and Exposure of Bcc

A. Defining Bcc

B. cepacia complex is comprised of former *Pseudomonas* species (*P. cepacia* and *P. pyrrocinia*), existing *Burkholderia* species newly allied with Bcc (*B. vietnamiensis*), newly named *Burkholderia* species split off from *Burkholderia cepacia* (*B. multivorans*, *B. stabilis*, and *B. ambifaria*), and the three as yet unnamed genomovars (genomovars III, VI, and VIII). Of these nine components, only seven appear generally accepted as members of the Bcc in the current literature. Most current literature and reports refer to seven genomovars/species in the Bcc. One of these components, *B. pyrrocinia* had not been universally associated with Bcc until recently, but new information appears to move *B. pyrrocinia* from a unique species to part of a new genomovar of the Bcc. Additionally, recent information indicates that a publication is in

preparation which will establish a new genomovar (VIII). Acceptance of these two additional genomovars may be a function of the time needed for common usage by the research community (Ref. 1).

For purposes of this proposed rule EPA is defining Bcc as including all nine species. EPA is also proposing to use the provisional name, *Burkholderia cepacia* genomovars III, VI, and VIII, for the three unnamed genomovars, in the codified text and to replace these names with species designations via an administrative amendment when the species names are accepted by the scientific community. If in the future the composition of the Bcc is modified to include new species equivalents, or existing Bcc members are removed from that group, EPA will consider whether an additional rulemaking is warranted to revise the definition of Bcc in this proposed rule.

B. Bcc Hazard Assessment

Although *B. cepacia* is not a frank pathogen for humans, it is an important opportunistic pathogen for patients with CF and other diseases resulting in immune defects (Refs. 2 and 3). CF is an autosomal recessive disorder resulting in the dysfunction of the cystic fibrosis transmembrane regulator (CFTR), that actively transports chloride ions across the plasma membrane of mammalian cells (Ref. 3). This defect results in high salt concentrations in epithelial secretions and a production of a thick mucus within the airways of the CF lung. The airway mucus impairs normal mucocilliary clearance mechanisms, thus promoting infection with a variety of microbial pathogens.

CF patients suffer from a variety of health problems including infection, intestinal obstruction, pancreatic insufficiency, reproductive problems, and malnutrition (Ref. 4). These result in symptoms such as gastrointestinal pain, diarrhea, fatigue, weight loss, and wheezing. These problems are the result of mutations in the CFTR gene (Ref. 5). There have been more than 600 different mutations of this gene documented (Ref. 6). Different mutations have resulted in different phenotypes of the disease. Thus, CF is not an ''all or none'' disease, and the spectrum of CF disease can vary from very mild to very severe (Ref. 7).

Bacterial colonization and associated inflammation are the major causes of morbidity and mortality in patients with CF (Ref. 3). Surprisingly, the spectrum of bacteria that are routinely isolated from CF sputum is narrow (Ref. 3). Characteristically, infant CF patients are infected with *Staphylococcus aureus* and *Haemophilus influenzae*. In adolescent and adult CF patients, the prevalence of pulmonary infection with *Pseudomonas aeruginosa* (80–90% in most CF adults) exceeds that of all other pathogens. Other organisms isolated from CF patients include *Stenotrophomonas maltophilia*, *Alcaligenes xylosoxidans*, *Aspergillus* species, *Ralstonia pickettii*, and *Bordetella*.

Although *Pseudomonas aeruginosa* is the dominant pathogen for the CF patient, *B. cepacia* has been isolated with increasing frequency over the last 15 years (Ref. 3). According to the Cystic Fibrosis Foundation, 3.5% of all people with CF receiving care at CF Foundation-accredited Care Centers in 1988 were infected with *B. cepacia*. An adult CF infection rate of 6% has been reported (Ref. 6). The clinical outcome for CF patients can vary considerably. Some patients have only transient infection or are chronically infected without impact. Infection in other patients results in a more rapid deterioration of lung function. In about 20% of CF patients infected with *B. cepacia*, colonization results in the so-called ''cepacia syndrome,'' which is characterized by fever, pneumonia, and ultimately a fatal clinical decline.

B. cepacia causes pulmonary infections in CF patients. Respiratory tract infections, in general, are mainly caused by invasion of the mucus membranes lining the respiratory tract (Ref. 8). Thus, inhalation exposure would be the most relevant route of exposure for *B. cepacia* risk assessment. The level of exposure needed to cause infection is not known (Ref. 9).

B. cepacia is a pathogen in other immunocompromised patients as well. For example, patients with chronic granulomatous disease (CGD) are at a high risk of invasive *B. cepacia* infection (Ref. 10). This can result in fatal pneumonia in these patients. CGD is an inherited disorder of the immune system that leaves patients vulnerable to bacterial and fungal infections.

The virulence factors that allow *B. cepacia* to cause disease are only beginning to be defined (Ref. 11). Several virulence factors have been proposed for *B. cepacia* infecting CF patients. These include *B. cepacia* lipopolysaccharide catalase, a hemolysin, lipases, proteases, siderophores, and a so-called giant cable pilus. However, it is difficult to determine if the virulence traits identified actually contribute to pathogenicity in CF patients. This is partly due to animal models that do not reproduce the human CF phenotype with high fidelity.

Ascertaining the virulence factors important for *B. cepacia* infection would help in determining the relative pathogenicity of each distinct *B. cepacia* genomovar. Formerly a member of the genus *Pseudomonas*, *B. cepacia* is now known to be a complex of bacteria (*B. cepacia* complex) consisting of nine distinct species or genomovars (Ref. 3). Currently, it is not known if all genomovars of the *B. cepacia* complex are human pathogens. Based on analyses of isolates associated with human disease, genomovar III appears to be the most pathogenic for CF patients (Ref. 11). Some of the other genomovars are only rarely encountered in a clinical setting, and their ability to cause disease in CF patients is unknown. Thus far, however, no *B. cepacia* strains can currently be determined to be free from the potential to cause disease in CF patients (Ref. 12).

Ascertaining the virulence factors important for *B. cepacia* infection would also help in determining the source of all the infections that cause disease in CF patients. For example, epidemic transmission of *B. cepacia* is most commonly seen with genomovar III (Ref. 11). However, CF patients can also be infected by non-epidemic strains of *B. cepacia* (Refs. 2, 4, and 11). The source of all the infections that cause disease in CF patients is unknown. Potential infection sources could include: a) humans, b) hospital/treatment centers (nosocomial), c) food, or d) the environment (soil, water, plants). Thus far, only patient to patient transmission has been demonstrated to be an infection source (Ref. 13). Importantly, environmental isolates of *B. cepacia* cannot thus far be distinguished from human pathogenic strains (Ref. 11).

The therapy for *B. cepacia* remains a challenge (Ref. 11). *B. cepacia* is highly resistant to antibiotic drugs, and there is poor penetration of antibiotics into respiratory secretions. There have been reports of bacterial isolates for which no single anti-bacterial agent is effective *in vitro*. According to one author (Ref. 14), the most effective reagents appear to be carbapenems, extended-spectrum β-lactam drugs, and trimethoprim-sulfamethoxazole.

C. Potential Uses of Bcc

Studies suggest that Bcc microorganisms may be useful in a variety of TSCA applications, including bioremediation (degradation of toxic chemicals, as well as degradation of grease in drains), turf management, and specialty chemicals production. In order to gauge the scope of commercial use of Bcc, EPA conducted a survey of over

100 firms, associations, and researchers. In sum, EPA was able to discover no evidence that Bcc is contained in a commercial product currently available for use in the U.S. The only potential TSCA uses of Bcc for which information is available are field studies of Bcc in the biodegradation of chlorinated solvents in groundwater. Specifically, one company has injected a strain of Bcc into aquifers in New Jersey to demonstrate its ability to degrade trichloroethylene, and a consulting firm carried out a pilot study in Wichita, Kansas to verify the effectiveness and overall feasibility of injecting *Burkholderia cepacia* $PR1_{301}$ into groundwater to degrade chlorinated aliphatic hydrocarbons. The conclusion to the pilot study report suggests that the use of *Burkholderia cepacia* $PR1_{301}$ was quite successful and should reduce clean-up time and costs at many other sites. However, none of these strains is currently available for general commercial use.

No companies indicated that Bcc was currently used for the degradation of grease (typically in drain cleaners) or for turf management (typically in thatch reduction), although researchers and firms cautioned that even the companies that produce such products may be unaware of the presence of Bcc.

One respondent indicated that lipases harvested from Bcc are used in the production of specialty chemicals. One company web site lists seven lipases derived from Bcc species available for sale under their brand names. However, when this company was contacted, it indicated that it imports the lipases from an overseas firm and does not work with Bcc microorganisms. No more information was available.

Many respondents indicated a knowledge of Bcc and its possible applications, but very few had any knowledge that it was actually being used. Some contacts indicated that Bcc's potential for opportunistic pathogenicity had led them to disregard it for use in their products. Thus, the information available to EPA indicates that the only existing TSCA use of Bcc in the U.S. are the demonstration studies of its effectiveness in degrading chlorinated solvents in groundwater. EPA considers these studies to fall under the description of research and development (Ref. 15).

D. Exposures

Bcc is a naturally occurring microorganism which is found in a wide range of habitats but especially in high populations in the soil. While Bcc is not known to be in general commercial use at this time, the potential uses identified could give rise to exposures in different ways. To produce microorganisms on a commercial scale, they first are cultured in large commercial fermentation facilities to obtain adequate amounts for a potential use. If used for specialty chemical manufacture the microorganisms are cultured first then killed after harvesting the chemical substance to be manufactured. EPA has identified potential dermal and inhalation exposures as well as environmental release from manufacture of microorganisms. These exposures could occur for any potential use of microorganisms. Sources of potential environmental release include exhaust gas from the fermentor and wastes from cleanup of equipment. Potential exposures result from laboratory propogation of cells, sampling, equipment cleaning/maintenance, and from cell recovery. Estimates of potential inhalation exposure were derived from area monitoring data in fermentation facilities. Estimates of potential dermal exposure were derived from laboratory experiments involving liquids which measured the retention on the hands for various types of exposures.

In addition to exposure from fermentation, there is also potential for dermal and inhalation exposures as well as environmental release from uses in bioremediation, turf builders, and drain cleaners. The primary source of potential release and dermal exposure is from the intended injection or application of the material. Application of turf builders would be spray applications resulting in increased inhalation exposures. Other release sources include air releases from off-gassing of aerated shipping containers and residue left in the shipping containers. Exposure to bioaerosols may occur from the aerated shipping containers. Although there is no evidence that Bcc specifically is used in the turf building or drain cleaning applications, there are commercially available products that contain microbials. (Ref. 16)

V. Objectives and Rationale of the Proposed Rule

In determining what would constitute a significant new use for the microorganisms that are the subject of this proposed SNUR, EPA considered relevant information on the toxicity of the microorganisms, likely exposures associated with potential uses, information provided by industry sources, and the relevant factors listed in TSCA section 5(a)(2) and Unit II.B. of this document. Based on these considerations, EPA has determined that all uses other than research and development in the degradation of chemicals via injection into subsurface groundwater, are significant new uses.

EPA's considerations under each of the relevant factors are discussed below:

1. *Projected volume of manufacturing and processing of a chemical substance.* Microorganisms may reproduce and increase beyond the number initially introduced and may spread beyond the site of manufacture or use. Thus, what begins as a small localized population of microorganisms may become a large widespread population which could contribute to increased exposure potential for Bcc beyond that which occurs naturally. These facts complicate the Agency's ability to project the potential volume and processing of Bcc.

2. *Extent to which a use changes the type, form, magnitude, and duration of exposure to human beings or the environment to a chemical substance.* EPA has not currently identified any general commercial use of Bcc. EPA has identified field studies of Bcc in the biodegradation of chlorinated solvents in groundwater. All other research and development activities, other than such field studies involving injection into groundwater, that do not meet the definition of small quantities for research and development would require reporting under 40 CFR 725.105(c) if included in a final SNUR. EPA is specifically soliciting comments on whether all other research and development activities should be captured under the SNUR or whether the SNUR should be limited to general commercial use of Bcc.

EPA expects only limited exposures from the identified field studies of Bcc as only technically qualified individuals are growing and injecting Bcc directly into groundwater. The potential uses identified in Unit IV.C. of this document, which include bioremediation (degradation of toxic chemicals, as well as degradation of grease in drains), turf management, and specialty chemicals production, could significantly increase dermal and inhalation exposures of Bcc to humans. In some cases these exposures could be higher than typically found in nature and more likely to be encountered by a member of a sensitive population. These exposures would significantly increase the type, form, magnitude, and duration of exposures to human beings from known uses of Bcc.

EPA wants to achieve the following objectives with regard to the significant new uses that are designated in this proposed rule. EPA wants to ensure that:

1. EPA will receive notice of any company's intent to manufacture, import, or process Bcc for a significant new use before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in an MCAN before the notice submitter begins manufacturing, importing, or processing Bcc for a significant new use.

3. EPA would be able to regulate prospective manufacturers, importers, or processors of Bcc before a significant new use occurs, provided such regulation is warranted pursuant to TSCA section 5(e) or section (f).

VI. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory actions for Bcc. In addition, EPA determined that Bcc is currently not subject to Federal notification requirements.

1. *Promulgate a TSCA section 8(a) reporting rule for Bcc.* Under a TSCA section 8(a) rule, EPA could require any person to report information to the Agency when they intend to manufacture or import Bcc. However, the use of TSCA section 8(a) rather than the SNUR authority, would not provide the opportunity for EPA to review human and environmental hazards and exposures associated with the new uses of these substances and, if necessary, to take immediate regulatory action under TSCA section 5(e) or section 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because those firms generally are exempt from TSCA section 8(a) reporting requirements. In view of EPA's concerns about Bcc and its interest in having the opportunity to review these substances and regulate them as appropriate, pending the development of exposure and/or hazard information should a significant new use be initiated, the Agency believes that a TSCA section 8(a) rule for Bcc would not meet all of EPA's regulatory objectives.

2. *Regulate Bcc under TSCA section 6.* EPA must regulate under TSCA section 6 if there is a reasonable basis to conclude that the manufacture, import, processing, distribution in commerce, use, or disposal of a chemical substance or mixture ''presents or will present'' an unreasonable risk of injury to human health or the environment. Based on EPA's findings that there is currently no general commercial use of Bcc, EPA concluded that risk management action under TSCA section 6 is not necessary at this time. This proposed SNUR would allow the Agency to address the potential risks associated with any intended significant new use of Bcc. If EPA is notified of any additional existing commercial uses, EPA may reconsider the decision and pursue additional regulatory action as appropriate.

VII. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require the development of any particular test data before submission of a MCAN or TERA. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 725.160).

However, in view of the potential health risks posed by the significant new uses of Bcc, EPA requests that potential MCAN or TERA submitters include data that would permit a reasoned evaluation of risks posed by Bcc when used for an intended significant new use. EPA also requests that potential MCAN or TERA submitters include data that demonstrate that the bacteria which would be the subject of the MCAN or TERA are in fact in the Bcc. EPA encourages persons to consult with the Agency before submitting an MCAN or TERA for Bcc. As part of this optional pre-notice consultation, EPA will discuss specific data it believes are necessary to evaluate a significant new use of Bcc. EPA urges MCAN or TERA submitters to provide detailed information on human and environmental exposures that would result or could reasonably be anticipated to result from the significant new uses of Bcc. In addition, EPA encourages persons to submit information on risks posed by Bcc compared to risks posed by possible substitutes. An MCAN or TERA submitted without sufficient data to reasonably evaluate risks posed by a significant new use of Bcc may increase the likelihood that EPA will take action under TSCA section 5(e).

VIII. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

EPA believes that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish notification requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the proposed rule became final, and then argue that the use was ongoing.

Persons who begin commercial manufacture, import, or processing of Bcc, for the significant new use in this proposed SNUR, after the proposal has been published must stop that activity before the effective date of the final rule. To resume commercial manufacture, import or processing of Bcc, those persons will have to meet all applicable MCAN or TERA requirements and wait until the notice review period, including all extensions, expires before engaging in any commercial manufacture, import, or processing of Bcc for a significant new use. If, however, persons who begin commercial manufacture or import of Bcc for a significant new use between the proposal and the effective date of the final SNUR meet the conditions of advance compliance as codified at 40 CFR 725.912, those persons would be considered to have met the requirements of the final SNUR for those activities.

IX. Economic Considerations

EPA has evaluated the potential costs of establishing a SNUR for potential manufacturers, importers, and processors of Bcc. These potential costs are related to the submission of MCANs, TERAs, and the export notification requirements of TSCA section 12(b). EPA notes that, the costs of submission of MCANs or TERAs will not be incurred by any company unless that company decides to pursue a significant new use as defined in this proposed SNUR.

A. MCANs and TERAs

Because of uncertainties related to predicting the number of MCANs or TERAs that will be submitted as a result of this proposed SNUR, EPA is unable to calculate the total annual cost of compliance with the final rule. However, EPA estimates that the cost for preparation and submission of an MCAN ranges from approximately $7,582 to $42,736, which includes the $2,500 user fee required by the Agency. EPA notes that small businesses with annual sales of less than $40 million are subject to a reduced user fee of $100. The cost of a TERA is estimated to range from $6,905 to $73,562 (Ref. 17).

Based on past experience with SNURs and the low number of Significant New Use Notices (SNUNs) which are submitted on an annual basis, EPA believes that there would be few, if any, MCANs or TERAs submitted as a result of this SNUR. Furthermore, no company is required to submit an MCAN or TERA for Bcc unless the company decides to

begin manufacture or importation of Bcc. As a result, EPA expects that companies would be able to determine if the burden of submitting an MCAN or TERA would be likely to create significant adverse economic impacts for the company prior to incurring MCAN/TERA-related costs.

B. Export Notification

As noted in Unit II.C. of this document, persons who intend to export a microorganism identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)). These provisions require that a company notify EPA of the first shipment to a particular country of an affected microorganism. The estimated cost of the TSCA section 12(b)(1) export notification, which would be required for the first export to a particular country of a microorganism subject to this proposed rule, is estimated to be $158.35 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $14.43 for each subsequent export notification submitted by that exporter (Ref. 17).

EPA is unable to estimate the total number of TSCA section 12(b) notifications that will be received as a result of this proposed SNUR, or the total number of companies that will file these notices. However, EPA expects that the total cost of complying with the export notification provisions of TSCA section 12(b) will be limited based on historical experience with TSCA section 12(b) notifications and the fact that no companies have currently been identified that currently market Bcc commercially. If companies were to manufacture the microorganisms covered by this proposed SNUR for export only, these companies would incur costs associated with export notification even if these companies decided to forgo any domestic significant new use. EPA is not aware of any companies in this situation, and expects that any potential impact would be limited to the small burden of export notification.

X. References

These references have been placed in the official record that was established under docket control number OPPTS–50645 for this document as indicated in Unit I.B.2. of this document.

1. Risk Assessment for TSCA Section 21 Petition on Bacteria in the *Burkholderia cepacia* complex, USEPA, November 2001.

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8. Davies, S.S., Advanced Drug Delivery Reviews 51, 2001, 21.

9. FIFRA SAP Report # 99–04, Sept. 30, 1999.

10. Geiszt, M., Kapus, A., and Legeti, E., J. Leukocyte Biology 69, 2001, 191.

11. Parke, J. L., Gurian-Sherman, D., Ann. Rev. Phytopath. 39, 2001, 225.

12. FIFRA SAP report (1999). Risk Assessment of *Burkholderia cepacia* - based biopesticides and other bacteria related to opportunistic human infections.

13. Speert, D. P., Infect. Med., 18, 2001,49.

14. Parke, J.J., The Plant Health Instructor, 10, 2000, 1094.

15. Commercial Uses of *Burkholderia cepacia* complex, USEPA, October 2001.

16. Assessment of Potential Worker Exposure and Environmental Releases From Commercial Uses of *Burkholderia cepacia* complex, USEPA, October 2001.

17. Economic Analysis to Support the Proposed SNUR for *Burkholderia cepacia* complex, USEPA, October 15, 2001.

XI. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a ''significant regulatory action'' subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with proposing and finalizing SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This proposed rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001 do not apply to this proposed rule. Nor will this action have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section

12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this proposed SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting an MCAN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 900 SNURs, the Agency has received fewer than 25 SNUNs. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of an MCAN or TERA (see Unit IX.A. of this document) are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. This rationale has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 1188.06). This action does not impose any burden requiring additional OMB approval. If an entity were to submit an MCAN or TERA to the Agency, the annual burden is estimated to average between 98.96 and 118.92 hours per response at an estimated reporting cost between $5,957 and $7,192 per MCAN. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required MCAN or TERA. This burden estimate does not include the $2,500 user fee submission of an MCAN ($100 for businesses with less than $40 million in annual sales).

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OP Regulatory Information Division (2137), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

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

List of Subjects in 40 CFR Part 725

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 21, 2001.

William H. Sanders, III

Office Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 725 be amended as follows:

PART 725—[AMENDED]

1. The authority citation for part 725 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625.

2. By adding new § 725.1075 to subpart M to read as follows:

§ 725.1075 Burkholderia cepacia complex.

(a) *Microorganism and significant new uses subject to reporting.*(1) The microorganisms identified as the *Burkholderia cepacia* complex defined as containing the following nine species, *Burkholderia cepacia*, *Burkholderia multivorans*, *Burkholderia stabilis*, *Burkholderia vietnamiensis*, *Burkholderia ambifaria*, *Burkholderia pyrrocinia*, and *Burkholderia cepacia* genomovars III, VI, and VIII are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is any use other than research and development in the degradation of chemicals via injection into subsurface groundwater.

(b) [Reserved]

[FR Doc. 02–513 Filed 1–8–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 123101B]

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 2002 ocean salmon fisheries. This document announces the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April Council meetings will be published in subsequent Federal Register documents prior to the actual meetings.

DATES: Written comments on the salmon management options must be received by April 2, 2002, at 4:30 p.m. Pacific Time.

ADDRESSES: Documents will be available from and written comments should be sent to Dr. Hans Radtke, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220, facsimile 503–326–6831. For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, telephone 503–326–6352.

SUPPLEMENTARY INFORMATION:

Schedule For Document Completion and Availability

March 5, 2002: ''Review of 2001 Ocean Salmon Fisheries'' and ''Preseason Report I-Stock Abundance Analysis for 2002 Ocean Salmon Fisheries'' will be available to the public from the Council office.

March 26, 2002: ''Preseason Report II'' and public hearing schedule will be mailed to the public. The report will include a description of the adopted salmon management options and a summary of their biological and economic impacts.

April 24, 2002: Newsletter describing adopted ocean salmon fishing management measures will be mailed to the public.

May 1, 2002: Federal regulations will be implemented and ''Preseason Report III- Analysis of Council-Adopted Ocean Salmon Management Measures for 2002 Ocean Salmon Fisheries'' will be available from the Council office.

Meetings and Hearings

January 22–25, 2002: The Salmon Technical Team (STT) will meet at the Council office in a public work session to draft ''Review of 2001 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2002 ocean salmon fisheries.

February 19–22, 2002: STT will meet at the Council office in a public work session to draft ''Preseason Report I-Stock Abundance Analysis for 2002 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2002 ocean salmon fisheries.

March 11–15, 2002: Council and advisory entities will meet at the Red Lion Hotel Sacramento, Sacramento, CA to adopt the 2002 salmon management options for public review.

April 1–3, 2002: Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified here.

April 1, 2002: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA 98595, telephone 360–268–9101.

April 1, 2002: Red Lion Hotel, South Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR 97420, telephone 541–267–4141.

April 2, 2002: Red Lion Hotel Eureka, Evergreen Room, 1929 Fourth Street, Eureka, CA 95501, telephone 707–445–0844.

April 8–12, 2002: Council and advisory entities meet at the DoubleTree Hotel - Columbia River, 1401 North Hayden Island Drive, Portland, OR 97217, to adopt 2001 management measures for implementation by NMFS.

April 9, 2002: Testimony on the management options is taken during the Council meeting at the DoubleTree Hotel - Columbia River, Riverview Ballroom, 1401 North Hayden Island Drive, Portland, OR 97217, telephone 503–283–2111.

Although nonemergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this notice requiring emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

The 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 (voice), or 503-326-6831 (fax) at least 5 days prior to the meeting date.

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

Dated: January 3, 2002..

Bruce C. Morehead,

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

[FR Doc. 02–551 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 6
Wednesday, January 9, 2002

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–165–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, and –83 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes. This proposal would require an inspection to verify proper installation of the support clamp of the alternating current (AC) power relay feeder cables at the aft inboard side of the electrical power center, and corrective actions, if necessary. This action is necessary to prevent the AC power relay feeder cables from chafing against the aft inboard side of the electrical power center due to improper installation, which could result in electrical arcing and damage to adjacent structures, and consequent smoke and/or fire in the electrical power center area. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–165–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; 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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–165–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that one operator discovered several instances of the alternating current (AC) power relay feeder cables chafing against the aft inboard side of the electrical power center on a McDonnell Douglas Model DC–9–82 series airplane. The cause of such chafing has been attributed to the support clamp of the AC power relay feeder cables not being properly installed during production of the airplane. These conditions, if not corrected, could result in electrical arcing and damage to adjacent structures, which could result in smoke and/or fire in the electrical power center area.

The AC power relay feeder cables on certain Model DC–9–81 and -83 series airplanes, and Model MD–88 airplanes are identical to those on the affected Model DC–9–82 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–24A145, Revision 01, dated June 22, 2000, which describes

procedures for a general visual inspection to verify proper installation of the support clamp of the AC power relay feeder cables at the aft inboard side of the electrical power center; and corrective actions, if necessary. The corrective actions include performing a general visual inspection of the power relay feeder cables for chafing; repairing of the cables, if necessary; and installing the clamp, grommet, and sta-strap. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Cost Impact

There are approximately 162 airplanes of the affected design in the worldwide fleet. The FAA estimates that 90 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,400, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2000–NM–165–AD.

Applicability: Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin MD80–24A145, Revision 01, dated June 22, 2000.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the alternating current (AC) power relay feeder cable from chafing against the aft inboard side of the electrical power center, which could result in electrical arcing and damage to adjacent structures, and consequent smoke and/or fire in the electrical power center area, accomplish the following:

Inspection

(a) Within 1 year from the effective date of this AD, do a general visual inspection to verify proper installation of the support clamp of the alternating current (AC) power relay feeder cables (includes the clamp, grommet, and sta-strap) at the aft inboard side of the electrical power center, per McDonnell Douglas Alert Service Bulletin MD80–24A145, Revision 01, dated June 22, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Proper Installation: No Further Action

(1) If the installation of the clamp, grommet, and sta-strap is correct, no further action is required by this AD.

Improper Installation: Corrective Actions

(2) If any installation of the clamp, grommet, or sta-strap is not correct, before further flight, do the actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Do a general visual inspection of the power relay feeder cables for chafing, per the service bulletin. If any chafing is found, before further flight, repair per the service bulletin.

(ii) Install the clamp, grommet, and sta-strap, per the service bulletin.

Note 3: Accomplishment of the actions specified in McDonnell Douglas MD80–24–145, dated December 15, 1992, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 2, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–458 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–40–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Powered by General Electric (GE) CF6–45/50, Pratt & Whitney (P&W) JT9D–70, or JT9D–7 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes powered by GE CF6–45/50, P&W JT9D–70, or JT9D–7 series engines. This proposal would require repetitive inspections to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead, and repair, if necessary. For certain airplanes, this proposal provides for an optional terminating modification for the inspections of the outboard nacelle struts. This action is necessary to find and fix cracks and broken fasteners of the inboard and outboard nacelle struts, which could result in possible loss of the bulkhead load path and consequent separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–40–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–40–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that fatigue cracking of the inboard and outboard nacelle struts of the rear engine mount bulkhead was found on certain Boeing Model 747 series airplanes powered by General Electric CF6–45/50 and Pratt & Whitney (P&W) JT9D–3, –7, and –70 series engines. Cracking found on airplanes powered by P&W JT9D–3 and –7 series engines was located in the frame webs at the inner angles, extending in a radial direction. Cracking also was found in the inner flange radius and web. Cracking found on airplanes powered by GE CF6–45/50 and P&W JT9D–70 series engines was located in the frame flange common to the strut skin. Such cracking, if not found and fixed, could result in possible loss of the bulkhead load path and consequent separation of the engine from the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000, which describes procedures for repetitive detailed visual and high frequency eddy current (HFEC) inspections to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead, and repair, if necessary. For certain airplanes with web doublers installed per the Boeing service bulletins listed below, an HFEC inspection is to be done in the stop-drilled holes or around the fasteners, if installed. The service bulletin specifies contacting Boeing for repair instructions if discrepancies (cracks, broken fasteners) are found.

The FAA also has reviewed and approved Boeing Service Bulletins 747–54–2033, Revision 2, dated July 29, 1977, and 747–54–2065, Revision 6, dated May 29, 1997. These service bulletins describe procedures for a detailed visual inspection for cracks and broken fasteners, and modification of

the outboard nacelle struts of the rear engine mount bulkhead. These service bulletins are referenced in Boeing Alert Service Bulletin 747–54A2202.

Explanation of Requirements of Proposed Rule

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

Differences Between Alert Service Bulletin and This Proposed AD

The alert service bulletin specifies that the manufacturer must be contacted for repair of certain conditions, but this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

This is considered to be interim action. At this time, the FAA is considering a separate rulemaking action to mandate accomplishment of the optional terminating modification for certain outboard struts, and the manufacturer has advised that it currently is developing a terminating modification for the inboard struts and the remaining outboard struts.

Cost Impact

There are approximately 456 airplanes of the affected design in the worldwide fleet. The FAA estimates that 165 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to accomplish the proposed detailed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $39,600, or $240 per airplane, per inspection cycle.

It would take approximately 32 work hours per airplane to accomplish the proposed high frequency eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed high frequency eddy current inspection on U.S. operators is estimated to be $316,800, or $1,920 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the optional terminating modification that would be provided by this AD action, it would take approximately 368 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $20,000 per airplane. Based on these figures, the cost impact of the optional terminating action is estimated to be $42,080 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2001–NM–40–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) 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 find and fix cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead, which could result in possible loss of the bulkhead load path and consequent separation of the engine from the airplane, accomplish the following:

Detailed Visual Inspections

(a) Do a detailed visual inspection to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Do the inspection per Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000. Repeat the inspection at least every 350 flight cycles until paragraph (b) of this AD has been done.

(1) For airplanes on which the inspections specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, HAVE NOT been done: Within 120 days after the effective date of this AD.

(2) For airplanes on which the inspections specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, HAVE been done: Within 1,600 flight hours after doing the last inspection with no crack finding, or within 600 flight hours after doing the last inspection with a crack finding.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by

the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Detailed Visual/High Frequency Eddy Current Inspections

(b) Within 1,200 flight cycles or 18 months after the effective date of this AD, whichever is first: Do detailed visual and high frequency eddy current (HFEC) inspections to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead per Part 1 and Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000, as applicable. Doing the inspections required by this paragraph terminates the inspections required by paragraph (a) of this AD.

(1) For airplanes on which the modification of the inboard struts specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, HAS NOT been done: Repeat the applicable inspection at least every 1,200 flight cycles or 18 months, whichever is first.

(2) For Groups 3 and 4 airplanes on which the modification of the inboard struts specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, HAS been done: Repeat the applicable inspection at least every 1,200 flight cycles.

(c) For Groups 1 and 5 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000, with web doublers and angle chords installed to repair cracking, as specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997; or Boeing Service Bulletin 747–54–2033, Revision 2, dated July 29, 1977: Within 1,200 flight cycles or 18 months after the effective date of this AD, whichever is first, do an HFEC inspection of the stop-drilled holes per Figure 1, Flag Notes 1 and 2, of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000. Repeat the inspection at least every 600 flight cycles.

Note 3: Accomplishment of the actions specified in paragraphs (b)(1), (b)(2), and (c) of this AD before the effective date of this AD, per Boeing Service Bulletin 747–54–2033, dated September 13, 1974; or Revision 1, dated November 14, 1975; or Boeing Service Bulletin 747–54–2065, dated October 30, 1981; Revision 1, dated December 19, 1983; Revision 2, dated October 23, 1984; Revision 3, dated March 14, 1986; or Revision 5, dated November 2, 1989; is considered acceptable for compliance with the applicable actions specified in this AD.

Repair

(d) Except as provided by paragraph (e) of this AD: Before further flight, repair any discrepancy (crack or broken fastener) found during any inspection required by this AD, per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(e) Web cracks in the existing bulkhead frames repaired with the web doublers and angle chords are acceptable, provided they are stop drilled and are within the limits specified in Figure 1, Flag Notes 1 and 2, of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000.

Optional Terminating Modification

(f) For Groups 3, 4, and 5 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000: Accomplishment of the modification of the outboard nacelle struts, as specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, terminates the repetitive inspections required by paragraphs (a) and (b) of this AD for the outboard nacelle struts only.

Note 4: Accomplishment of the modification of the outboard nacelle struts before the effective date of this AD per Boeing Service Bulletin 747–54–2065, dated October 30, 1981; Revision 1, dated December 19, 1983; Revision 2, dated October 23, 1984; Revision 3, dated March 14, 1986; or Revision 5, dated November 2, 1989; is considered acceptable for compliance with paragraph (e) of this AD.

Alternative Methods of Compliance

(g) 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, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

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

Issued in Renton, Washington, on January 2, 2002.

Lirio Liu Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–457 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, and –83 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes. This proposal would require an inspection of the electrical power feeder cables in the aft cargo compartment sidewall for chafing and/or preloading, and corrective actions, if necessary. This action is necessary to prevent possible arcing of the electrical power cables in the aft cargo compartment sidewall and consequent damage to equipment and the adjacent structure, which could result in smoke and/or fire in the cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–164–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–

0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Airframe Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; 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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–164–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that chafed electrical power feeder cables in the aft cargo compartment sidewall were found during a ''C'' check on a McDonnell Douglas Model DC–9–82 series airplane. Investigation has revealed that cables rubbing against a floor support cutout due to a preload condition was the cause. This condition, if not corrected, could result in possible arcing of the electrical power feeder cables in the aft cargo compartment sidewall and consequent damage to equipment and the adjacent structure, which could result in smoke and/or fire in the cargo compartment.

The existing design of the electrical power feeder cables on certain McDonnell Douglas Model DC–9–81 and –83 series airplanes, and Model MD–88 airplanes is identical to that on the affected Model DC–9–82 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–24A124, Revision 01, dated August 24, 2000. The service bulletin describes procedures for a one-time general visual inspection of the electrical power feeder cables on each side of the floor support strut at station Y=1231.000 for chafing and preloading against the adjacent floor support cutout, and corrective actions, if necessary. The corrective actions include repairing the cables; installing a shim on the bracket; and repositioning the cables; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Cost Impact

There are approximately 112 airplanes of the affected design in the worldwide fleet. The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,420, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2000–NM–164–AD.

Applicability: Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin MD80–24A124, Revision 01, dated August 24, 2000.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent possible arcing of the electrical power cables in the aft cargo compartment sidewall and consequent damage to equipment and the adjacent structure, which could result in smoke and/or fire in the cargo compartment, accomplish the following:

Inspection and Corrective Action, if Necessary

(a) Within 1 year after the effective date of this AD, perform a general visual inspection of the electrical power feeder cables on each side of the floor support strut at station Y=1231.00 for chafing and preloading against the adjacent floor support cutout, in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A124, dated Revision 01, dated August 24, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: Accomplishment of the actions required by this AD, before the effective date of this AD, in accordance with McDonnell Douglas MD–80 Service Bulletin 24–124, dated September 26, 1991, is considered acceptable for compliance with the requirements of this AD.

(1) Condition 1. If no chafing and preloading of the electrical power feeder cables are found, no further action is required by this AD.

(2) Condition 2. If any chafing of the electrical power feeder cable is found, before further flight, repair the cable, install a shim on the bracket, and reposition the cable; in accordance with the service bulletin.

(3) Condition 3. If any preloading of the electrical power feeder cable is found, before further flight, install a shim on the bracket and reposition the cable, in accordance with the service bulletin.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles ACO.

Special Flight Permits

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

Issued in Renton, Washington, on January 2, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–456 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC92

Oil and Gas and Sulphur Operations on the Outer Continental Shelf; Suspension of Operations for Exploration Under Salt Sheets

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: MMS proposes to modify regulations that govern suspensions of operations for oil and gas leases on the Outer Continental Shelf (OCS). There are instances where oil and gas lessees begin timely analysis of geophysical data early in the lease term, but the analysis proves inconclusive because of problems caused by the existence of salt sheets underlying the seabed and overlying possible hydrocarbon deposits. In such cases, the proposed rule would allow lessees to apply for a suspension of operations (SOO) to complete the necessary geophysical analysis before drilling a well. To qualify for a suspension of operations, the lessee must show it has made and will continue to make substantial efforts and financial commitment to process and reprocess its geophysical data.

DATES: MMS will consider all comments received by February 8, 2002. MMS may not fully consider comments received after February 8, 2002.

ADDRESSES: You may mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: John Mirabella, Engineering and Operations Division, (703) 787–1598.

SUPPLEMENTARY INFORMATION: When a lessee obtains an oil and gas lease on the OCS, MMS regulations allow the lessee flexibility to schedule activities during the primary term. At the end of the primary term, the lease can continue in force only by production, suspension, drilling, or well reworking operations as approved by the Secretary. MMS regulations authorize suspensions before discovery of oil or gas in paying quantities only in limited circumstances. Generally, when a lease reaches the end of the primary term, the lessee must conduct drilling operations until it has made a discovery of oil or gas and a commitment to proceed to development and production.

Although lessees have made great progress in imaging potential objectives in areas under salt sheets, processing, analyzing, and interpreting geophysical, geological, and other relevant data and information is complex and time-consuming. As a result, lessees have been faced with the end-of-lease-term decisions to either allow the lease to expire or drill a well without sufficient geophysical information.

On December 21, 2000, MMS issued Notice to Lessees (NTL) 2000–G22, Subsalt Lease Term Extension. That NTL provides for extension of lease terms for subsalt exploration in cases where the lessee has drilled a well on the lease during the primary term but needs additional time to process geophysical data before drilling another well. The NTL did not provide

additional time to process geophysical data in cases where a well had not been drilled. This rule would authorize MMS to grant a suspension for a lease when the operator has conducted timely analysis and interpretation of the geophysical data that may ultimately lead to a drilling objective but, due to the complexity of the salt sheet, needs additional time to complete the geophysical analysis before drilling. The provision requires the lessee to conduct timely analysis of geophysical information before the lessee may be granted additional time because of complications associated with the presence of the salt sheet. In considering whether the analysis of geophysical information is timely, MMS will require the lessee to have collected and analyzed geophysical information (i.e., full 3–D depth migration beneath the salt sheet and over the entire lease area) before the end of the third lease year and to have completed additional data reprocessing before MMS will grant a suspension. MMS finds that this provision will address those special circumstances and that appropriate suspensions may lead to improved opportunities for effective exploration, development, and production.

Procedural Matters

Public Comment Procedure

Comments on the proposed rule, including names and home addresses of respondents, are available for public review during regular business hours. Individual respondents may request that we withhold their home address or identity from the rulemaking record to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all comments from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under Executive Order 12866.

Over the next 5 years, MMS anticipates that companies would make 3 to 5 requests each year under the proposed rule. We estimate that in three of the cases each year, this new rule will prevent unnecessary compelled drilling of wells that may not otherwise have been drilled had the geophysical analysis been sufficient. Depending on the water depth and the well depth, we estimate that drilling each well, on average, would have cost $10 million. Selective suspensions will help reduce potential environmental impact and produce approximately $30 million in private sector savings.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Issuance of a suspension for a lease does not interfere with the ability of other agencies to exercise their authority.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*).

This rule may directly or indirectly affect lessees and operators of leases on the OCS. This includes about 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Based on these criteria, we estimate that about 70 percent of these companies are considered small. We expect few, if any, of the small companies to apply for a suspension under this rule. Some small companies may be included in partnerships with larger companies that are exploring in the subsalt areas.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

We do not expect this rule to have a significant effect because, as discussed above, this rule will have a positive effect on the private sector of approximately $30 million per year in avoided costs.

Paperwork Reduction Act (PRA) of 1995

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The proposed revisions to 30 CFR part 250, subpart A, refer to, but do not change, information collection requirements in current regulations. OMB has approved the referenced information collection requirements under OMB control numbers 1010–0114, current expiration date of September 30, 2002. The rule proposes no new reporting or recordkeeping requirements, and an OMB form 83–I submission to OMB under the PRA is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule does not affect that role.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the proposed rule does not have significant Takings implications. A Takings Implication Assessment is not required. The proposed rulemaking is not a governmental action capable of

interfering with constitutionally protected property rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. The rule may have a small positive effect on energy supplies.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The Department of the Interior has established that ''issuance and/or modification of regulations'' is considered a categorically excluded action as it results only in administrative effects causing no significant impacts on the environment and, therefore, will not require preparation of an environmental assessment or impact statement. MMS has determined that this action does not represent an exception to the categorical exclusion. A detailed statement under NEPA is not required.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: December 21, 2001.

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. In § 250.175, redesignate the existing text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 250.175 When may the Regional Supervisor grant an SOO?

* * * * *

(b) The Regional Supervisor may grant an SOO not to exceed 3 years in the Western Gulf of Mexico when all of the following conditions are met:

(1) The lease was issued with an initial lease term of 5 years, or with an initial term of 8 years with a requirement to drill within 5 years;

(2) The lessee has collected and analyzed appropriate geophysical information prior to the end of the third lease year;

(3) The geophysical information confirms the presence of a salt sheet as well as evidence that a drillable objective may exist beneath the salt sheet;

(4) The applicant has completed additional reprocessing prior to submitting the application for suspension; and

(5) The applicant demonstrates that additional time is necessary to gather new geophysical data or to reprocess or reinterpret existing data to further define drilling objectives beneath a salt sheet.

[FR Doc. 02–521 Filed 1–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[NM–042–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico proposes revisions to and additions of rules about definitions, general environmental resource information, operations that may have an adverse impact on publicly owned parks or places listed on the National Register of Historic Places, bond release applications, termination of jurisdiction, prime farmland reclamation, inspection frequency of abandoned sites, hearings for charges of violation, the qualifying criteria for assistance under the small operator's program, areas where mining is prohibited or limited, criteria for designating areas unsuitable for surface coal mining, applications for and approval of coal exploration operations of more than 250 tons, criteria for permit approval or denial, application and approval criteria for demonstrating valid existing rights, the one square mile criterion in the definition of intermittent streams, and miscellaneous non-substantive editorial revisions. New Mexico intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA and improve operational efficiency.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t., February 8, 2002. If requested, we will hold a public hearing on the amendment on February 4, 2002. We will accept requests to speak until 4 p.m., m.s.t., on January 24, 2002.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to Willis L. Gainer at the address listed below.

You may review copies of the New Mexico program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Albuquerque Field Office.

Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW, Suite 1200, Albuquerque, New Mexico 87102, Telephone: 505–248–5096.

Director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 1120 South St.

Francis Drive, Santa Fe, New Mexico 87505, Telephone: 505–476–3400.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: 505–248–5096.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Description of the Proposed Amendment

By letter dated November 28, 2001, New Mexico sent us a proposed amendment (administrative record No. NM–853) to its program under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment in response to the June 19, 1997, and April 2, 2001, letters (administrative record Nos. NM–796 and NM–851) that we sent to New Mexico in accordance with 30 CFR 732.17(c); in response to the required program amendments at 30 CFR 931.16(e), (u) and (v); and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, New Mexico proposes, in response to the June 19, 1997, 30 CFR part 732 letter, to:

1. Revise 19.8.1.7.O(5) NMAC, the definition of ''other treatment facilities,'' to include chemical treatments or mechanical structures that have a point-source discharge and are utilized to comply with all applicable State and Federal water-quality laws and regulations;

2. Revise 19.8.1.7.P(12) NMAC, the definition of ''previously mined areas,'' to mean land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the requirements of SMCRA, the Act, and the New Mexico regulatory standards;

3. Revise 19.8.1.7.Q(1) NMAC, the definition of ''qualified laboratory,'' to specify, in addition to the listed services, those services allowed under the small operator assistance program (SOAP) at 19.8.32.3203 NMAC;

4. Revise 19.8.8.801.B, concerning general environmental resources information in a permit application, to require (1) at paragraph B(1), a description (based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies) of the nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed permit and adjacent areas, and (2) at paragraph B(2), further evaluation of important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses;

5. Revise 19.8.9.912 NMAC, concerning proposed operations that may have an adverse effect on any publicly owned parks or any places listed on the National Register of Historic Places, to (1) require a plan to either (a) describe the measures to be used to prevent adverse impacts, or (b) minimize adverse impacts when valid existing rights exist or joint agency approval must be obtained, and (2) require the applicant to prevent or minimize impacts to any historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures, which may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

6. Revise 19.8.14.1412 NMAC, concerning general requirements for bonding, by adding paragraph (2)(h) that requires an operator to include in an application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of SMCRA, the Act, the regulatory program, and the approved reclamation plan;

7. Add 19.8.14.1415.A and B NMAC, concerning termination of jurisdiction, stating that the Director (1) may terminate regulatory jurisdiction over a reclaimed surface coal mining and reclamation operation upon a written finding that all reclamation requirements have been successfully completed or the performance bond has been released and (2) must reassert jurisdiction over a site if it is demonstrated that either the written finding to release a performance bond or regulatory jurisdiction was based upon fraud, collusion, or misrepresentation of a material fact;

8. Revise 19.8.20.2057.A NMAC, the definition of ''thin overburden,'' to allow a variation from backfilling to the approximate original contour when the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and the coal bed prior to removing the coal;

9. Revise 19.8.20.2058.A NMAC, the definition of ''thick overburden,'' to allow a variation from backfilling to the approximate original contour when the overburden thickness times the swell factor exceeds the combined thickness of the overburden and the coal bed prior to removing the coal;

10. Revise 19.8.24.2400 NMAC, concerning performance standards for operations on prime farmlands, by adding paragraph C requiring that the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining; water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area; and the creation of any such water bodies must be approved by the regulatory authority with the consent of all affected property owners within the permit area;

11. Add 19.8.29.2900.G and H NMAC that define ''abandoned site'' to mean a surface coal mining and reclamation operation for which the Director has made specified written findings and allow for a reduced inspection frequency determined by specified conditions at the site, but no less frequently than one complete inspection per quarter;

12. Revise 19.8.31.3107.A NMAC, concerning a request for a hearing by a person charged with a violation, to allow 30 rather than 15 days from the date of service of the conference officer's action for the person to contest

the proposed penalty or alleged violation;

13. Revise 19.8.32.3200.B NMAC by allowing an applicant to be eligible for assistance under SOAP if he establishes that his probable total actual and attributed production from all locations during any consecutive 12-month period either during the permit term or during the first 5 years after issuance of his permit, whichever period is shorter, will not exceed 300,000 rather than 100,000 tons;

14. Revise 19.8.32.3203.A and B NMAC, concerning the small operators assistance program, to allow funding for additional services performed by a qualified laboratory including engineering analyses and designs necessary for the determination of probable hydrologic consequences, drilling, development of cross-section maps and plans, collection of archaeological and historic information and related plans, pre-blast surveys, and collection of site specific resources information and production of protection and enhancement plans for fish and wildlife habitats; and

15. Revise 19.8.32.3206.A and A(2) and (3) NMAC to clarify that the SOAP applicant shall reimburse the Director for the costs of the services rendered if either the applicant's actual and attributed annual production of coal for all locations exceeds 300,000 tons (rather than 100,000 tons) or the permit is sold, transferred or assigned to another person and the transferee's total actual attributed annual production of coal for all locations exceeds 300,000 tons (rather than 100,000 tons) during any consecutive 12-month period either during the permit term or during the first 5 years after issuance of his permit.

In response to the April 2, 2001, 30 CFR part 732 letter, New Mexico proposes revisions and additions of rules concerning valid existing rights (VER). Specifically, New Mexico proposes to:

1. Revise 19.8.2.201.C NMAC, concerning areas where mining is prohibited or limited, to prohibit mining within 300 feet of any occupied dwelling unless, among other things, an access or haul road connects with an existing public road on the side of the public road opposite the dwelling;

2. Revise 19.8.2.201.E NMAC, concerning areas where mining is prohibited or limited, to prohibit mining within 100 feet of a cemetery, unless the cemetery is relocated in accordance with all applicable laws and regulations;

3. Add 19.8.2.201.F.(5) NMAC, concerning areas where mining is prohibited or limited, to prohibit mining on federal lands within a national forest, unless the U.S. Secretary of the Department of the Interior finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations and any surface operations or surface impacts will be incidental to an underground coal mine, or, with respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the U.S. Secretary of Agriculture has determined that the surface mining operation is in compliance with several Federal acts;

4. Revise 19.8.2.202 NMAC, concerning areas designated unsuitable for mining, to incorporate new procedures for determining whether an applicant proposes surface coal mining operations on lands protected under 19.8.2.201 NMAC and, if proposed, whether the applicant has valid existing rights to disturb protected lands;

5. Add 19.8.2.203 NMAC, concerning criteria for designating areas unsuitable for mining, to identify when the prohibitions and limitations of 19.8.2.201 NMAC do not apply;

6. Revise 19.8.3.300.C, concerning criteria for designating lands unsuitable for mining, to add a statement that all lands protected under 19.8.2 NMAC, concerning areas designated unsuitable for surface coal mining, are subject to designation as unsuitable for all or certain types of surface coal mining operations pursuant to the appropriate petitions;

7. Revise 19.8.6.602.A(9), concerning an application for coal exploration of more than 250 tons and lands designated as unsuitable for mining, to add the requirements that an applicant (1) demonstrate that the proposed exploration will minimize interference with values for which the land was designated unsuitable and (2) include documentation of consultation with the owner of the feature causing the land to be protected and, when applicable, the agency with the primary jurisdiction over the feature;

8. Add 19.8.6.603.B(4) NMAC, concerning approval of coal exploration for more than 250 tons, to require that the Director of the New Mexico program approve an application only if he finds that the activities on any lands protected under 19.8.2.201 NMAC will minimize interference with the values for which the lands were designated as unsuitable for mining. Prior to making this finding, the Director must provide reasonable opportunity to the owner of the features and, when applicable, to the agency with primary jurisdiction over the features, to comment on whether the finding is appropriate;

9. Revise 19.8.7.704.C, concerning application requirements for identification of areas with a proposed permit that are within areas designated unsuitable for mining, to require that when an applicant proposes to conduct surface coal mining operations within 100 feet of a public road, an applicant must meet the requirements concerning the necessary approvals and public notice and hearing provided for at 19.8.2.202.D;

10. Revise 19.8.11.1106.D(3), concerning the criteria for permit approval or denial, to require that the Director find that the proposed permit area is not within an area designated as unsuitable for surface coal mining operations under 19.8 NMAC Parts 3 and 4, or within an area subject to the prohibitions of 19.8.2.201 NMAC; and

11. Add a new part at 19.8.35.1 NMAC through 19.8.35.14 NMAC, concerning the definition of ''valid existing rights'' (VER), the requirement for an applicant to demonstrate compliance with the ''good faith/all permits standard'' or the ''need for and adjacent standard'' with respect to areas with VER, roads and VER, the submission and processing of requests for VER determinations, the requirements for a VER property rights demonstration, the initial review of a VER request, the public notice and comment requirements and procedures for processing a VER request, how decisions on a VER request will be made, opportunities for administrative and judicial review of VER determinations, and the availability of records for VER requests and determinations.

In response to required program amendments at 30 CFR 931.16(e), (u) and (v), concerning the inclusion of a one square mile criterion in the definition of intermittent streams, New Mexico proposed an explanation of how the existing New Mexico rules governing ephemeral streams provide environmental protection for drainages of one square mile that is as effective as the Federal regulations. New Mexico's justification is based on unique regional characteristics of low rainfall in an arid environment and implementation of performance standards for diversions of ephemeral streams requiring use of site-specific designs that take into account the local watershed and rainfall conditions, use of the best technology currently available; protection against material damage both on and off-site; and, minimization of impacts to the hydrologic balance.

In addition, at its own initiative, New Mexico proposes to revise the following rules:

1. 19.8.1.7.(2) NMAC, concerning the definition of ''fixed assets,'' to clarify the meaning by adding ''facilities and equipment not used for the production, transportation or processing of coal;''
2. 19.8.1.7.(5) NMAC, concerning the definition of ''fixed assets,'' to clarify that fixed assets and land or coal in place shall not be considered assets for the purposes of calculating net worth;
3. 19.8.8.802.A(1) NMAC, concerning application requirements for hydrology and geology, to replace the word ''by'' with ''to;''
4. 19.8.13.1307.A.(1)(d) NMAC, concerning transfer, assignment or sale of permit rights, to delete an inappropriate rule reference;
5. 19.8.19.1900.A and B NMAC, concerning coal exploration, to correct a referenced rule citation;
6. 19.8.19.1902.C.(2) NMAC, concerning coal exploration, to correct reference rule citations; and
7. 19.8.20.2009.E and E(5) NMAC, concerning protection of the hydrologic balance, to correct referenced rule citations.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the New Mexico program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see Dates). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Albuquerque Field Office may not be logged in.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t., on January 24, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that state programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 5, 2001.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 02–481 Filed 1–8–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–070]

RIN 2115–AE46

Special Local Regulations for Marine Events; Western Branch, Elizabeth River, Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for marine events held on the waters of the Western Branch of the Elizabeth River, Portsmouth, Virginia. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in portions of the Western Branch of the Elizabeth River during the events.

DATES: Comments and related material must reach the Coast Guard on or before March 11, 2002.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Operations Oversight Branch, Auxiliary and Recreational Boating Safety Section, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–01–070), 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 proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The City of Portsmouth, Ports Events, Inc., and other event organizers sponsor marine events throughout the year on the waters of the Western Branch of the Elizabeth River. These marine events are held adjacent to the Portsmouth City Park. A fleet of spectator vessels traditionally gathers near the event site to view the marine events. To provide for the safety of event participants, spectators and transiting vessels, the Coast Guard proposes to temporarily restrict the movement of all vessels operating in the event area during the marine events.

Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent regulated area on specified waters of the Western Branch of the Elizabeth River. The proposed special local regulations will restrict general navigation in the regulated area during the events. Except for persons or vessels authorized by the Coast Guard Patrol

Commander, no person or vessel will be allowed to enter or remain in the regulated area. The proposed regulated area is needed to control vessel traffic during the marine events to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Western Branch of the Elizabeth River during the events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety necessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Although this regulation prevents traffic from transiting a portion of the Western Branch of the Elizabeth River during the events, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial and 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We prepared an ''Environmental Assessment'' in accordance with

Commandant Instruction M16475.1D, and determined that this proposed rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

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

PART 100—MARINE EVENTS

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

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

2. § 100.525 is added to read as follows:

§ 100.525 Western Branch, Elizabeth River, Portsmouth, Virginia.

(a) *Definitions*—(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Regulated Area.* The regulated area includes all waters of the Western Branch, Elizabeth River bounded by a line connecting the following points:

Latitude	*Longitude*
36°50′18″ North	076°23′ 10″ West, to
36°50′18″ North	076°21′42″ West, to
36°50′12″ North	076°217prime;42″ West, to
36°50′12″ North	076°23′10″ West, to
36°50′18″ North	076°23′10″ West

All coordinates reference Datum NAD 1983.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign; and

(ii) Proceed as directed by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective Dates.* This section is effective annually from 6 a.m. to 6 p.m. local time on the fourth Friday and fourth Saturday in March, the fourth Friday and fourth Saturday in April, the second Friday and second Saturday in May, and the second Saturday and second Sunday in October.

Dated: December 11, 2001.

Thad W. Allen,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–545 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 725

[OPPTS–50645; FRL–6809–2]

RIN 2070–AD43

Burkholderia Cepacia Complex; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for *Burkholderia cepacia* complex (Bcc), a group of naturally-occurring microorganisms. Bcc microorganisms, when encountered in sufficient numbers through an appropriate route of exposure by a member of a sensitive population, such as a cystic fibrosis (CF) patient, have the potential to cause a severe infection, resulting in significantly increased rates of mortality. This proposed rule would require persons who intend to manufacture, import, or process Bcc for a significant new use to notify EPA at least 90 days before commencing the manufacturing(including import) or processing of Bcc for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

DATES: Comments, identified by docket control number OPPTS–50645, must be received on or before March 11, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50645 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics (7405M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (including import), process, or use products that contain living microorganisms subject to jurisdiction under TSCA, especially if you know that your products contain or may contain Bcc. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Chemical manufacturers	325	Persons manufacturing, importing, or processing products for commercial purposes containing Bcc for biofertilizers; biosensors; biotechnology reagents; commodity or specialty chemical production; energy applications; and other TSCA uses
Waste management and remediation	562	Waste treatment or pollutant degradation

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the list of substances excluded by TSCA section (3)(2)(B), and the applicability provisions at 40 CFR 725.105(c) for SNUR related obligations. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 725 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr725_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–50645. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50645 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50645. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This proposed rule would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of Bcc, a group of naturally occurring microorganisms, for any use other than research and development in the degradation of chemicals via injection into subsurface groundwater.

B. What is the Agency's Authority for Taking this Action?

TSCA section 5(a)(2) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' See also, 40 CFR part 725, Subparts L–M. EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Section 5(a)(2) of TSCA lists the following as potentially relevant factors for EPA to consider: (A) the projected volume of manufacturing and processing of a chemical substance, (B) the extent to which a use changes

the type or form of exposure to human beings or the environment to a chemical substance, (C) the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance, and (D) the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

Once EPA promulgates a rule designating ''significant new uses'' for a given chemical substance, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 725.105(c).

EPA has interpreted the TSCA section 3(2) definition of ''chemical substance'' as authorizing EPA to regulate microorganisms under TSCA. See the **Federal Register** of April 11, 1997 (62 FR 17910 and 17913) (FRL–5577–2). Microorganisms that are not intergeneric are implicitly included on the TSCA Inventory, which would include naturally-occurring microorganisms such as Bcc (40 CFR 725.8(b)). Thus, such microorganisms are only subject to TSCA section 5 notification requirements upon promulgation of a SNUR, pursuant to TSCA section 5(a)(2).

C. Which General Provisions Apply?

General provisions for SNURs appear under subpart L of 40 CFR part 725. These provisions describe persons subject to the proposed rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the proposed rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of Microbial Commercial Activity Notices (MCANs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the conditions necessary to qualify for the exemptions under TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), as codified in the regulations at 40 CFR part 725. In contrast to the provisions of 40 CFR part 721, under 40 CFR part 725, EPA has adopted a narrow interpretation of the TSCA section 5(h)(3) exemption for small quantities used in research. Under 40 CFR 725.3, EPA has defined small quantities solely for research and development as ''quantities of a microorganism manufactured, imported, or processed or proposed to be manufactured, imported, or processed solely for research and development that meet the requirements of § 725.234.'' Any other research and development activity of a microorganism subject to a SNUR must comply with the section 5(a)(1)(A) notification requirements unless that activity has been excluded from coverage under the SNUR. See, 40 CFR 725.3, Subparts E and F of 40 CFR part 725, and the **Federal Register** of April 11, 1997 (62 FR 17921–17926).

Once EPA receives an MCAN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the MCAN notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy addressing the import certification appears at 40 CFR part 707.

III. Summary of the Proposed Rule

On July 31, 2001, The Cystic Fibrosis Foundation submitted a petition under section 21 of TSCA which requested EPA to ''establish regulations prohibiting the manufacture, processing, distribution in commerce, use, and improper disposal of bacterial species within the *Burkholderia cepacia* complex.'' The Bcc was defined by the petitioner as nine species including *B. cepacia*, *B. multivorans*, *B. stabilis*, *B. vietnamiensis*, *B. ambifaria*, *B. pyrrocinia*, and three as yet unnamed species referred to as *B. cepacia* genomovars III, VI, and VIII. The petitioner stated that ''exposure of individuals with CF to Bcc frequently results in life-threatening infections'' and ''these actions are necessary to address the significant threat that these microorganisms pose to individuals with CF and other diseases that compromise the immune system.'' On November 6, 2001 (66 FR 56105) (FRL–6808–7) EPA published in the **Federal Register** a notice denying that petition. EPA also stated in the notice that it intended to issue a SNUR for Bcc.

It is well established that when encountered in sufficient numbers through an appropriate route of exposure by a member of a sensitive population, such as a CF patient, Bcc has the potential to cause a severe infection, resulting in significantly increased rates of mortality. There is also the possibility of increased exposure from several potential commercial uses especially for bioremediation where EPA has identified environmental research and development of Bcc that has already occurred. EPA believes that there is currently no general commercial use of Bcc. Therefore, EPA is proposing to designate any use of Bcc other than research and development in the degradation of chemicals via injection into subsurface groundwater as a significant new use.

This proposed rule, when finalized, would require persons, who intend to manufacture, import, or process Bcc for a significant new use to notify EPA, through submission of an MCAN or TSCA Experimental Release Application (TERA), at least 90 days before commencing the manufacture or importation of any of these microorganisms for any use other than research and development in the degradation of chemicals via injection into subsurface groundwater. The required notice would provide EPA with the opportunity to evaluate the intended use, and, if necessary, to prohibit or limit that use before it occurs.

IV. Hazard and Exposure of Bcc

A. Defining Bcc

B. cepacia complex is comprised of former *Pseudomonas* species (*P. cepacia* and *P. pyrrocinia*), existing *Burkholderia* species newly allied with Bcc (*B. vietnamiensis*), newly named *Burkholderia* species split off from *Burkholderia cepacia* (*B. multivorans*, *B. stabilis*, and *B. ambifaria*), and the three as yet unnamed genomovars (genomovars III, VI, and VIII). Of these nine components, only seven appear generally accepted as members of the Bcc in the current literature. Most current literature and reports refer to seven genomovars/species in the Bcc. One of these components, *B. pyrrocinia* had not been universally associated with Bcc until recently, but new information appears to move *B. pyrrocinia* from a unique species to part of a new genomovar of the Bcc. Additionally, recent information indicates that a publication is in

preparation which will establish a new genomovar (VIII). Acceptance of these two additional genomovars may be a function of the time needed for common usage by the research community (Ref. 1).

For purposes of this proposed rule EPA is defining Bcc as including all nine species. EPA is also proposing to use the provisional name, *Burkholderia cepacia* genomovars III, VI, and VIII, for the three unnamed genomovars, in the codified text and to replace these names with species designations via an administrative amendment when the species names are accepted by the scientific community. If in the future the composition of the Bcc is modified to include new species equivalents, or existing Bcc members are removed from that group, EPA will consider whether an additional rulemaking is warranted to revise the definition of Bcc in this proposed rule.

B. Bcc Hazard Assessment

Although *B. cepacia* is not a frank pathogen for humans, it is an important opportunistic pathogen for patients with CF and other diseases resulting in immune defects (Refs. 2 and 3). CF is an autosomal recessive disorder resulting in the dysfunction of the cystic fibrosis transmembrane regulator (CFTR), that actively transports chloride ions across the plasma membrane of mammalian cells (Ref. 3). This defect results in high salt concentrations in epithelial secretions and a production of a thick mucus within the airways of the CF lung. The airway mucus impairs normal mucocilliary clearance mechanisms, thus promoting infection with a variety of microbial pathogens.

CF patients suffer from a variety of health problems including infection, intestinal obstruction, pancreatic insufficiency, reproductive problems, and malnutrition (Ref. 4). These result in symptoms such as gastrointestinal pain, diarrhea, fatigue, weight loss, and wheezing. These problems are the result of mutations in the CFTR gene (Ref. 5). There have been more than 600 different mutations of this gene documented (Ref. 6). Different mutations have resulted in different phenotypes of the disease. Thus, CF is not an ''all or none'' disease, and the spectrum of CF disease can vary from very mild to very severe (Ref. 7).

Bacterial colonization and associated inflammation are the major causes of morbidity and mortality in patients with CF (Ref. 3). Surprisingly, the spectrum of bacteria that are routinely isolated from CF sputum is narrow (Ref. 3). Characteristically, infant CF patients are infected with *Staphylococcus aureus* and *Haemophilus influenzae*. In adolescent and adult CF patients, the prevalence of pulmonary infection with *Pseudomonas aeruginosa* (80–90% in most CF adults) exceeds that of all other pathogens. Other organisms isolated from CF patients include *Stenotrophomonas maltophilia*, *Alcaligenes xylosoxidans*, *Aspergillus* species, *Ralstonia pickettii*, and *Bordetella*.

Although *Pseudomonas aeruginosa* is the dominant pathogen for the CF patient, *B. cepacia* has been isolated with increasing frequency over the last 15 years (Ref. 3). According to the Cystic Fibrosis Foundation, 3.5% of all people with CF receiving care at CF Foundation-accredited Care Centers in 1988 were infected with *B. cepacia*. An adult CF infection rate of 6% has been reported (Ref. 6). The clinical outcome for CF patients can vary considerably. Some patients have only transient infection or are chronically infected without impact. Infection in other patients results in a more rapid deterioration of lung function. In about 20% of CF patients infected with *B. cepacia*, colonization results in the so-called ''cepacia syndrome,'' which is characterized by fever, pneumonia, and ultimately a fatal clinical decline.

B. cepacia causes pulmonary infections in CF patients. Respiratory tract infections, in general, are mainly caused by invasion of the mucus membranes lining the respiratory tract (Ref. 8). Thus, inhalation exposure would be the most relevant route of exposure for *B. cepacia* risk assessment. The level of exposure needed to cause infection is not known (Ref. 9).

B. cepacia is a pathogen in other immunocompromised patients as well. For example, patients with chronic granulomatous disease (CGD) are at a high risk of invasive *B. cepacia* infection (Ref. 10). This can result in fatal pneumonia in these patients. CGD is an inherited disorder of the immune system that leaves patients vulnerable to bacterial and fungal infections.

The virulence factors that allow *B. cepacia* to cause disease are only beginning to be defined (Ref. 11). Several virulence factors have been proposed for *B. cepacia* infecting CF patients. These include *B. cepacia* lipopolysaccharide catalase, a hemolysin, lipases, proteases, siderophores, and a so-called giant cable pilus. However, it is difficult to determine if the virulence traits identified actually contribute to pathogenicity in CF patients. This is partly due to animal models that do not reproduce the human CF phenotype with high fidelity.

Ascertaining the virulence factors important for *B. cepacia* infection would help in determining the relative pathogenicity of each distinct *B. cepacia* genomovar. Formerly a member of the genus *Pseudomonas*, *B. cepacia* is now known to be a complex of bacteria (*B. cepacia* complex) consisting of nine distinct species or genomovars (Ref. 3). Currently, it is not known if all genomovars of the *B. cepacia* complex are human pathogens. Based on analyses of isolates associated with human disease, genomovar III appears to be the most pathogenic for CF patients (Ref. 11). Some of the other genomovars are only rarely encountered in a clinical setting, and their ability to cause disease in CF patients is unknown. Thus far, however, no *B. cepacia* strains can currently be determined to be free from the potential to cause disease in CF patients (Ref. 12).

Ascertaining the virulence factors important for *B. cepacia* infection would also help in determining the source of all the infections that cause disease in CF patients. For example, epidemic transmission of *B. cepacia* is most commonly seen with genomovar III (Ref. 11). However, CF patients can also be infected by non-epidemic strains of *B. cepacia* (Refs. 2, 4, and 11). The source of all the infections that cause disease in CF patients is unknown. Potential infection sources could include: a) humans, b) hospital/treatment centers (nosocomial), c) food, or d) the environment (soil, water, plants). Thus far, only patient to patient transmission has been demonstrated to be an infection source (Ref. 13). Importantly, environmental isolates of *B. cepacia* cannot thus far be distinguished from human pathogenic strains (Ref. 11).

The therapy for *B. cepacia* remains a challenge (Ref. 11). *B. cepacia* is highly resistant to antibiotic drugs, and there is poor penetration of antibiotics into respiratory secretions. There have been reports of bacterial isolates for which no single anti-bacterial agent is effective *in vitro*. According to one author (Ref. 14), the most effective reagents appear to be carbapenems, extended-spectrum β-lactam drugs, and trimethoprim-sulfamethoxazole.

C. Potential Uses of Bcc

Studies suggest that Bcc microorganisms may be useful in a variety of TSCA applications, including bioremediation (degradation of toxic chemicals, as well as degradation of grease in drains), turf management, and specialty chemicals production. In order to gauge the scope of commercial use of Bcc, EPA conducted a survey of over

100 firms, associations, and researchers. In sum, EPA was able to discover no evidence that Bcc is contained in a commercial product currently available for use in the U.S. The only potential TSCA uses of Bcc for which information is available are field studies of Bcc in the biodegradation of chlorinated solvents in groundwater. Specifically, one company has injected a strain of Bcc into aquifers in New Jersey to demonstrate its ability to degrade trichloroethylene, and a consulting firm carried out a pilot study in Wichita, Kansas to verify the effectiveness and overall feasibility of injecting *Burkholderia cepacia* $PR1_{301}$ into groundwater to degrade chlorinated aliphatic hydrocarbons. The conclusion to the pilot study report suggests that the use of *Burkholderia cepacia* $PR1_{301}$ was quite successful and should reduce clean-up time and costs at many other sites. However, none of these strains is currently available for general commercial use.

No companies indicated that Bcc was currently used for the degradation of grease (typically in drain cleaners) or for turf management (typically in thatch reduction), although researchers and firms cautioned that even the companies that produce such products may be unaware of the presence of Bcc.

One respondent indicated that lipases harvested from Bcc are used in the production of specialty chemicals. One company web site lists seven lipases derived from Bcc species available for sale under their brand names. However, when this company was contacted, it indicated that it imports the lipases from an overseas firm and does not work with Bcc microorganisms. No more information was available.

Many respondents indicated a knowledge of Bcc and its possible applications, but very few had any knowledge that it was actually being used. Some contacts indicated that Bcc's potential for opportunistic pathogenicity had led them to disregard it for use in their products. Thus, the information available to EPA indicates that the only existing TSCA use of Bcc in the U.S. are the demonstration studies of its effectiveness in degrading chlorinated solvents in groundwater. EPA considers these studies to fall under the description of research and development (Ref. 15).

D. Exposures

Bcc is a naturally occurring microorganism which is found in a wide range of habitats but especially in high populations in the soil. While Bcc is not known to be in general commercial use at this time, the potential uses identified could give rise to exposures in different ways. To produce microorganisms on a commercial scale, they first are cultured in large commercial fermentation facilities to obtain adequate amounts for a potential use. If used for specialty chemical manufacture the microorganisms are cultured first then killed after harvesting the chemical substance to be manufactured. EPA has identified potential dermal and inhalation exposures as well as environmental release from manufacture of microorganisms. These exposures could occur for any potential use of microorganisms. Sources of potential environmental release include exhaust gas from the fermentor and wastes from cleanup of equipment. Potential exposures result from laboratory propogation of cells, sampling, equipment cleaning/maintenance, and from cell recovery. Estimates of potential inhalation exposure were derived from area monitoring data in fermentation facilities. Estimates of potential dermal exposure were derived from laboratory experiments involving liquids which measured the retention on the hands for various types of exposures.

In addition to exposure from fermentation, there is also potential for dermal and inhalation exposures as well as environmental release from uses in bioremediation, turf builders, and drain cleaners. The primary source of potential release and dermal exposure is from the intended injection or application of the material. Application of turf builders would be spray applications resulting in increased inhalation exposures. Other release sources include air releases from off-gassing of aerated shipping containers and residue left in the shipping containers. Exposure to bioaerosols may occur from the aerated shipping containers. Although there is no evidence that Bcc specifically is used in the turf building or drain cleaning applications, there are commercially available products that contain microbials. (Ref. 16)

V. Objectives and Rationale of the Proposed Rule

In determining what would constitute a significant new use for the microorganisms that are the subject of this proposed SNUR, EPA considered relevant information on the toxicity of the microorganisms, likely exposures associated with potential uses, information provided by industry sources, and the relevant factors listed in TSCA section 5(a)(2) and Unit II.B. of this document. Based on these considerations, EPA has determined that all uses other than research and development in the degradation of chemicals via injection into subsurface groundwater, are significant new uses.

EPA's considerations under each of the relevant factors are discussed below:

1. *Projected volume of manufacturing and processing of a chemical substance.* Microorganisms may reproduce and increase beyond the number initially introduced and may spread beyond the site of manufacture or use. Thus, what begins as a small localized population of microorganisms may become a large widespread population which could contribute to increased exposure potential for Bcc beyond that which occurs naturally. These facts complicate the Agency's ability to project the potential volume and processing of Bcc.

2. *Extent to which a use changes the type, form, magnitude, and duration of exposure to human beings or the environment to a chemical substance.* EPA has not currently identified any general commercial use of Bcc. EPA has identified field studies of Bcc in the biodegradation of chlorinated solvents in groundwater. All other research and development activities, other than such field studies involving injection into groundwater, that do not meet the definition of small quantities for research and development would require reporting under 40 CFR 725.105(c) if included in a final SNUR. EPA is specifically soliciting comments on whether all other research and development activities should be captured under the SNUR or whether the SNUR should be limited to general commercial use of Bcc.

EPA expects only limited exposures from the identified field studies of Bcc as only technically qualified individuals are growing and injecting Bcc directly into groundwater. The potential uses identified in Unit IV.C. of this document, which include bioremediation (degradation of toxic chemicals, as well as degradation of grease in drains), turf management, and specialty chemicals production, could significantly increase dermal and inhalation exposures of Bcc to humans. In some cases these exposures could be higher than typically found in nature and more likely to be encountered by a member of a sensitive population. These exposures would significantly increase the type, form, magnitude, and duration of exposures to human beings from known uses of Bcc.

EPA wants to achieve the following objectives with regard to the significant new uses that are designated in this proposed rule. EPA wants to ensure that:

1. EPA will receive notice of any company's intent to manufacture, import, or process Bcc for a significant new use before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in an MCAN before the notice submitter begins manufacturing, importing, or processing Bcc for a significant new use.

3. EPA would be able to regulate prospective manufacturers, importers, or processors of Bcc before a significant new use occurs, provided such regulation is warranted pursuant to TSCA section 5(e) or section (f).

VI. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory actions for Bcc. In addition, EPA determined that Bcc is currently not subject to Federal notification requirements.

1. *Promulgate a TSCA section 8(a) reporting rule for Bcc.* Under a TSCA section 8(a) rule, EPA could require any person to report information to the Agency when they intend to manufacture or import Bcc. However, the use of TSCA section 8(a) rather than the SNUR authority, would not provide the opportunity for EPA to review human and environmental hazards and exposures associated with the new uses of these substances and, if necessary, to take immediate regulatory action under TSCA section 5(e) or section 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because those firms generally are exempt from TSCA section 8(a) reporting requirements. In view of EPA's concerns about Bcc and its interest in having the opportunity to review these substances and regulate them as appropriate, pending the development of exposure and/or hazard information should a significant new use be initiated, the Agency believes that a TSCA section 8(a) rule for Bcc would not meet all of EPA's regulatory objectives.

2. *Regulate Bcc under TSCA section 6.* EPA must regulate under TSCA section 6 if there is a reasonable basis to conclude that the manufacture, import, processing, distribution in commerce, use, or disposal of a chemical substance or mixture ''presents or will present'' an unreasonable risk of injury to human health or the environment. Based on EPA's findings that there is currently no general commercial use of Bcc, EPA concluded that risk management action under TSCA section 6 is not necessary at this time. This proposed SNUR would allow the Agency to address the potential risks associated with any intended significant new use of Bcc. If EPA is notified of any additional existing commercial uses, EPA may reconsider the decision and pursue additional regulatory action as appropriate.

VII. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require the development of any particular test data before submission of a MCAN or TERA. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 725.160).

However, in view of the potential health risks posed by the significant new uses of Bcc, EPA requests that potential MCAN or TERA submitters include data that would permit a reasoned evaluation of risks posed by Bcc when used for an intended significant new use. EPA also requests that potential MCAN or TERA submitters include data that demonstrate that the bacteria which would be the subject of the MCAN or TERA are in fact in the Bcc. EPA encourages persons to consult with the Agency before submitting an MCAN or TERA for Bcc. As part of this optional pre-notice consultation, EPA will discuss specific data it believes are necessary to evaluate a significant new use of Bcc. EPA urges MCAN or TERA submitters to provide detailed information on human and environmental exposures that would result or could reasonably be anticipated to result from the significant new uses of Bcc. In addition, EPA encourages persons to submit information on risks posed by Bcc compared to risks posed by possible substitutes. An MCAN or TERA submitted without sufficient data to reasonably evaluate risks posed by a significant new use of Bcc may increase the likelihood that EPA will take action under TSCA section 5(e).

VIII. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

EPA believes that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish notification requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the proposed rule became final, and then argue that the use was ongoing.

Persons who begin commercial manufacture, import, or processing of Bcc, for the significant new use in this proposed SNUR, after the proposal has been published must stop that activity before the effective date of the final rule. To resume commercial manufacture, import or processing of Bcc, those persons will have to meet all applicable MCAN or TERA requirements and wait until the notice review period, including all extensions, expires before engaging in any commercial manufacture, import, or processing of Bcc for a significant new use. If, however, persons who begin commercial manufacture or import of Bcc for a significant new use between the proposal and the effective date of the final SNUR meet the conditions of advance compliance as codified at 40 CFR 725.912, those persons would be considered to have met the requirements of the final SNUR for those activities.

IX. Economic Considerations

EPA has evaluated the potential costs of establishing a SNUR for potential manufacturers, importers, and processors of Bcc. These potential costs are related to the submission of MCANs, TERAs, and the export notification requirements of TSCA section 12(b). EPA notes that, the costs of submission of MCANs or TERAs will not be incurred by any company unless that company decides to pursue a significant new use as defined in this proposed SNUR.

A. MCANs and TERAs

Because of uncertainties related to predicting the number of MCANs or TERAs that will be submitted as a result of this proposed SNUR, EPA is unable to calculate the total annual cost of compliance with the final rule. However, EPA estimates that the cost for preparation and submission of an MCAN ranges from approximately $7,582 to $42,736, which includes the $2,500 user fee required by the Agency. EPA notes that small businesses with annual sales of less than $40 million are subject to a reduced user fee of $100. The cost of a TERA is estimated to range from $6,905 to $73,562 (Ref. 17).

Based on past experience with SNURs and the low number of Significant New Use Notices (SNUNs) which are submitted on an annual basis, EPA believes that there would be few, if any, MCANs or TERAs submitted as a result of this SNUR. Furthermore, no company is required to submit an MCAN or TERA for Bcc unless the company decides to

begin manufacture or importation of Bcc. As a result, EPA expects that companies would be able to determine if the burden of submitting an MCAN or TERA would be likely to create significant adverse economic impacts for the company prior to incurring MCAN/TERA-related costs.

B. Export Notification

As noted in Unit II.C. of this document, persons who intend to export a microorganism identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)). These provisions require that a company notify EPA of the first shipment to a particular country of an affected microorganism. The estimated cost of the TSCA section 12(b)(1) export notification, which would be required for the first export to a particular country of a microorganism subject to this proposed rule, is estimated to be $158.35 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $14.43 for each subsequent export notification submitted by that exporter (Ref. 17).

EPA is unable to estimate the total number of TSCA section 12(b) notifications that will be received as a result of this proposed SNUR, or the total number of companies that will file these notices. However, EPA expects that the total cost of complying with the export notification provisions of TSCA section 12(b) will be limited based on historical experience with TSCA section 12(b) notifications and the fact that no companies have currently been identified that currently market Bcc commercially. If companies were to manufacture the microorganisms covered by this proposed SNUR for export only, these companies would incur costs associated with export notification even if these companies decided to forgo any domestic significant new use. EPA is not aware of any companies in this situation, and expects that any potential impact would be limited to the small burden of export notification.

X. References

These references have been placed in the official record that was established under docket control number OPPTS–50645 for this document as indicated in Unit I.B.2. of this document.

1. Risk Assessment for TSCA Section 21 Petition on Bacteria in the *Burkholderia cepacia* complex, USEPA, November 2001.

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9. FIFRA SAP Report # 99–04, Sept. 30, 1999.

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11. Parke, J. L., Gurian-Sherman, D., Ann. Rev. Phytopath. 39, 2001, 225.

12. FIFRA SAP report (1999). Risk Assessment of *Burkholderia cepacia* - based biopesticides and other bacteria related to opportunistic human infections.

13. Speert, D. P., Infect. Med., 18, 2001,49.

14. Parke, J.J., The Plant Health Instructor, 10, 2000, 1094.

15. Commercial Uses of *Burkholderia cepacia* complex, USEPA, October 2001.

16. Assessment of Potential Worker Exposure and Environmental Releases From Commercial Uses of *Burkholderia cepacia* complex, USEPA, October 2001.

17. Economic Analysis to Support the Proposed SNUR for *Burkholderia cepacia* complex, USEPA, October 15, 2001.

XI. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a ''significant regulatory action'' subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with proposing and finalizing SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This proposed rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001 do not apply to this proposed rule. Nor will this action have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section

12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this proposed SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting an MCAN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 900 SNURs, the Agency has received fewer than 25 SNUNs. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of an MCAN or TERA (see Unit IX.A. of this document) are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. This rationale has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 1188.06). This action does not impose any burden requiring additional OMB approval. If an entity were to submit an MCAN or TERA to the Agency, the annual burden is estimated to average between 98.96 and 118.92 hours per response at an estimated reporting cost between $5,957 and $7,192 per MCAN. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required MCAN or TERA. This burden estimate does not include the $2,500 user fee submission of an MCAN ($100 for businesses with less than $40 million in annual sales).

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OP Regulatory Information Division (2137), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

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

List of Subjects in 40 CFR Part 725

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 21, 2001.

William H. Sanders, III

Office Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 725 be amended as follows:

PART 725—[AMENDED]

1. The authority citation for part 725 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625.

2. By adding new § 725.1075 to subpart M to read as follows:

§ 725.1075 Burkholderia cepacia complex.

(a) *Microorganism and significant new uses subject to reporting.*(1) The microorganisms identified as the *Burkholderia cepacia* complex defined as containing the following nine species, *Burkholderia cepacia*, *Burkholderia multivorans*, *Burkholderia stabilis*, *Burkholderia vietnamiensis*, *Burkholderia ambifaria*, *Burkholderia pyrrocinia*, and *Burkholderia cepacia* genomovars III, VI, and VIII are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is any use other than research and development in the degradation of chemicals via injection into subsurface groundwater.

(b) [Reserved]

[FR Doc. 02–513 Filed 1–8–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 123101B]

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 2002 ocean salmon fisheries. This document announces the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April Council meetings will be published in subsequent Federal Register documents prior to the actual meetings.

DATES: Written comments on the salmon management options must be received by April 2, 2002, at 4:30 p.m. Pacific Time.

ADDRESSES: Documents will be available from and written comments should be sent to Dr. Hans Radtke, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220, facsimile 503–326–6831. For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, telephone 503–326–6352.

SUPPLEMENTARY INFORMATION:

Schedule For Document Completion and Availability

March 5, 2002: ''Review of 2001 Ocean Salmon Fisheries'' and ''Preseason Report I-Stock Abundance Analysis for 2002 Ocean Salmon Fisheries'' will be available to the public from the Council office.

March 26, 2002: ''Preseason Report II'' and public hearing schedule will be mailed to the public. The report will include a description of the adopted salmon management options and a summary of their biological and economic impacts.

April 24, 2002: Newsletter describing adopted ocean salmon fishing management measures will be mailed to the public.

May 1, 2002: Federal regulations will be implemented and ''Preseason Report III- Analysis of Council-Adopted Ocean Salmon Management Measures for 2002 Ocean Salmon Fisheries'' will be available from the Council office.

Meetings and Hearings

January 22–25, 2002: The Salmon Technical Team (STT) will meet at the Council office in a public work session to draft ''Review of 2001 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2002 ocean salmon fisheries.

February 19–22, 2002: STT will meet at the Council office in a public work session to draft ''Preseason Report I-Stock Abundance Analysis for 2002 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2002 ocean salmon fisheries.

March 11–15, 2002: Council and advisory entities will meet at the Red Lion Hotel Sacramento, Sacramento, CA to adopt the 2002 salmon management options for public review.

April 1–3, 2002: Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified here.

April 1, 2002: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA 98595, telephone 360–268–9101.

April 1, 2002: Red Lion Hotel, South Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR 97420, telephone 541–267–4141.

April 2, 2002: Red Lion Hotel Eureka, Evergreen Room, 1929 Fourth Street, Eureka, CA 95501, telephone 707–445–0844.

April 8–12, 2002: Council and advisory entities meet at the DoubleTree Hotel - Columbia River, 1401 North Hayden Island Drive, Portland, OR 97217, to adopt 2001 management measures for implementation by NMFS.

April 9, 2002: Testimony on the management options is taken during the Council meeting at the DoubleTree Hotel - Columbia River, Riverview Ballroom, 1401 North Hayden Island Drive, Portland, OR 97217, telephone 503–283–2111.

Although nonemergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this notice requiring emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

The 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 (voice), or 503-326-6831 (fax) at least 5 days prior to the meeting date.

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

Dated: January 3, 2002..

Bruce C. Morehead,

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

[FR Doc. 02–551 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 6

Wednesday, January 9, 2002

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

Office of the Secretary

Notice of Appointment of Members to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Appointment of Members.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, *as amended*, the United States Department of Agriculture announces the appointment of 11 individuals to fill vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board. Appointments are for a three-year term, effective October 1, 2001, until September 30, 2004, with the exception of one two-year appointment resulting from a member resignation after serving one year. Advisory Board terms beyond September 30, 2002, are contingent upon the reauthorization of the Board in accordance to Sec. 802 of Pub. L. 104–127.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office; Room 344A, Jamie L. Whitten Building; U.S. Department of Agriculture; STOP 2255; 1400 Independence Avenue, SW., Washington, DC 20250–2255; telephone: (202) 720–3684; fax: (202) 720–6199; or e-mail: smorgan@reeusda.gov.

SUPPLEMENTARY INFORMATION: Section 802 of Pub. L. 104–127, the Federal Agricultural Improvement and Reform Act of 1996, authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed in September 1996, and one-third of the 30 members were appointed for a one, two, and three-year terms, respectively.

As a result of the staggered appointments, the terms for 10 of the 30 members expired September 30, 2001. In addition, one vacancy exists due to the resignation of the Category P appointee. The Secretary of Agriculture has designated appointees to fill all 11 vacancies. Appointees, by category, are as follows: Category E—National Animal Commodity Organizations, Paul C. Genho, Vice President, King Ranch, Inc., Kingsville, Texas, and Former Chair, National Cattleman's Beef Association; Category H—National Food Animal Science Societies, Jeffrey D. Armstrong, Dean, College of Agriculture and Natural Resources, Michigan State University, and President, American Society of Animal Science; Category I—National Crop, Soil, Agronomy, Horticulture or Weed Science Societies, Martin A. Massengale, President Emeritus, Foundation Distinguished Professor, and Director, Center for Grassland Studies, University of Nebraska-Lincoln (reappointed); Category N—1890 Land-Grant Colleges and Universities, including Tuskegee University, McArthur Floyd, Research Director, School of Agricultural and Environmental Sciences, Associate Director, Alabama Agricultural Experiment Station, and Professor of Soil Microbiology, Alabama A&M University; Category O—1994 Equity in Education Land-Grant Institutions, Judith Davis, Dean, Academic Affairs, Dull Knife Memorial College, Lame Deer Montana; Category P—Hispanic-Serving Institutions (2-year term), Castell Vaughn Bryant, President, Miami-Dade Community College North Campus, Miami, Florida; Category T—Food Retailing and Marketing, George H. Hoffman, President and CEO, Restaurant Services, Inc., Coral Gables, Florida; Category V—Rural Economic Development, Walter J. Armbruster, President, Farm Foundation, Oak Brook, Illinois; Category W—National Consumer Interest Groups, Barbara Stowe, Dean Emeritus, College of Human Ecology, Kansas State University, former Senior Advisor, AESOP Enterprises, Ltd., Washington, DC (reappointed); Category X—National Forestry Groups, George Samuel Foster, Jr., Dean, College of Forest Resources, Director, Forest and Wildlife Research Center, Mississippi State University; and Category Y—National Conservation or Natural Resource Groups, Peter H. Raven, Director, Missouri Botanical Garden, and National Medal of Science recipient.

Appointees' terms began on October 1, 2001, and end September 30, 2004, with the exception of the Category P term which ends on September 30, 2003.

Done at Washington, DC this 20th day of December 2001.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–452 Filed 1–8–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 011214300–1300–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Retail Trade Survey. The Census Bureau has determined that it needs to collect data covering annual sales, e-commerce sales, percent of e-commerce sales to customers located outside the United States, year-end inventories, purchases, accounts receivables, and, for select industries, merchandise line sales and percent of sales by class of customer.

FOR FURTHER INFORMATION CONTACT: Scott Scheleur, Service Sector Statistics Division, on (301) 457–2713.

SUPPLEMENTARY INFORMATION: The Annual Retail Trade Survey is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). It provides on a comparable classification basis, annual sales, e-commerce sales, and purchases

for 2001 and year-end inventories for 2000 and 2001. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 2001 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, sections 182, 224, and 225. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census. These data will provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 United States Code, chapter 35, the OMB approved the Annual Retail Trade Survey under OMB Control Number 0607–0013. We will furnish report forms to organizations included in the survey. Additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: December 18, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 02–507 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 020103003–2003–01]

Annual Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Trade Survey. The Census Bureau has determined that it needs to collect data covering annual sales, e-commerce sales, year-end inventories, and purchases.

FOR FURTHER INFORMATION CONTACT: Scott Scheleur, Service Sector Statistics Division, on (301) 457–2713.

SUPPLEMENTARY INFORMATION: The Annual Trade Survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides, on a comparable classification basis, annual sales, e-commerce sales (including Electronic Data Interchange-EDI) and purchases for 2001 and year-end inventories for 2000 and 2001. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 2001 Annual Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, sections 182, 224, and 225. This survey will provide continuing and timely national statistical data on wholesale trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census. These data will provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 United States Code, chapter 35, the OMB approved the Annual Trade Survey under OMB Control Number 0607–0195. We will furnish report forms to organizations included in the survey. Additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: December 18, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 02–506 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Closed Meeting

The Materials Technical Advisory Committee will meet on January 24, 2002, at 10:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions which affect the level of export controls applicable to materials and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 7, 2000, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020. U.S. Department of Commerce, Washington, DC. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: January 3, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–519 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990810211–1294–02]

RIN 0648–ZA69

Sea Grant Fellowships: National Marine Fisheries Service—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics; and Sea Grant—Industry Fellowship Program: Request for Applications for FY 2002

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for applications.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is seeking applications for two fellowship programs to fulfill its broad educational responsibilities, to strengthen the collaboration between Sea Grant and the National Marine Fisheries Service (NMFS), and to strengthen ties between academia and industry:

(1) The NMFS—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics (Fisheries Fellowship Program), which is available to U.S. citizens who are graduate students enrolled in PhD degree programs in academic institutions in the United States and its territories, with required institutional matching funds, expects to support six new Fisheries Fellows in Population Dynamics and Marine Resource Economics in FY 2002. Fisheries Fellows will work on thesis problems of public interest and relevance to NMFS and have summer internships at participating NMFS Science Centers or Laboratories under the guidance of NMFS mentors.

(2) The Sea Grant—Industry Fellowship Program (Industry Fellowship Program), which is available to graduate students enrolled in either MS or PhD degree programs in academic institutions in the United States and its territories, with required matching funds from private industrial sponsors, expects to support five new Industry Fellows in FY 2002. Industry Fellows will work on research and development projects on topics of interest to a particular industry/company. In a true partnership, the student, the faculty advisor, the Sea Grant College or institute, and the industry representative will work together, sharing research facilities and the cost of the activity.

DATES: Applications must be received by 5 pm (local time) on February 15, 2002 by a state Sea Grant Program (or by the NSGO in the case of an academic institution in a non-Sea Grant state). Note that applications arriving after these deadlines will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery (see ''Addresses'' below) prior to the specified closing date and time; in any event, applications received by the NSGO or the State Sea Grant Programs later than two business days following the closing date will not be accepted. Facsimile transmissions and electronic mail submission of applications will not be accepted. It is anticipated that successful applicants will be able to initiate Fisheries Fellowships on approximately June 1, 2002 or Industry Fellowships on approximately September 1, 2002.

ADDRESSES: Applications originating from academic institutions in Sea Grant states must be submitted to the state Sea Grant Program. Applications originating elsewhere may be submitted either to the nearest state Sea Grant Program or directly to the NSGO. Sea Grant's web site lists the addresses of the state Sea Grant College Program directors (*http://www.nsgo.seagrant.org/SGDirectors.html*) and the participating NMFS Facilities (*http://www.nsgo.seagrant.org/research/rfp/NMFS_Labs.html*), or those addresses may also be obtained by contacting the NSGO. Applications submitted to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Proposal Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301–713–2445).

FOR FURTHER INFORMATION CONTACT: Information about the Fisheries Fellowship Program may be obtained from Dr. Emory D. Anderson, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2435 ext. 144; e-mail: *emory.anderson@noaa.gov;* from any state Sea Grant Program (see **ADDRESSES**); or from any participating NMFS facility (see **ADDRESSES**). Information about the Industry Fellowship Program may be obtained from Dr. Vijay G. Panchang, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2435 ext. 142; e-mail: *vijay.panchang@noaa.gov.*

SUPPLEMENTARY INFORMATION:

National Marine Fisheries Service—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics and Sea Grant—Industry Fellowship Program

I. Program Authority

Authority: 33 U.S.C. 1127. Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.

II. Description of Programs

A. Fisheries Fellowship Program

The National Sea Grant Office (NSGO) and the National Marine Fisheries Service (NMFS) established a new Graduate Fellowship Program in Population Dynamics and Marine Resource Economics (Fisheries Fellowship Program) in 1999. The intent of the Fisheries Fellowship Program is to award fellowships to four students each year who are intereted in careers related to (1) the population dynamics of living marine resources and the development and implementation of quantitative methods for assessing their status, and (2) the economics of the conservation and management of living marine resources. Two new fellowships were to be awarded each year in each of the above two disciplines resulting in an anticipated six students per discipline to be supported annually when the Fisheries Fellowship Program reached its maximum level three years following its inception.

For the FY 2002 competition now being announced, funds are available to award six new fellowships in the two disciplines combined, with a potential maximum of four in one of the two disciplines.

The goals of the Fisheries Fellowship Program are to (1) encourage qualified applicants to pursue careers in (a) population dynamics and stock assessment methodology or (b) marine

resource economics; (2) increase available expertise related to (a) the population dynamics and assessment of the status of the stocks of living marine resources or (b) economic analysis of living marine resource conservation and management decisions; (3) foster closer relationships between academic scientists and NMFS; and (4) provide real-world experience to graduate students and accelerate their career development.

The fellowships will provide support for up to three years for highly qualified graduate students working towards a PhD in population dynamics or related fields of study and for up to two years for highly qualified graduate students working towards a PhD in marine resource economics, natural resource economics, or environmental economics. Continued support after the first year will be contigent upon the availability of Federal funds and satisfactory performance by the Fellow. In addition to his/her faculty adviser, each Fellow will be required to work closely with an expert (mentor) from NMFS who will provide data for the Fellow's thesis, serve on the Fellow's committee, and host an annual summer internship at the participating NMFS facility.

Mentors will be from participating NMFS Science Centers or Laboratories. Each Fellow will be required to work as a summer intern at the participating NMFS facility either on his/her thesis or on appropriate related problems. Remuneration for the summer internship will be part of the annual award. Population Dynamics Fellows will also be expected to spend 10–20 days at sea per year learning about sampling techniques and problems, commercial fishing, fishery biology, and local and regional issues of importance to fisheries management. Fellows may also work, as necessary, at the participating NMFS facility during some or all of the academic year at the mutual discretion of mentor, faculty adviser, and Fellow.

Newly-selected Fellows must submit a one-page description of their thesis research or assignment based on discussions involving mentor, faculty adviser, and Fellow to the Fisheries Fellowship Program Manager by April 30, 2002. The thesis research or assignment description must reflect a clear mutual understanding of the substantive dimensions of the project and its expected results.

Fellows must, for each year of their fellowship, provide a written summary of their accomplishments and activities during the preceding year to the Fisheries Fellowship Program Manager. This summary must accompany the request for each additional year's funding. Fellows will be expected to present a review of their research during the annual Fellows Meeting held in the spring in Silver Spring, MD.

The award for each Fisheries Fellowship, contingent upon the availability of Federal funds, will be in the form of a grant or cooperative agreement of up to $38,000 per year, 50 percent (up to $19,000) of which will be contributed by NMFS, 33⅓ percent (up to $12,667) by the NSGO, and 16⅔ percent (up to $6,333) by the acadamic institution as the required 50 percent match of NSGO funds. The portion of the award provided to each Fellow for salary (stipend), living expenses (per diem), tuition (unless waived), health insurance and other institution fees, and travel necessary to carry out the proposed thesis research and to attend the annual Fellows Meeting in the spring in Silver Spring, MD will be determined and distributed by the institution in accordance with its guidelines.

B. Industry Fellowship Program

Today's global economy is putting unprecendented demands on the U.S. industrial community for innovation and new technology. This situation presents challenges to industry and academic institutions to develop new paradigms leading to more efficient utilization of available human, fiscal, and technical resources. This can be accomplished through the recruitment of graduates trained in technologies relevant to an industry's future and the creation of opportunities for collaboration between industrial and academic scientists and engineers. Academically well-trained students with exposure to advanced industrial issues constitute a critical component of success in that endeavor. To respond to the need for strengthened ties between academia and industry, Sea Grant developed the Sea Grant—Industry Fellowship Program (Industry Fellowship Program) in 1995.

For the FY 2002 competition new being announced, funds are available to award five new Industry Fellowships. Each fellow will be a graduate student selected through national competition, and will be known as a (Company Name)/Sea Grant Industry Fellow.

The goals of the Industry Fellowship Program are to (1) enhance the education and training provided to top graduate students in academic institutions in the United States and its territories; (2) provide real-world experience of industrial issues to graduate students and to accelerate their career development; (3) increase interactions between the nation's top scientists and engineers and their industrial counterparts; (4) accelerate the exchange of information and technologies between academic institutions and industry; (5) provide a mechanism for industry to influence Sea Grant research priorities and solve problems of importance to industry; and (6) forge long-term relationships between Sea Grant Colleges and industrial firms.

The Industry Fellowship Program, in cooperation with specific companies, provides support for highly-qualified graduate students who are pursuing research and development projects on topics of interest to a particular industry/company. The projects may be up to two years duration. In a true partnership, the student, the faculty advisor, the Sea Grant College or institute, and the industry representative work together on a project from beginning to end. Research facilities and the cost of the activity are shared. Academic institution faculty are the major source for identifying potential industrial collaborators and suitable research topics. However, other sources can be used to identify potential industrial partners including the Sea Grant Marine Advisory Services, university industrial relations offices, and the National Sea Grant Review Panel. Sea Grant directors are encouraged to use a variety of sources in building successful partnerships with industry.

Fellows must, for each year of their fellowship, provide a written summary of their accomplishments and activities during the preceding year to the Industry Fellowship Program Manager. This summary must accompany the request for each additional year's funding.

The award for each Industry Fellowship, contingent upon the availability of Federal funds, will be in the form of a grant of up to $30,000 per year from the NSGO; matching funds equal to at least 50 percent of the Federal request must also be provided by the industrial partner to support the budget for the proposed project.

III. Eligibility

A. Fisheries Fellowship Program

Any student may apply who is a United States citizen. At the time of application, prospective Population Dynamics Fellows must be admitted to a PhD degree program in population dynamics or a related field such as applied mathematics, statistics, or quantitative ecology at an academic

institution in the United States or its territories, or submit a signed letter from the institution indicating provisional acceptance to a PhD degree program conditional on obtaining financial support such as this fellowship. At the time of application, prospective Marine Resource Economics Fellows must be in the process of completing at least two years of course work in a PhD degree program in natural resource economics or a related field at an academic institution in the United States or its territories.

B. Industry Fellowship Program

Applications must be prepared by individuals affiliated with academic institutions in the United States or its territories. A prospective Fellow must be enrolled or accepted in either an MS or PhD degree program in the institution which submits the application.

IV. Selection Criteria

A. Fisheries Fellowship Program

Selection criteria will include: (1) Relevant academic ability and achievement, particularly quantitative skills (35 percent); (2) demonstrated research ability in the discipline and appropriateness/importance of proposed thesis topic (30 percent); (3) expertise of major professor (20 percent); and (4) additional relevant experience (15 percent).

B. Industry Fellowship Program

Selection criteria will include: (1) The caliber of the prospective Fellow, including special skills, past experiences, or training that render him/her especially qualified for the proposed project; participation by the Fellow in proposal preparation will be viewed favorably (25 percent); (2) the benefit accruing to the student from his or her participation as a Sea Grant—Industry Fellow, including exposure to industrial methods and mentoring by the industrial partner (25 percent); (3) the level of commitment of the industrial partner to the project, as demonstrated by financial support, mentoring on technical and other issues such as industry trends, problems, and opportunities, offering exposure to an industrial setting, facilities/equipment, etc. (25 percent); and (4) the importantance of the problem and the benefits expected to the industrial partner and the nation due to the advancement of technology (25 percent).

V. Selection Procedures

Applications will be ranked in accordance with the above criteria and their assigned weights by independent review panels consisting of government, academic, and industry experts. The panel members will provide individual evaluations of each applicant, but there will be no consensus advice. Their recommendations and evaluations will be considered by the NSGO in the final selection. Only those applications receiving a minimum score of 50 percent by the panel will be eligible for funding. For those applications, the NSGO will: (1) Ascertain which best meet the objectives of the particular program (as stated in Section II. Descriptions of Programs); (2) give priority, in the case of Fisheries Fellowship applications to NMFS Fisheries Science Centers which do not currently have Fellows; and (3) select the applications to be funded. Accordingly, awards may not necessarily be made to the highest-scoring applications in each program or discipline therein. Applicants may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. A summary statement of the review of the application by the review panel will be provided to each applicant.

VI. Timetable

February 15, 2002, 5 pm (local time)—Applications due at state Sea Grant Program (or at NSGO, only if application is from an academic institution in a non-Sea Grant state).

February 20, 2002, 5 pm EST—Applications due at NSGO from state Sea Grant Programs.

June 1, 2002 (approximate)—Funds awarded for the Fisheries Fellowships.

September 1, 2002 (approximate)—Funds awarded for the Industry Fellowships.

Note that applications arriving after the above deadlines will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery (see ''Addresses'' above) prior to the specified closing date and time; in any event, applications received by the NSGO or the state Sea Grant Programs later than two business days following the closing date will not be accepted. Facsimile transmissions and electronic mail submission of applications will not be accepted.

VII. Application Instructions

A. General Requirements

All printed pages in the application must be on metric A4 (210 mm × 297 mm) or 8.5″ × 11″ paper with at least a 10-point font. Applications must include the items listed below.

1. *Signed Title Page:* The title page must identify the prospective Fellow, be signed by the Faculty Advisor and the institutional representative, and provide complete contact information. The program area being addressed should be clearly identified by starting the project title with either ''NMFS—Sea Grant Fisheries Fellowship'' or ''Sea Grant—Industry Fellowship''. The total amount of Federal and matching funds being requested for each project year must be listed.

2. *Project Summary:* The project summary should concisely describe the activity being proposed and the impact that would result from its successful completion, in a form suitable for publication. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the Sea Grant form. The project summary should include: (a.) *Title:* Use the exact title as it appears in the rest of the application. (b.) *Investigators:* List the names and affiliations of each investigator who will significantly contribute to the project, starting with the Principal Investigator. For Sea Grant Fellowships, the faculty advisor or the state Sea Grant Director may be used. (c.) Funding request for each year of the Fellowship, including matching funds if appropriate. (d.) *Project Period:* Start and completion dates. Applications for a Fisheries Fellowship should request a start date of July 1, 2002, and applications for an Industry Fellowship should request a start date of September 1, 2002. (e.) *Project Abstract:* This should include the rationale for the proposed activity, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of the work to be completed.

3. *Budget and Budget Justification:* There should be a separate budget for each year as well as a cumulative annual budget for the entire period of the proposed fellowship. The Sea Grant Budget Form 90–4 should preferably be used, but the institution may use its own form as long as it provides the same information as the Sea Grant form. Sub-contractors should have a separate budget page. Indirect costs are not allowable for either the fellowship or for any costs associated with fellowship (15 CFR 917.11(e), ''Guidelines for Sea Grant Fellowships'').

For Fisheries Fellows: Matching funds equivalent to 50 percent of the NSGO funds must be provided by the Fellow's institution. Allocation of matching funds must be specified in the budget and may consist of up to one/half month's salary for the faculty adviser,

waived tuition, equipment and supplies, and any other costs typically used as matching funds. In addition to stipend and tuition for the applicant, the budget should include funds for equipment, supplies, and travel (see ''Description of Programs'' above).

For Industry Fellows: Matching funds equivalent to 50 percent of the NSGO funds must be provided by the industrial partner. Allocation of matching funds must be specified in the budget. The budget should include adequate travel funds for the Fellow, the industrial mentor, and the faculty advisor to meet at least twice per year during the fellowship period, preferably at the site of the industrial partner. The budget may also include up to one month of salary or stipend support for the faculty advisor or one other project participant, in addition to the Fellow, who is affiliated with the academic institution.

4. Curriculum vitae of the student, the faculty advisor, and NMFS or company-appointed research mentor (2-page maximum per investigator).

5. Signed letter of commitment from the prospective NMFS mentor or industrial partner.

6. Official copies of all undergraduate and graduate student transcripts.

7. Additional Material for Fisheries Fellowship Program only:

a. Education and career goal statement (not to exceed two pages) from the student indicating the number of years for which fellowship support is being sought and the student's interest in (a) marine population dynamics or the development and implementation of quantitative methods for assessing stock status of living marine resources, or (b) in marine resource economic (a summary of the proposed thesis or the general intended area of study should be included, if available).

b. Three signed letters of recommendation, including one from the student's faculty adviser.

c. Proof of application, acceptance, provisional acceptance, and enrollment (only for Population Dynamics applicants) in the case of students entering graduate school (i.e., who have not yet completed one semester of graduate work) if they are selected for a fellowship.

8. Additional Material for Industry Fellowship Program only:

a. *Project Description (10-page limit):* Brevity will assist reviewers and program staff in dealing effectively with applications. Therefore, the Project Description may not exceed 10 pages. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations, are included in the 10-page limitation; literature citations are not included in the 10-page limitation. Conformance to the 10-page limitation will be strictly enforced. All information needed for review of the application should be included in the main text; no appendices are permitted.

Introduction/Background/Justification: What is the problem being addressed and what is its scientific and economic importance to the advancement of technology, to the cooperating industrial partner, and to the region or nation?

Research or Technical Plan: What are the goals, objectives, and anticipated approach of the proposed project? While a detailed work plan is not expected, the application should present evidence that there has been thoughtful consideration of the approach to the problem under study. What capabilities does the industrial partner possess that will benefit the Fellow?

Output/Anticipated Economic Benefits: Upon successful completion of the project, what are the anticipated benefits to the student, the industrial partner, the academic institution and its faculty, the sponsoring Sea Grant Program, and the nation?

References and Literature Citations: Should be included, but will not be counted in the 10-page project description limit.

b. A brief (1-page) description of the collaborating industrial firm.

VIII. How To Submit

Ten (10) copies of applications must be submitted to the state Sea Grant Programs or to the NSGO according to the schedule outlined above (See ''Addresses'' and ''Timetable''). The addresses of the state Sea Grant College Programs may be found at the following Internet web site: (*http://www.nsgo.seagrant.org/SGDirectors.html*), or may be obtained by contacting Mr. Joseph Brown at the NSGO (tel: 301–713–2438 × 135). Applications sent to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Applications Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 10910 (telephone number for express mail applications is 301–713–2445). Facsimile transmissions and electronic mail submission of applications will not be accepted.

IX. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the Federal Register notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation. The Federal Register notice also lists the forms required to complete the standard Department of Commerce grant application package, but those forms will be required only for those applicants who have been recommended for funding. Unsuccessful applications will be held in the National Sea Grant Office for a period of five (5) years and then destroyed. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at the following Internet web site: *http://www.ed.gov/offices/OCR/minorityinst.html.*

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of NOAA Forms 90–2 and 90–4, or equivalents, has been approved by OMB under the control number 0648–0362. Public reporting burden for these collections of information is estimated to average 20 minutes for a NOAA Form 90–2 and 15 minutes for a NOAA Form 90–4. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the National Sea Grant Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the

Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

X. Classification

It has been determined that this notice is not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as the term is defined in EO 13132.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S. C. 553(a)), a Regulatory Flexibility Analysis is not required and had not been prepared for this notice, 5 U.S.C. 601 *et seq.*

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

John E. Herring,

Acting Director, Officer of Science and Technology, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 02–514 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 991027290–1295–02]

RIN 0648–ZA74

Sea Grant National Strategic Investments in Technology, Marine Environmental Biotechnology, and Fisheries Habitat: Request for Proposals for FY 2002

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is entertaining preliminary proposals and subsequently full proposals for National Strategic Investments in the following three programs:

(1) The Technology Program, which involves the development and transfer of technologies pertaining to engineering and the physical sciences; this program is intended to fulfill Sea Grant's broad responsibilities in fostering economic competitiveness through the transfer of technology pertaining to the development and utilization of ocean, coastal, and Great Lakes resources. The maximum Federal award for each project will be $150,000 per year for up to two years.

(2) The Marine Environmental Biotechnology Program, which seeks to fund innovative research, education, and outreach projects to (i) develop and utilize molecular and cellular biology for assessing the effects of contaminants and pathogens on the health of the coastal ecosystem; and (ii) educate and inform the public about marine biotechnology. The maximum Federal award for each project will be $150,000 per year for up to two years.

(3) The Fisheries Habitat Program, which deals with innovative research, education, and outreach projects that address critical and high priority problems related to fisheries habitat in U.S. coastal and Great Lakes waters. The maximum Federal award for each project will be $300,000 per year for up to two years.

To support projects in the above three programs, Sea Grant expects to provide a total of about $1,750,000, $2,750,000, and $2,000,000, respectively, over a two-year period (FY2002 and FY2003). Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects, which will have a maximum duration of two years, will be selected through national competitions.

DATES: Preliminary proposals must be received by 5 pm (local time) on February 15, 2002 by a state Sea Grant College Program. Preliminary proposals from non-Sea Grant states, if submitted directly to the National Sea Grant Office (NSGO), must be received by 5 pm EST on February 15, 2002. After evaluation at the NSGO, some proposers will be encouraged to prepare full proposals, which must be received by 5 pm (local time) on April 18, 2002 by a state Sea Grant College Program or the NSGO. (See **ADDRESSES** for where to submit preliminary and full proposals.) Note that applications arriving after these deadlines will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery to the address listed below (see **ADDRESSES**) prior to the specified closing date and time; in any event, applications received by the NSGO or the state Sea Grant programs later than two business days following the closing date will not be accepted. Facsimile transmissions and electronic mail submission of proposals will not be accepted. It is anticipated that funding decisions will be made by June 20, 2002, and that successful applicants will be able to initiate projects approximately December 1, 2002.

ADDRESSES: Preliminary proposals and full proposals originating in Sea Grant states must be submitted to the state Sea Grant Program. Preliminary proposals and full proposals originating elsewhere may be submitted either to the nearest Sea Grant Program or directly to the NSGO. The addresses of the Sea Grant College Program directors may be found on Sea Grant's home page (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting the NSGO. Preproposals and proposals submitted to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Proposal Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301–713–2445).

FOR FURTHER INFORMATION CONTACT: Dr. Vijay G. Panchang (Program Director for Technology Transfer), Dr. Linda Kupfer (Program Director for Biotechnology), or Dr. Emory Anderson (Program Director for Fisheries) at the National Sea Grant Office, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–2435, e-mail: *Vijay.Panchang@noaa.gov*; *Linda.Kupfer@noaa.gov*; *Emory.Anderson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 1121–1131.

Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.

II. Description of Programs

A. Technology Program

Background

The ocean environment has traditionally provided an abundance of economic opportunities over a wide spectrum of activities. As a result of growing population pressures, the demands to maintain a sustainable and healthy environment, and ongoing scientific advancements, the economic potential afforded by the marine environment may be expected to increase. On the other hand, globalization has put unprecedented demands on U.S. industry for innovation and the development of new technologies. Economic competitiveness can be fostered by creating opportunities for collaboration between industrial and academic scientists and engineers, as well as by supporting post-fundamental work to accelerate the

conversion of academic research into products with commercial value.

The ''National Sea Grant College Program Reauthorization Act of 1997'' (33 U.S.C. 1121–1131) calls upon the National Sea Grant College Program (Sea Grant) to foster economic competitiveness, invest in technology transfer, and create partnerships between the Federal Government and universities, private industry, and other agencies in the development and utilization of marine resources. To meet these objectives, Sea Grant's Technology program is meant to serve as a catalyst for scientific entrepreneurship and technology transfer and thereby enhance commerce. In particular, the goals are: To conduct focused projects that can lead to the development of marine and Great Lakes related technological innovations and their acceptance in the marketplace (both in the U.S. and abroad); to increase interactions between the nation's academic scientists and engineers and their industrial counterparts; to stimulate Sea Grant's research and development activities in the physical sciences and engineering; to accelerate the transfer of research-based marine science from universities to new technologies in industry; to provide a mechanism for industry to influence Sea Grant research priorities and solve problems of importance to industry; and to forge long-term relationships between Sea Grant colleges and industrial firms.

Funding Priorities and Availability

The Sea Grant Technology program provides support for applied research and development projects that ultimately facilitate the transfer of new products and processes that pertain to the development of marine technologies, including cost reductions for processes and product safety. In a true partnership that benefits national or regional economies, industrial cooperation in academic research and development efforts could be expected and such cooperation should be sought. University faculty are the major source for identifying potential industrial collaborators and suitable research topics. However, other sources can be used to identify potential industrial partners or user groups, such as the Sea Grant Marine Extension Program, university industrial relations offices, and the Sea Grant Review Panel. Sea Grant directors are encouraged to use a variety of sources in building successful partnerships with industry or other user groups.

Several types of projects will be considered under this announcement. These include, for example, the following:

1. Additional developmental work that can accelerate the transition of academic research to marketplace acceptance or practice. For example, pilot-scale testing of technologies developed in academia may be necessary to establish economic feasibility. A private sector partner may or may not be identified. (If the work has imminent commercial implications and an industrial partner is involved, the partner is encouraged to provide matching funds.)

2. A project which does not lead to a commercializable product per se, but is of mutual benefit to industry and academia. For example, if an industry sector anticipates future trends either due to market forces or government regulations, it may wish to prepare for them by developing technologies with help from academia. If there is actual transfer of technologies to industry, then participation by an industrial partner may be appropriate.

3. Technology transfer or demonstration projects and workshops/forums given by academic researchers and mainly targeted to industry, involving registration or other fees paid by industry which can constitute industrial match.

4. Technology transfer to user groups in government or other agencies that enhances cost-effectiveness of operations.

Proposals that will be considered under this announcement are not limited to the above types of projects, which are given by way of example only.

This announcement is intended to stimulate Sea Grant developments in the physical sciences and engineering. (See the Long Range Plan on Sea Grant's home page or that of the nearest Sea Grant College Program). Examples of possible project areas include:

1. Improved ocean observation technology and data management systems pertaining to a ''digital ocean'', including predictive models of coastal/shoreline/basin ocean/lake circulation and sensors for currents/tides, marine contamination and water quality, storms/winds/waves, and other natural chemical/physical properties.

2. Marine weather prediction techniques for users in coastal regions.

3. Determining the extent and implications of shoreline erosion and developing new solutions (including social science approaches).

4. Sea level issues such as rise/fall, hazard analysis, etc.

5. Harbor/channel problems such as management for commercial, public, and private/recreational uses as well as engineering design and operations (e.g. improved techniques for dredging and spoil analysis/distribution, ''intelligent'' waterways and enhanced navigability, etc).

6. Improved wastewater treatment technologies to reduce coastal contamination.

7. Vessel design.

8. Life raft/lifesaving/rescue communications devices.

9. Material science in relation to the marine environment for structures, vessels, antifouling products, etc.

10. Programmable online robotic submersibles for marine observations.

11. Improvements in land use practice, watershed management, smart growth, risk analysis, etc.

The above list is not intended to be restrictive and projects covering other topics in the physical sciences and engineering are welcome.

To support projects in the Technology program, Sea Grant expects to provide a total of about $1,750,000 over a two-year period (FY2002 and FY2003). The maximum Federal award for each project will be $150,000 per year. Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects will have maximum duration of two years; however, the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress.

B. Marine Environmental Biotechnology Program

Background

Preservation of coastal ecosystems is critically important to the American public. There are growing concerns with the status and health of vital marine resources. Increasing development of coastal areas and pollution from variety of sources now exert relentless pressure upon these environments. Recognition that widespread threats to coastal ecosystems impact human health as well as traditional and emerging economic interests resonates throughout the scientific and management communities. The National Research Council's Ocean Studies Board reported in ''Challenges on the Horizon'' that improving the health of the coastal oceans and sustaining ocean ecology in the fact of mounting anthropogenic impacts represent key challenges for ocean research. Realization of the close link between the oceans and human health has sparked interest and involvement from scientists, health care professionals and other stakeholders as cited in the Ocean Studies Board's report ''From Monsoons to Microbes.''

There are numerous chemical and biological threats to the health of the marine environment, which can affect its potential to sustain essential biodiversiry, its ability to fuel valuable economic interests, and its effect on human health. These range from severe impacts of point-source contamination and diseases to far more subtle stress imposed by sublethal and non-point source contamination exposure over long time frames. Development of coastal areas and the associated changes in land use patterns apply additional impacts to the coastal ecosystem. The response of the biota to the cumulative stress is now evident in a variety of compelling ways.

While these problems have continued to mount, our understanding of the concurrent biological and ecological ramifications have not followed in step. Consequently, we are poorly equipped to evaluate these problems and to adequately suggest and implement remedies. Historically, a number of factors have prevented this. We are using for the most part the tools of early twentieth century biology when better ones are available. Techniques with sufficient resolution to discern the mechanisms underlying these problems have rarely been applied within the context of the health of the marine environment. In addition, owing to their highly interdisciplinary nature, some of these problems have been difficult to address through traditional funding paths. The early promise of molecular biology and genetics continues to be realized as evidenced by the publishing of the human genome in February of this year. New methodologies are being developed and applied to the field such as the microarray or ''gene chip''. Yet, while many scientists utilize the tools of biotechnology to answer pertinent questions regarding human health, the state of the environment and food production and safety, the extension, education and communication of information about biotechnology has largely been neglected.

There is a significant lack of understanding in the public domain regarding biotechnology and its applications in the marine environment. An accelerated program of biotechnology education, communication and outreach is critical to public acceptance and trust in the use of marine biotechnology tools.

Overcoming these barriers is the present emphasis of this program, which is meant to support the application of innovative and state-of-the-art molecular and cellular biotechnology research designed specifically to address tractable problems pertaining to the health of the marine ecosystem as well as education and outreach projects designed to inform the public about marine biotechnology.

The same innovative technology that has yielded such profound changes in the way that biomedical research is conducted and has become commonplace in virtually all modern biology laboratories will be applied in the critical area of environmental research. Techniques utilized in a typical molecular and cellular biology laboratory can now be viewed as an accessible biological toolbox that enables researchers to answer insightful questions relating to stress detection and monitoring methodologies. Marine biotechnology has become a mature and powerful driving force that is poised to lead to new developments in our understanding of how marine organisms and the coastal ecosystems respond to pollution, disease and environmental stress.

This announcement builds upon the successes of previous marine biotechnology initiatives funded by Sea Grant. These initiatives were instrumental in focusing university molecular and cellular biology research on marine issues. The benefits of previously funded research in marine biotechnology include new natural products and pharmaceuticals, new tools for fisheries management as well as development of new research systems for fundamental research and new insights into ocean dynamics. With this request for proposals, Sea Grant will focus the considerable power of molecular and cellular biology on the aquatic ecosystem.

Funding Priorities and Availability

Sea Grant will fund a nationwide research, education, and outreach program that is designed to foster innovative approaches to the study of health of the marine environment. It is designed to encourage collaboration among academics and key resource decision makers to ensure that the research is pertinent to the end users and that the results are distributed in an appropriate fashion among a variety of key user groups ranging from the research and management communities to the general public.

1. The focus of the research conducted under this initiative addresses a topic of pressing national importance: To better understand the marine ecosystem and the impact of contaminants and pathogens on this system.

The overarching goal is to add new focus and direction to Sea Grant funded research and to enhance its impact through innovative research studies, interdisiplinary studies, educational programs and outreach efforts. Research proposals should focus on tractable problems and specific, identifiable outcomes which impact the problem. Project areas may include the application of cellular and molecular biological techniques for the detection and characterization of pollutants and disease on the coastal ecosytem, including (a) the development of novel biosensors (including in situ biosensors) for major groups of pollutants and contaminants (toxics; heavy metals such as cadmium, copper and mercury; organics such as PCBs, PAHs, and pesticides; and endocrine disrupters); (b) the detection and characterization of sublethal effects of pollutants, contaminants, and pathogens (excluding effects of harmful algal blooms) in ecologically and economically important stocks in the natural environment (excluding aquacultured animals); and (c) the identification and use of biomarkers for the purpose of health and environmental quality assessment.

2. Outreach projects conducted under this initiative will focus on the fact that while the science of biotechnology has literally sprinted forward, public understanding of this technology has merely limped along, creating an uninformed and at times bewildered public. This situation is addressed in a January 2000 report by the National Association of State Universities and Land-Grant Colleges entitled ''Agricultural Biotechnology: Critical Issues and Recommended Responses from the Land-Grant Universities.'' With this request for proposals, Sea Grant will begin the process of bringing the public up to speed on marine biotechnology, its promise as well as the issues surrounding its use. Proposals should address the communication, education, and extension of marine biotechnology to the public. Examples in the field of communication include the development of a Sea Grant marine biotechnology web site which is a one-stop shop, critical for users learning about the many facets of marine biotechnology and for tying together all the work in marine biotechnology currently going on in the Sea Grant network. In addition, synthesis documents describing the results of Sea Grant sponsored research in marine biotechnology to both the scientist and the layperson are essential to tell the story of Sea Grant successes in marine biotechnology. An integrated project in this area could also include fact sheets

on a variety of areas applicable to marine biotechnology suitable for diverse audiences. Examples of extension would be symposia geared to educate laypersons, industry, government regulators and policy makers on marine biotechnology. Similarly, workshops designed to assemble researchers who have been funded by national strategic investments in marine biotechnology to present their results and discuss the state of the science are encouraged. Publication of workshop proceedings would document a body of work and suggest future investments, similar to the NRC publication ''Opportunities for Environmental Applications of Marine Biotechnology'' upon which this request for proposals is based. Other themes for workshops might include policy issues surrounding marine biotechnology such as Federal and state regulations, risk assessment issues, legal policies such as patents and licensing, and regional marine biotechnology issues. Examples of proposals in the area of education include those focused on teaching marine biotechnology to high school students and teachers of high school students, aquarium exhibits focused on teaching marine biotechnology, traveling exhibits and museum exhibits, a course or series of courses in marine biotechnology for extension agents, specialists, or specific user groups such as policy makers or management.

To support projects in the Marine Environmental Biotechnology program, Sea Grant expects to provide a total of about $2,750,000 over a two-year period (FY2002 and FY2003). The maximum Federal award for each project will be $150,000 per year. For the Marine Environmental Biotechnology Program, about one quarter of the available funds will be devoted to support outreach projects. Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects will have a maximum duration of two years; however, the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress.

C. Fisheries Habitat Program

Background

Human and non-anthropogenic activities threaten the environments of our marine and Great Lakes waters. Habitats important to stocks of finfish and shellfish species exist in riverine, estuarine, coastal, and offshore continental shelf waters within the U.S. Exclusive Economic Zone as well as in waters of the Great Lakes. A long-term threat to the viability of commercial and recreational fisheries is the continuing adverse impacts of various human activities and natural hazards on our marine and Great Lakes aquatic habitats.

The U.S. Congress, in re-authorizing the Magnuson-Stevens Fishery Conservation and Management Act through the Sustainable Fisheries Act (SFA) (16 U.S.C. 1801 *et seq.*) in October 1996, mandated the identification of habitats essential to Federally managed marine finfish and shellfish species and the identification of measures to conserve and enhance these habitats. The SFA defined essential fish habitat (EFH) as ''those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.'' This has been further interpreted by NOAA to include aquatic areas and their associated physical, chemical, and biological properties needed to support sustainable fisheries and healthy ecosystems involving managed species.

Since Congressional intent in the SFA was to prevent further loss of marine, estuarine, and other aquatic habitats, the eight regional Fishery Management Councils (Councils) have had to amend their fishery management plans (FMPs) to describe and identify EFH for all life stages of managed species, provide information on fishing and non-fishing activities that may adversely impact EFH, recommend measures to conserve and enhance EFH, and minimize, to the extent practicable, adverse impacts on EFH caused by fishing activities. The SFA also requires consultations between the National Marine Fisheries Service (NMFS) and any Federal agency whose actions may adversely affect EFH.

Although the EFH mandate in the SFA was directed towards the conservation and management of habitat for Federally managed fisheries, it has served to heighten awareness and stimulate similar efforts by state resource agencies and interstate Marine Fisheries Commissions responsible for near-shore and estuarine waters and by state, Federal, and international bodies responsible for Great Lakes waters.

Huge gaps in knowledge exist regarding habitat preferences and requirements of the life stages of many finfish and shellfish species, the role played by various habitats in the fishery production process, and the impacts of various anthropogenic and natural activities on habitat structure and function. In order for Fishery Management Councils, NMFS, interstate Marine Fisheries Commissions, and other Federal and state regulatory bodies and agencies responsible for either marine or Great Lakes waters to adequately manage habitats, these gaps in knowledge must be filled through expanded research and extension efforts.

The importance of addressing the requirement for and present deficiency in knowledge regarding fisheries habitat, and the need to consider habitat to a greater extent in fisheries management, has recently received considerable national attention in scientific symposia and conferences and popular and peer-reviewed publications. This research initiative is helping to address that lack of knowledge.

Funding Priorities and Availability

The Sea Grant Fisheries Habitat Program encourages proposals that address the topical fisheries habitat issues listed below. Proposals that are particularly encouraged are those that: (1) Involve collaboration with multiple investigators and various Federal agencies (e.g., National Marine Fisheries Service, National Undersea Research Program, Environmental Research Laboratories, National Ocean Service, U.S. Geological Survey, Environmental Protection Agency) in which the cooperating agencies provide additional funding, personnel, specialized equipment, research vessel time, and the like; (2) address regional or national issues with broad application; (3) demonstrate local and regional resource manager and stakeholder involvement in the planning and development process; (4) provide results in digital, metadata, GIS-capable format; and (5) incorporate applied areas of education, outreach, socioeconomic, and management components and applications of direct benefit to stakeholders. Proposals with narrow focus from single investigators are not encouraged and will have a minimal likelihood of being funded.

Proposals are requested that address the following issues:

1. Documentation of the functional role of habitats for particular species and life stages.

a. Documentation of the associations between managed fish and shellfish species and their habitats and characterization of the ecological processes that control species distribution.

b. Identification of the specific types of habitat that contribute most to the growth, reproduction, and survival of managed fish and shellfish species.

c. Development of survey strategies for seabed mapping, combining large-scale mapping technology with finer-scale survey techniques such as underwater video and sediment sampling.

2. Determination of the short- and long-term (cumulative) effects of commercial and recreational fishing gear and activities on fish and shellfish habitats.

a. Documentation of the effects of fishing activities on the physical and chemical structure of habitats, community composition of associated species, and growth, reproduction, and survival of managed fish and shellfish species.

b. Evaluation of the recovery rates for benthic habitats and associated fish and shellfish species disturbed by fishing gear and activities with respect to the frequency and magnitude of disturbance.

To support projects in the Fisheries Habitat program, Sea Grant expects to provide a total of about $2,000,000 over a two-year period (FY2002 and FY2003). The maximum Federal award for each project will be $300,000 per year. Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects will have a maximum duration of two years; however, the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress.

III. Eligibility

Applications may be submitted by individuals, public or private corporations, partnerships, or other associations or entities (including institutions of higher education, institutes, or non-Federal laboratories), or any State, political subdivision of a State, or agency or officer thereof. Directors of the state Sea Grant Programs are not eligible to compete for funds under this announcement, although for administrative purposes, they will be considered to be the Principal Investigator for all awards made to their state programs.

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under these three programs are:

A. *Impact of Proposed Project* (50%): Significance of the problem addressed; impacts/benefits expected to the nation as a consequence of the project; degree to which the activity will advance the state of the science or discipline; potential for technology transfer to user groups such as industry and/or for enhanced economic/scientific/educational/management value.

B. *Project Design* (50%): Appropriateness of methodologies to be used; advanced synthesis of existing information; use or extension of state-of-the-art methods; qualifications of the investigators (education, training, and/or experience and record of achievement with previous funding); the degree to which multiple investigators, other Federal agencies, and potential users of the results of the proposed activity have been involved in planning the activity and/or will be involved in the execution of the activity, as appropriate; proposed project schedule (timeline).

V. Selection Procedures

Preliminary proposals will be reviewed at the NSGO by panels composed of government, industry, and academic experts. The panels will be asked to assess each preliminary proposal according to the evaluation criteria. The panels will make individual recommendations to the NSGO regarding which preliminary proposals may be suitable for further consideration. On the basis of the panels' recommendations, the Director of the NSGO will advise proposers whether or not the submission of full proposals is encouraged. Invitation to submit a full proposal does not constitute an indication that the proposal will be funded. Interested parties who are not invited to submit full proposals will not be precluded from submitting full proposals if they have submitted a preliminary proposal in accordance with the described procedures.

Individual state Sea Grant Programs receiving full proposals will conduct the mail peer review of the proposed projects in accordance with the Evaluation Criteria listed above. Complete proposals (12 copies) and copies of the mail reviews will then be sent by the state Sea Grant programs to the National Sea Grant Office. The NSGO will conduct mail reviews for proposals submitted directly to it by applicants not in Sea Grant states.

The proposals will be ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer review panel consisting of government, academic, and industry experts. These panel members will provide individual evaluations on each proposal; thus there will be no consensus advice. Their recommendations and evaluations will be considered by the NSGO in the final selection. Only those proposals awarded a score of 50% or greater by the panel will be eligible for funding. For those proposals, the NSGO will: (a) Ascertain which proposals best meet the program priorities (stated in Section II), and do not substantially duplicate other projects that are currently funded or are approved for funding by NOAA and other Federal agencies, hence, awards may not necessarily be made to the highest-scored proposals; (b) select the proposals to be funded; (c) determine which components of the selected projects will be funded; (d) determine the total duration of funding for each proposal; and (e) determine the amount of funds available for each proposal. Investigators may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. Note that only one award will normally be made for each project; if multiple institutions are involved, they should be handled through subcontracts. A summary statement of the scientific review by the peer panel will be provided to each applicant.

VI. Instructions for Application

A. General Requirements

The ideal project attacks a well-defined problem that will be or is a significant societal, research, or technology development and transfer issue. The organization or people whose task it will be to make related decisions or who will be able to make specific use of project results will have been identified and contacted by the Principal Investigator(s). The proposal demonstrates an understanding of what constitutes necessary and sufficient information for responsible decision-making or for applied use, and shows how that information will be provided by the proposed activity or in concert with other planned activities.

Proposals are expected to have: a rigorous, hypothesis-based scientific work plan, or a well-defined, logical approach to address an engineering problem or outreach opportunity; a strong rationale for the proposed work; and a clear relationship with the ultimate users of the information. Projects undertaken jointly with industry, business, multiple investigators, or other agencies with interest in the problem are encouraged. Their contribution to the project may be in the form of collaboration, in-kind services, or dollar support. Projects that are solely monitoring efforts are not appropriate for funding. Proposals that incorporate educational, outreach, socioeconomic, and management components and applications will be viewed favorably.

To prevent the expenditure of effort that may not be successful, proposers must first submit preliminary proposals; based on advice provided by the NSGO, proposers may subsequently submit full

proposals. Full proposals submitted by applicants who do not first submit a preliminary proposal will be returned without review. Applications may be made for Federal funds to support up to two-thirds of the total budget. Allocation of matching funds, equal to at least one-third of the total budget (in other words, at least 50% of the Federal request), must be specified. No more than $150,000 (for the Technology and the Marine Environmental Biotechnology Programs) or $300,000 (for the Fisheries Habitat Program) of Federal funds per year will be awarded to a project. The maximum duration for funded projects will be two years. Awards may be made either as grants or, if there is substantial involvement by one or more Federal agencies, as cooperative agreements. Investigators are encouraged to review the budgeting and grant-making policies of their state's Sea Grant Program, if any, before finalizing their proposal submissions.

B. How To Submit

Interested parties must submit applications (preliminary and full proposals) as follows. Applications originating in one of the Sea Grant states must be submitted to the state's Sea Grant College Program, which will submit the final grant application to the NSGO. Applications originating in a state with no Sea Grant College Program may be submitted to the nearest state Sea Grant College Program which will then submit the final grant application to the NSGO, or the application may be submitted directly to the National Sea Grant Office. Twenty (20) copies of preliminary proposals and proposals must be submitted to the state Sea Grant Programs or to the NSGO according to the schedule outlined below (See ''Timetable''). The addresses of the Sea Grant College Program directors may be found on Sea Grant's World Wide Web home page (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting Mr. Joseph Brown at the NSGO (phone: 301–713–2438 x135 or e-mail: joe.brown@noaa.gov). Preproposals and proposals sent to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Ms. Geri Taylor, Proposals Processing, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2435 for express mail applications). Facsimile transmissions and electronic mail submission of applications will not be accepted.

C. Timetable

February 15, 2002, 5 p.m. (local time)—Preliminary proposals (20 copies) due at state Sea Grant Program, or at NSGO if application is being submitted by an institution in a non-Sea Grant state.

February 20, 2002, 5 pm EST—Preliminary proposals received at state Sea Grant Programs due at NSGO (18 copies).

April 18, 2002, 5 pm (local time)—Full proposals (20 copies) due at state Sea Grant Program, or at NSGO if application is being submitted by an institution in a non-Sea Grant state.

April 24, 2002, 5 pm EST—Full proposals (12 copies) received at state Sea Grant Programs due at NSGO.

June 4, 2002, 5 pm EDT—Reviews received at state Sea Grant Programs due at NSGO.

December 1, 2002 (approximate)—Funds awarded to selected recipients; projects begin.

Note that applications arriving after the closing dates given above will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery to the appropriate address (see **ADDRESSES**) prior to the specified closing date and time; in any event, applications received by the NSGO or the state Sea Grant programs later than two business days following the closing date will not be accepted.

D. What To Submit

Preliminary Proposal Requirements

Preliminary proposals must be printed on metric A4 (210 mm x 297 mm) or 8½″ x 11″ paper with at least a 10-point font. The following information should be included:

1. Signed Title Page: The title page must be signed by the Principal Investigator and should clearly identify the program to which the proposal is submitted by starting the project title with ''Sea Grant Technology Program'' or ''Sea Grant Marine Environmental Biotechnology Program'' or ''Sea Grant Fisheries Habitat Program'' (as appropriate). Principal Investigators and collaborators should be identified by affiliation and contact information. The total project costs (Federal funds being requested and matching funds) should be listed as well as the source of the matching funds. Preliminary proposals must include matching funds equivalent to at least 50% of the Federal funds requested.

2. A concise (2-page limit) description of the project, its experimental design, its expected output or products, the anticipated users of the products, and its anticipated impact. Proposers should consult the Evaluation Criteria for additional guidance in preparing the preliminary proposals.

3. Resumes (1-page limit) of the Principal Investigators.

4. Proposers are encouraged (but not required) to include a separate page suggesting reviewers that the proposers believe are especially well-qualified to review the proposal. Proposers may also designate persons they would prefer not review the proposal, indicating why. These suggestions will be considered during the review process.

No institutional signatures or Federal government forms are needed while submitting preliminary proposals.

Full Proposal Requirements

All pages must be printed on metric A4 (210 mm × 297 mm) or 8½″ x 11″ paper with at least a 10-point font. Each full proposal should include the items listed below. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations and letters of support are not included in the 15-page limitation. No appendices are permitted. Applicants may obtain all required application forms through the World Wide Web at *http://www.nsgo.seagrant.org/research/index.html* and *http://www.ofa.noaa.gov/~grants/pdf/*, from the state Sea Grant Programs, or from Mr. Joseph Brown at the National Sea Grant Office (phone: 301–713–2438 ×135 or e-mail: *joe.brown@noaa.gov)*.

1. *Signed Title Page*: The title page must be signed by the Principal Investigator and the institutional representative and provide complete contact information. The program area being addressed should be clearly identified by starting the project title with ''Sea Grant Technology Program'' or ''Sea Grant Marine Environmental Biotechnology Program'' or ''Sea Grant Essential Fisheries Habitat Program'' (as appropriate). The total amount of Federal and matching funds being requested for each project year must be listed.

2. *Project Summary*: The project summary should concisely describe the activity being proposed and the impact that would result from its successful completion, in a form suitable for publication. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the Sea Grant form. The project summary should include: A. Title: Use the exact title as it appears in the rest of the application. B.

Investigators: List the names and affiliations of each investigator who will significantly contribute to the project, starting with the Principal Investigator. For graduate fellowships, the faculty advisor or the state Sea Grant Director may be used. C. Funding request for each year of the project, including matching funds if appropriate. D. Project Period: Start and completion dates. Proposals should request a start date of December 1, 2002. E. Project Abstract: This should include the rationale for the proposed activity, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of the work to be completed.

3. *Project Description (15-page limit)*:

a. *Introduction/Background/Justification*: Subjects that the investigator(s) may wish to include in this section are: (i) Previous fundamental research, including relevant work funded by Sea Grant, and a description of what additional work is needed to enhance the value of that work; and (ii) impacts of the study to the particular discipline or subject area.

b. *Research or Technical Plan*: (i) Objectives to be achieved, hypotheses to be tested; (ii) Experimental design and statistical analysis to be used; (iii) Plan of work, detailed methodology, collaboration with industry or other user groups (if appropriate), and a timetable for project activities; and (iv) Role of project personnel.

c. *Output/Anticipated Economic Benefits*: These may be measured in many ways (for instance the benefits of using biotechnological tools as opposed to other methods, the value of better understanding and managing the ecosystem or fisheries habitats, etc). To the extent possible, proposers are urged to devise appropriate metrics to quantify the benefits. Examples of metrics may include patents or licenses; commercializable new products (e.g. products used in or obtained from marine engineering operations, computer models for simulation of marine processes, etc.); process improvements (e.g. harbor design or dredging procedures, biochemical engineering, etc.); corporate investments in academic research efforts; private sector job opportunities for students involved in the project; number of end users or persons affected by the projects long-term goals, etc.

d. *Coordination with other Program Elements*: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

e. *References and Literature Citations*: Should be included but will not be counted in the 15-page project description limit.

4. *Budget and Budget Justification:* There should be a separate budget for each year and one cumulative budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may also use their own form as long as it provides the same information as the Sea Grant form. Subcontracts should have a separate budget page. Matching funds must be indicated. The budget should include a separate budget justification page that itemizes all budget items in sufficient detail to enable reviewers to evaluate the appropriateness of the funding requested, and indicates the source for all matching funds. Please pay special attention to any travel, supply or equipment budgets and provide details. Note that only one award will normally be made for each project; if multiple institutions are involved, they should be handled through subcontractors with all necessary indirect costs included in the original budget submission.

Investigators are strongly advised to consult with and follow any budgeting guidelines available through their state's Sea Grant Program. Local institutional policies may affect how a project budget should be submitted, and what may be included (i.e., application of indirect costs, availability of fellowships, and other restrictions or cost-saving opportunities). Proposals generated from Sea Grant states must follow local guidelines, if any. In no case will proposals be funded at a level which exceeds the funding limitations as set in this announcement.

5. *Current and Pending Support:* Applicants must provide information on all current and pending Federal support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. The relationship between the proposed project and these other projects should be described, and the number of person-months per year to be devoted to the projects must be stated.

6. Vitae (2 pages maximum per investigator).

7. Letters of commitment and letter of support from any industry or other partner, if appropriate.

VII. Other Requirements for Successful Applicants

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. The **Federal Register** notice also lists the forms required to complete the standard Department of Commerce grant application package, but those forms will be required only for those applicants who have been recommended for funding. For projects selected in Sea Grant states, the Sea Grant Program will prepare and submit these forms on behalf of all projects selected from that state. Unsuccessful applications will be held in the National Sea Grant Office for a period of five (5) years and then destroyed. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Pursuant to Execute Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at the following Internet website: *http://www.ed.gov/offices/OCR/minorityinst.html.*

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. THe use of NOAA Forms 90–2 and 90–4, or equivalents, has been approved by OMB under the control number 0648–0362. Public reporting burden for these collections of information is estimated to average 20 minutes for a NOAA Form 90–2 and 15 minutes for a NOAA Form 90–4. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the National Sea Grant Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a

collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

VIII. Classification

It has been determined that this notice is not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–515 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010302G]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee and Groundfish Oversight Committee in January, 2002, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on January 24 and January 25, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Colonial Hotel, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, January 24, 2002, 9:30 a.m.– Research Steering Committee Meeting.

The committee will review its roles and responsibilities. They will review experimental fishery permit correspondence. They will also discuss the development of a mechanism for project tracking and evaluation and incorporation into the management process. The agenda will include planning for the next Request For Proposals. Time permitting, the committee will review Dr. William Phoel's silver hake project report.

Friday, January 25, 2002, 9:30 a.m.– Groundfish Oversight Committee Meeting.

The Groundfish Oversight Committee will resume its work on Amendment 13 to the Northeast Multispecies Fishery Management Plan. Amendment 13 will establish rebuilding programs for overfished stocks, and end overfishing for those stocks where it is occurring. The Committee will review the goals and objectives for the Amendment, and may revise them if necessary. In addition, the Committee will review the management measures under consideration and may select additional management alternatives for future consideration. The Committee will also plan its future work on the Amendment.

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 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 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 Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 4, 2002.

Richard W. Surdi,

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

[FR Doc. 02–550 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010302A]

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: A subcommittee of the Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Strategic Plan Implementation Oversight Committee (SPOC) will hold a meeting which is open to the public.

DATES: The meeting will convene at 1 p.m. on Wednesday, January 30, 2002, recess when business for the day is completed, then reconvene at 8 a.m. Thursday, January 31, 2002, and adjourn at 10 a.m.

ADDRESSES: The meeting will be held in the West Conference Room at the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Fishery Economics Staff Officer, telephone: 503–326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to continue development of a SPOC subcommittee report on options for controlling capacity in the open access fishery. The SPOC subcommittee will discuss catch and participation analyses of the open access fishery, potential qualification criteria for permitting, and other data and issues relevant to capacity reduction in the open access fishery.

Although non-emergency issues not contained in the meeting agenda may come before the SPOC subcommittee for discussion, those issues may not be the subject of formal SPOC subcommittee action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice requiring emergency action under

section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the SPOC subcommittee's intent to take final action to address the emergency.

Special Accommodations

This 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: January 3, 2002.

Richard W. Surdi,

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

[FR Doc. 02–553 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 17 January 2002 at 10:00 am in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 2 January 2002.

Charles H. Atherton,

Secretary.

[FR Doc. 02–493 Filed 1–8–02; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

January 4, 2002.

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

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that Olympic Mills Corporation has violated the requirements for participation in the Special Access Program and has suspended Olympic Mills Corporation from participation in the Program for the one-year period January 14, 2002 through January 13, 2003.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Olympic Mills Corporation during the period January 14, 2002 through January 13, 2003, and to prohibit entry by or on behalf of Olympic Mills Corporation under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 4, 2002.

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

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended Olympic Mills Corporation from participation in the Special Access Program for the period January 14, 2002 through January 13, 2003. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of Olympic Mills Corporation during the period January 14, 2002 through January 13, 2003. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Olympic Mills Corporation manufactured from fabric exported from the United States during the period January 14, 2002 through January 13, 2003.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–509 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Tracey A. Dodenhoff

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Tracey A. Dodenhoff, a revocable, nonassignable, partially exclusive license to practice in the United States, the Government-owned inventions described in U.S. Patent No. 5,769,084, issued June 23, 1998, entitled ''Method and Apparatus For Diagnosing Sleep Breathing Disorders'' and U.S. Patent Application Serial No. 09/724,402, filed on November 28, 2000, entitled ''Method and Apparatus For Diagnosing Sleep Breathing Disorders While A Patient Is Awake'' in the field of underwater acoustic systems.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg 112T, Code 00OC, Newport, RI 02841.

FOR FURTHER INFORMATION CONTACT: Mr. M. J. McGowan, Deputy Counsel-Patents, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg 112T, Code 00OC, Newport, RI 02841, telephone (401) 832–4736.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: December 5, 2001.

T. J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–518 Filed 1–8–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites

comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 11, 2002.

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

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 3, 2002.

John Tressler,

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

Student Financial Assistance

Type of Review: New.

Title: Experimental Sites Initiative—Data Collection Instrument.

Frequency: Annually.

Affected Public: Individuals or household; not-for-profit institutions; state, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 150.

Burden Hours: 1,650.

Abstract: This data collection instrument will be used to collect specific information/performance data for analysis of nine experiments. This effort will assist ED/Student Financial Assistance (SFA) in obtaining and compiling information to help determine change in the administration and delivery of Title IV programs. The experiments cover major financial aid processes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–459 Filed 1–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before February 8, 2002.

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

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

Dated: January 3, 2002.

John Tressler,

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

Office of Educational Research and Improvement

Type of Review: Revision.

Title: FRSS Survey on High School Guidance Counseling.

Frequency: One-time.

Affected Public: State, local or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,000.

Burden Hours: 500.

Abstract: This survey will provide the only national source of information on high school guidance since 1984. The survey is designed to indicate both now counseling in high schools has changed since that time and what the major roles and functions of counseling programs are today. The information will help local, state, and federal policymakers better understand the role of guidance counseling and how it is changing with change in education and labor market systems.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland

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

[FR Doc. 02–460 Filed 1–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before February 8, 2002.

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

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

Dated: January 3, 2002.

John Tressler,

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

Office of Educational Research and Improvement

Type of Review: Revision.

Title: PEQIS survey on distance education in higher education institutions.

Frequency: One-time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,350.

Burden Hours: 675.

Abstract: This survey will provide current nationally representative data about distance education in higher education institutions. This is an area of education that is rapidly changing and the survey will measure change since 1995 and 1998 when previous PEQIS survey collected the first and second nationally representative measures of distance education course offerings and future institutional plans.

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

[FR Doc. 02–461 Filed 1–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–07; Atmospheric Radiation Measurement Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for experimental and theoretical studies of radiation and clouds in conjunction with the Atmospheric Radiation Measurement (ARM) Program as part of the U.S. Global Change Research Program (USGCRP). This notice requests new applications and renewal applications of grants currently funded by DOE under previous ARM Program notices that are relevant to the terms of reference for this announcement and responsive to the particular needs defined below.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. The deadline for submission of preapplications is March 15, 2002. Early submission of preapplications is encouraged to allow time for meaningful responses.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., April 11, 2002, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003.

ADDRESSES: Preapplications referencing Program Notice 02–07 may be sent to the program contact, Dr. Wanda Ferrell, via electronic mail at: *wanda.ferrell@science.doe.gov* or by U.S. Postal Service Mail at: Office of Biological and Environmental Research, Dr. Wanda Ferrell, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Electronic mail is recommended to speed up response to preapplications.

Formal applications referencing Program Notice 02–07 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contract Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–07. This address also must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand-carried by the applicant. An

original and seven copies of the application must be submitted; however, applicants are requested not to submit multiple application copies using more than one delivery or mail service.

FOR FURTHER INFORMATION CONTACT: Dr. Wanda Ferrell, Office of Biological and Environmental Research, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–0043, fax (301) 903–8519, Internet e-mail address: *wanda.ferrell@science.doe.gov.* The full text of Program Notice 02–07 is available via the World Wide Web using the following web site address: *http://www.sc.doe/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION:

Background

Atmospheric Radiation Measurement (ARM) Program

Two of the major scientific objectives of the Environmental Sciences Division (ESD) are to improve the performance of predictive models of the Earth's climate and to thereby make predictions of the response of the climate system to increasing concentrations of greenhouse gases. The purpose of the ARM Program is to improve the treatment of radiation and clouds in the models particularly the General Circulation Models (GCMs) used to predict future climate. This program is one component of a major interagency effort to improve the quality of current models and to support the development of sets of climate models capable of simulating and predicting climate and climate change. The major component of the ARM Program is an experimental testbed to gather data for the study of models of the terrestrial radiation field, properties of clouds, the full life cycle of clouds, and the incorporation of these process-level models into climate models. This facility is referred to as the Cloud and Radiation Testbed (CART).

The ARM program has established CART sites in three climatic regimes. The first site, Southern Great Plains (SGP), began operation in calendar year 1992, with instruments spread over an area of approximately 60,000 sq. km., centered on Lamont, Oklahoma. The second site, the Tropical Western Pacific (TWP), is the area roughly between 10° N to 10° S of the equator from Indonesia to near Christmas Island. This region of the world plays a large role in the interannual variability observed in the global climate system. The first and second of the TWP Atmospheric Radiation and Clouds Stations (ARCS) are operating on the islands of Manus, Papua, New Guinea and the Republic of Nauru respectively, and a third station at Darwin, Australia will be operational in early 2002. Similar instrumentation is gathering data in the vicinity of Point Barrow, on the North Slope of Alaska (NSA) and an inland site near Atqasak. Program information is available on the DOE/OBER WWW site using the URL: *http://www.sc.doe.gov/production/OBER/GC/arm.html.*

Request for Grant Applications

This notice requests applications for grants, both new and renewals that address the broad ARM goal of improving cloud and radiation parameterizations in climate models.

Successful applicants for renewal of previously awarded grants, shall demonstrate: (a) continued relevance of their work to the goals of the ARM Program; (b) the contribution of work conducted under previous support to the goals of the ARM Program, including a listing of publications and presentations; and (c) relevant contribution to the development of the ARM Program, particularly the design and development of ARM facilities, as a result of previous funding. Renewal applications should include a special section covering items (b) and (c) entitled ''Accomplishments Under Previous Support.'' (See *http://www.science.doe.gov/production/grants/App.html.*)

Applications are requested in one or more of the following three areas: (a) The development of models and parameterization of radiative transfer or cloud processes, including aerosol effects, or the testing of these models in climate GCMs or in process-level models; (b) experimental studies at ARM facilities to test elements of process-level models and their performance; or (c) the analysis of existing data, including field data and satellite data, to support model development or testing. Applicants should specifically describe the role of their proposed research in the improvement of climate GCMs and/or related models and delineate the path that their results will take to make those improvements.

The efforts proposed must have as a focus the conduct of research using the ARM data streams or ARM sites. Successful applicants for research on either parameterization development and evaluation or data assimilation will be encouraged to cooperate with the Initial Tendency Error Analysis (*http://www-pcmdi.llnl.gov/itea/*) effort at DOE's Program for Climate Model Diagnosis and Intercomparison (PCMDI). Successful applicants will participate in the continuing development of the detailed experimental approaches for the ARM.

Efforts that request funding to support the development of an instrument or to prove the scientific utility of an instrument will not be considered.

Specific areas of interest to the ARM Program include, but are not limited to:

- Use of ARM data to test quantitatively cloud and radiation parameterizations used in GCMs
- Development of new cloud and radiation parameterizations
- Determination of the concentration and advection of cloud water and ice on the regional scale
- Statistics of cloud fields and their interaction with atmospheric radiation
- Realistic retrievals of the 3D structure of clouds on scales of 10 to 100 km
- Retrieval of ice water path and ice cloud microphysics using remote sensing measurements from the ground or ground and satellite
- Calculation of heating rate profiles in realistic cloud fields
- Climatological properties of aerosols over the SGP site using ARM data
- Combining ground-based and satellite remote sensing data to provide improved characterization of the atmospheric column above and surrounding the ARM sites, particularly at the remote sites in the TWP and NSA

To ensure that the program meets the broadest needs of the research community and the specific needs of the DOE ESD, successful applicants are expected to participate as ARM Science Team members in the appropriate working group(s) relevant to their efforts. Costs for participation in ARM Science Team meetings and subcommittee meetings should be based on two trips of 1 week each to Washington, DC, and two trips of 3 days each to Chicago, Illinois.

Program Funding

It is anticipated that approximately $2,000,000 will be available for awards in Fiscal Year 2003, contingent upon the availability of appropriated funds. Multiple year funding of awards is expected, with out-year funding also contingent upon the availability of appropriated funds, progress of the research, and programmatic needs. The allocation of funds within the research areas will depend upon the number and quality of applications received.

Collaboration

Applicants are strongly encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/Colab.html.*

Preapplications

Potential applicants are strongly encouraged to submit a brief preapplication that consists of two to three pages of narrative describing the research objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the ARM Program. Principal Investigator (PI) address, telephone number, fax number and e-mail address are required parts of the preapplication. A response to each preapplication discussing the potential program relevance of a formal application generally will be communicated within 15 days of receipt. Use of e-mail for this communication will decrease the possibility of delay in responses to the preapplication.

The deadline for the submission of preapplications is March 15, 2002. Applicants should allow sufficient time so that the formal application deadline is met. SC's preapplication policy can be found on SC's Grants and Contracts Web Site at: *http://www.sc.doe.gov/production/grants/preapp.html.*

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation process will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Both federal and non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The technical portion of the application should not exceed twenty-five double-spaced pages and should include detailed budgets for each year of support requested. Awards are expected to begin on or about November 1, 2002. On the grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and e-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: *http://www.nsf.gov/bfa/cpo/gpg/fkit.htm#forms-9.*

In addition to the original and seven copies of the application that must be submitted, the applicants are asked to submit an electronic copy of the abstract in ASCII format to: *wanda.ferrell@science.doe.gov.* The abstract should include the following information: PI and co-PIs, their institutions, and a brief summary of research.

For researchers who do not have access to the World Wide Web (WWW), please contact Karen Carlson, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, phone: (301) 903–3338, fax: (301) 903–8519, e-mail: *karen.carlson@science.doe.gov;* for hard copies of background material mentioned in this solicitation.

Technical information on ARM is available on the WWW at the URL: http://www.arm.gov and the ARM Program Office at the Pacific Northwest National Laboratory, P.O. Box 999, Richland, Washington 99352, telephone: (509) 375–6964.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on December 28, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–500 Filed 1–8–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–12: Natural and Accelerated Bioremediation Research Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. The focus of the NABIR program is on radionuclides and metals that 1) pose the greatest potential risk to humans and the environment at DOE sites, and 2) are tractable for immobilization by means of bioremediation. Applications are especially encouraged that address the radionuclides uranium and technetium. Applications should describe research projects in one of the following categories:

1. Projects that address the scientific aims of the Biomolecular Science and Engineering Element.
2. Projects to be performed at the NABIR Field Research Center (FRC) addressing field scale biostimulation of microbiological processes that immobilize uranium and/or technetium. Interdisciplinary teams must include, at a minimum, expertise in microbiology, geochemistry and hydrology.

DATES: Researchers are strongly encouraged (but not required) to submit a preapplication for programmatic review. Early submission of preapplications is encouraged, to allow time for review for programmatic relevance. A brief preapplication should

consist of one or two pages of narrative describing the research objectives and methods.

The deadline for receipt of formal applications is 4:30 p.m., E.S.T., March 13, 2002, to be accepted for merit review and to permit timely consideration for awards late in Fiscal Year 2002, or in early Fiscal Year 2003. An original and seven copies of the application must be submitted; however, applicants are requested not to submit multiple applications using more than one delivery or mail service.

ADDRESSES: If submitting a preapplication, referencing Program Notice 02–12, it should be sent by e-mail to *anna.palmisano@science.doe.gov.*

Formal applications referencing Program Notice 02–12 on the cover page must be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–12. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9963, e-mail: *anna.palmisano@science.doe.gov,* fax: (301) 903–8519. The full text of Program Notice 02–12 is available via the Internet using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION:

Background

For more than 50 years, the U.S. created a vast network of more than 113 facilities for research, development, and testing of nuclear materials. As a result of these activities, subsurface contamination has been identified at over 7,000 discrete sites across the U.S. Department of Energy (DOE) complex. With the end of the Cold War threat, the DOE has shifted its emphasis to remediation, decommissioning, and decontamination of contaminated groundwater, sediments, and structures at its sites. DOE is currently responsible for remediating 1.7 trillion gallons of contaminated groundwater and 40 million cubic meters of contaminated soil. It is estimated that more than 60% of DOE facilities have groundwater contaminated with metals or radionuclides. The only other type of contaminant that appears more often than metal and radionuclide contaminants in groundwater is chlorinated hydrocarbons. More than 50% of all soil and sediments at DOE facilities are contaminated with radionuclides and metals, the contaminants found with the highest frequency in soil at all DOE waste sites. Indeed, while virtually all of the contaminants found at industrial sites nationwide can also be found at DOE sites, many of the metals and especially the radionuclides found on DOE sites are unique to those sites. The NABIR program aims: (1) To provide the fundamental knowledge to support the development of new remediation technologies for radionuclides and metals, and (2) to advance the understanding of the key microbiological and geochemical processes that control the effectiveness of in situ immobilization as a means of long term stewardship.

While bioremediation of organic contaminants involves their transformation to benign products such as carbon dioxide, bioremediation of radionuclides and metals involves their removal from the aqueous phase to reduce risk to humans and the environment. Microorganisms can directly transform radionuclides and metals by changing their oxidation state to a reduced form that leads to in situ immobilization. Or, microorganisms can indirectly immobilize radionuclides and metals through the reduction of inorganic ions that can, in turn, chemically reduce contaminants to less mobile forms. The long-term stability of these reduced contaminants is as yet unknown. Other mechanisms whereby microorganisms can influence mobility of contaminants include alteration of pH, oxidation/reduction reactions and complexation.

Currently, the fundamental knowledge that would allow cost-effective deployment of in situ subsurface bioremediation of radionuclides and metals is lacking. The focus of the NABIR program is on radionuclides and metals that: (1) Pose the greatest potential risk to humans and the environment at DOE sites, and (2) are tractable for immobilization by means of bioremediation. Thus, research is focused on the radionuclides uranium, technetium, and plutonium and the metals chromium and mercury. Radioactive contaminants such as tritium and cobalt are not a focus because of their relatively short half lives, and strontium and cesium are not addressed because they are not readily amenable to biotransformation. Research is focused on subsurface sediments below the zone of root influence and includes both the vadose (unsaturated) zone and the saturated zone (groundwater and sediments). NABIR research is oriented toward application in areas that have low levels of widespread contamination because it is too costly to clean up those situations with existing technologies. Uranium, technetium, and chromium can be especially mobile in the subsurface under certain conditions; they are risk-driving contaminants at some DOE sites. The effects of co-contaminants, such as nitrate, complexing agents, such as Ethylenediaminetetraacetate and chlorinated solvents, such as trichloroethylene and carbon tetrachloride on the behavior of radionuclides and metals in the subsurface is also of interest to the NABIR program.

NABIR Program

The goal of the NABIR program is to provide the fundamental science that will serve as the basis for development of cost-effective bioremediation and long-term stewardship of radionuclides and metals in the subsurface at DOE sites. The focus of the program is on strategies leading to long-term immobilization of contaminants in place to reduce the risk to humans and the environment. The NABIR program encompasses both intrinsic bioremediation by naturally occurring microbial communities, as well as accelerated bioremediation through the use of biostimulation (addition of inorganic or organic nutrients). NABIR will provide an improved, multidisciplinary understanding of the biogeochemical functioning of terrestrial subsurface systems. The NABIR Program supports hypothesis-driven research that is more fundamental in nature than demonstration projects.

Naturally occurring subsurface microbes may be involved in intrinsic bioremediation of radionuclides and metals by reduction and immobilization, either directly or indirectly. However, these natural processes typically occur at fairly slow rates, and there may be a need to use biostimulation to enhance the rates. The primary focus of the NABIR program is on biostimulation strategies, due to the ubiquity of metal-reducers in nature. In situ immobilization of contaminants is one approach to long-term stewardship, which is the post-closure responsibility of DOE at its contaminated sites. Long-term stewardship involves long-term monitoring and other maintenance activities to ensure that residual in-ground contaminants do not spread

further. Immobilized radionuclides and metals are not removed from the subsurface as may occur with excavation, pump and treat, or biodegradation of organic contaminants. Immobilization is focused on contaminant capture from both vadose zone and groundwater plumes. As such, it may be a strategy applied to prevent the discharge of deep or widely distributed contaminants from the vadose zone to groundwater, or from groundwater to a receiving water body (e.g., the Columbia River at Hanford). Therefore, an important aspect to the NABIR program is to assess factors controlling the long-term stability of the immobilized contaminants and to devise approaches (biological/chemical) to maintain their immobilization through the stewardship phase. Research on phytoremediation is not supported by NABIR.

The NABIR program consists of four interrelated scientific research elements (Biogeochemical Dynamics, Biotransformation, Community Dynamics and Microbial Ecology, and Biomolecular Science and Engineering). Innovative method development for the four NABIR scientific research elements is supported under the Assessment Element. The program also includes an element addressing ethical, legal and social issues of bioremediation called Bioremediation and its Societal Implications and Concerns (BASIC). The NABIR program encourages researchers to integrate laboratory and field research. DOE has a Field Research Center (FRC) at the Y–12 site near Oak Ridge National Laboratory (ORNL). Additional information about NABIR and the FRC can be accessed from the NABIR Homepage: *http://www.lbl.gov/NABIR/*

Current Request for Applications

Two kinds of projects are solicited in this request for applications:

1. Research projects that address the scientific aims of the NABIR Biomolecular Science and Engineering Element.

2. Research projects to be performed at the NABIR FRC addressing field scale biostimulation of microbiological processes that immobilize uranium and/or technetium. Research would be conducted at the FRC that is located near Oak Ridge National Laboratory, Oak Ridge, TN. Interdisciplinary teams must include, at a minimum, experts in the fields of microbiology, geochemistry, and hydrology.

Applications for research on other elements of the NABIR program will not be addressed at this time.

The NABIR Biomolecular Science and Engineering Element

Research in the Biomolecular Sciences and Engineering element provides a knowledge base, at the biomolecular level, of the processes leading to the in situ immobilization of radionuclides (U, Tc, and Pu) and metals (Cr and Hg) by indigenous subsurface microorganisms. Applications for this solicitation are especially encouraged that address the radionuclides uranium and technetium. The primary goal of this element is to understand the genetic, biochemical, and regulatory processes that mediate biotransformation of these specific radionuclides and metals, leading to their immobilization. Characterization of genes, gene products, and genetic regulatory networks associated with these biotransformations is key to this understanding. Secondary goals include: (1) Understanding molecular mechanisms of resistance of subsurface microorganisms to radionuclide and metal toxicity, (2) understanding, at a molecular level, the processes of lateral transfer between microbes of genes involved in biotransformation of these radionuclides and metals, (3) developing novel technologies to provide insights into biomolecular mechanisms of radionuclide and radionuclide biotransformation, and (4) developing approaches to manipulate pathways and enzyme systems that mediate these transformations to improve their ability to immobilize these radionuclides and metals.

DOE subsurface sites encompass a wide range of environments, with a diversity of microbial communities and contaminants. One of the challenges of the Biomolecular Science and Engineering Element is to select microbes for studies that are active members of subsurface microbial communities. A second challenge is to extrapolate laboratory findings on pure cultures under laboratory conditions to complex in situ environmental conditions. This extrapolation is especially critical in studying gene expression, which may be modified by changes in local cellular environments in the subsurface. A third challenge is to take advantage of genomic and other data derived from the DOE Microbial Genome Program on subsurface microorganisms to increase our understanding of how genes relevant to bioremediation are expressed in the environment.

Technical Areas of Interest for the Biomolecular Science and Engineering Element

Research projects are sought that focus on understanding the regulation of genes that have been identified to be important in: (1) The immobilization of radionuclides (U, Tc, and Pu) and metals (Cr and Hg) by naturally occurring microorganisms in contaminated subsurface environments, and (2) the growth and survival of microorganisms in the presence of these radionuclides and metals. Applications should primarily focus on indigenous subsurface microorganisms that can precipitate and immobilize these radionuclides and metals. Applications addressing immobilization of uranium and technetium are strongly encouraged. For mercury and plutonium, two other contaminants targeted by the NABIR program, strategies for immobilization are less clear, and may require the development of novel approaches. Detailed studies of the enzymatic mechanisms for radionuclide/metal reduction are needed to increase our understanding of in situ processes and to identify gene targets for better molecular assessment of radionuclide and metal reduction. Microorganisms selected for Biomolecular Science and Engineering research should be those that may play an important role in reducing these radionuclides and/or metals in subsurface environments. Exploring the effects of key environmental parameters on genetic regulation and expression of radionuclide and/or metal reduction is a critical need. The NABIR FRC provides an opportunity for Biomolecular Science and Engineering researchers to work at a DOE site in collaboration with scientists from the Biogeochemistry, Biotransformation, and Community Dynamics elements. Studies at the NABIR FRC show that microbial reduction of radionuclides and metals is affected by the presence of nitrate and low pH. Thus, research into microbial mechanisms involved in the reduction of these radionuclides and metals in this type of subsurface environment is of special interest. More information on the NABIR FRC and current research being conducted at the FRC can be found at the web site *http://www.esd.ornl.gov/nabirfrc*. The ultimate goal of this element is to improve our ability to predict and to manipulate the activities of microbes in situ, particularly in an in situ immobilization scenario.

New and creative scientific approaches are sought that address the following fundamental research

questions for the Biomolecular Science and Engineering Element:

What are the basic biomolecular mechanisms of uranium and technetium reduction and reoxidation in microorganisms, primarily those indigenous to the subsurface?

How do low pH and high nitrate concentrations impact the biochemistry and gene expression and regulation of uranium and technetium reduction?

How can biomolecular processes be manipulated to enhance the sustainability of immobilization of uranium and technetium?

Are there novel biomolecular mechanisms that can be used to immobilize mercury or plutonium?

For further information on the Biomolecular Science and Engineering Element, please contact Dr. Daniel Drell (*Daniel.Drell@science.doe.gov*), the Program Element Manager.

Field Scale Bioremediation Experiments

Although bioremediation of radionuclides and metals has been studied in the laboratory, and bioremediation technologies have been demonstrated in the field, there are few examples of carefully controlled, hypothesis-driven, in situ bioremediation research at the field-scale. The NABIR FRC provides opportunities for such field-scale experiments. The focus of field experiments at the FRC is on in situ immobilization of radionuclides, such as uranium and technetium by microbiological processes. For more information on the NABIR FRC, access the FRC web site at *http://www.esd.ornl.gov/nabirfrc*. For this solicitation, applicants are especially encouraged to develop experiments for Area 2, a low nitrate, circumneutral site at the FRC. Applicants may also choose to propose research for Area 1, a high nitrate, low pH site. Both sites are described in the following sections; maps and additional information on the sites are available at the FRC web site.

Applicants must propose a testable hypothesis that is based on biologically-mediated mechanisms of immobilization for in situ field research, and they should describe a detailed technical approach that should include (1) establishing a defined (surface area and depth) experimental and control plot within the proposed contaminated field site, and (2) manipulating the experimental plot by amendments of nutrients or other chemicals that might stimulate microbial communities to immobilize uranium or technetium. The technical approach must be described in phases such that completion of each phase could result in publishable results. A statistically robust sampling regimen to determine the efficacy of the manipulation should also be described. Moreover, the applicant must explain the technical feasibility of performing the proposed field research. Technology demonstration projects will not be funded by this solicitation.

The applicants should propose research to be performed as an interdisciplinary team including, at a minimum, expertise in microbiology, geochemistry, and hydrology. The Principal Investigator for the team must have prior experience in relevant field research, and the activities of each team member must be clearly defined. Multi-institutional partnerships are strongly encouraged; for example, applicants may draw expertise from National Laboratories, academia, and other institutions engaged in basic research. The successful team must be willing to partner with other funded NABIR investigators who may wish to obtain samples in conjunction with the proposed field studies.

Although compliance with National Environmental Policy Act (NEPA) is the responsibility of DOE, successful applicants who propose to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation. Successful applicants will also be expected to brief and to obtain approval of their written work plan from the FRC Advisory Panel prior to beginning their field work. For this solicitation, applicants should describe how they would communicate their proposed experimental design and their results to stakeholders, regulators, and community groups. Applicants may wish to review the FRC Communication Plan, which can be found on the FRC web site. All applicants should discuss other relevant societal issues, where appropriate, which may include intellectual property protection, and communication with and outreach to affected communities (including members of affected minority communities where appropriate) to explain the proposed research. For further information on NABIR Field Research, please contact Mr. Paul Bayer (*paul.bayer@ science.doe.gov*), the NABIR Field Activities Manager.

Characteristics of Area 2 at the NABIR FRC

The S–3 Ponds were the primary source of contamination detected at Area 2 of the NABIR FRC. The S–3 Ponds consisted of four unlined ponds constructed in 1951 on the west end of the Y–12 Plant. Liquid wastes, composed primarily of nitric acid plating wastes containing nitrate and various radionuclides and metals (e.g., uranium and technetium) were disposed of in the ponds until 1983. Waste disposal activities at the site have created a mixed waste plume of contamination in the underlying unconsolidated residuum (primarily saprolite and fill) and shale bedrock. Area 2 is located several hundred feet to the southwest of the former Ponds. Contaminants were probably transported to Area 2 through a historic stream channel of Bear Creek during operation of the Ponds. Some contaminated residuum and sediments in Area 2 were excavated and deposited in the S–3 Ponds, however, much contaminated residuum remains and contributes to the groundwater contamination currently detected in Area 2.

A typical geologic profile at Area 2 would consist of about 6 m of reworked fill and saprolite at the surface underlain by 2 m of intact saprolite with weathered bedrock below the saprolite. As much as 300–500 mg/kg of uranium may be associated with the solid phase material. The reworked fill tends to have a higher hydraulic conductivity than the native saprolite. Based on data from a tracer study test conducted in 1998, the rate of interstitial groundwater movement in the unconsolidated fill was calculated to range from 0.7 to 4.5 m/day, with an average rate of about 2.2 m/day. Hydraulic monitoring at the site indicates that the depth to groundwater is approximately 4.5 meters from the surface and the hydraulic gradient ranges between about 0.01 and 0.025 to the southwest towards the Creek. Vertical upward gradients between the shale bedrock and unconsolidated zone are as great as 0.25.

In Area 2, there is a shallow pathway (<10 m) for the migration of groundwater contaminated with uranium (1–2 mg/L) to seep in the upper reach of Bear Creek, which is adjacent to Area 2. Nitrate concentrations are generally <100 mg/L at Area 2, but have been detected above 1,000 mg/L in several of the wells. Technetium concentrations are generally less than 600 pCi/L, and total dissolved solids concentrations are approximately 1,000 mg/L. The pH of groundwater at Area 2 tends to be between 6 and 7 with dissolved oxygen content about 1–2 mg/L. Areas of higher and lower uranium and nitrate exist at Area 2. For example TPB–16 which is representative of an area with higher uranium and lower nitrate contains 28 mg/L nitrate, 98 mg/L sulfate, 310 mg/L chloride, 60 mg/L inorganic carbon, 2 mg/L dissolved

organic carbon, and 1.3 mg/L uranium; well FW003 which is representative of an area with higher nitrate and lower uranium contains 1059 mg/L nitrate, 16 mg/L sulfate, 183 mg/L chloride, 89 mg/L inorganic carbon, 13 mg/L organic carbon, and 0.01 mg/L uranium.

An 8 to 9 m deep trench bisects Area 2 in an east to west direction. The trench was filled with gravel except for an 18 m long section in the middle, which was filled with zero-valent iron. Guar gum slurry was added during excavation to prevent the trench walls from collapsing. The trench is oriented nearly parallel to the direction of groundwater flow and is designed to use both the natural groundwater gradient and the permeability contrast between the gravel and iron in the trench and the native silt and clay outside the trench to direct flow through the iron treatment zone. Approximately 52 wells have been installed at the site. Two 20m X 20m plots (one located on either side of the trench) that are high in uranium are available for use by NABIR PIs for field research.

Characteristics of Area 1 at the NABIR FRC

The S–3 Ponds were also the primary source of contamination detected at Area 1 of the NABIR FRC. A small 7 m X 25 m field plot has been established in Area 1 just south of the S–3 Ponds. This field plot, along with other locations within Area 1, is available for NABIR research. Thirteen monitoring wells have been installed in the field plot. The wells are generally 3 cm in diameter, about 7 m deep and have a 1.5 m length of screened interval at the bottom of the well. The wells have been used in the past for conducting small-scale push-pull tests of various types. A brief description of these experiments can be found at the FRC web site. The impact of these push-pull tests probably does not extend beyond the 7 m X 25 m field plot. A typical geologic profile at the Area 1 field plot would consist of about 1.5 m of reworked fill and saprolite at the surface underlain by about 7 m of intact saprolite with weathered shale bedrock below the saprolite. Hydraulic conductivity of the saprolite is fairly low (about 0.26 m/day) with maximum pumping rates of < 1 liter/minute. Hydraulic monitoring at the site indicates that the depth to groundwater is approximately 3.5 m from the surface and the hydraulic gradient is fairly flat. Contaminants include all the contaminants generally associated with the S–3 Ponds groundwater plume (i.e., nitrate, technetium, uranium, volatile organic compounds and other common anions and cations).

Concentrations of contaminants in groundwater and soil from well to well are variable but tend to be fairly stable over time within individual wells. Nitrate concentrations at the Area 1 field plot in groundwater range from 48 to 10,400 mg/l, uranium ranges from 0.01 to 7.5 mg/l, and technetium-99 ranges from 66 to 31,000 pCi/l. Wells with high uranium (e.g., >1 mg/l) tend to have high to moderate nitrate (>1,000 mg/l) and high technetium concentrations (>12,000 pCi/l). The pH of groundwater at Area 1 tends to be more acidic than Area 2 but ranges between 3.25 and 6.5 with dissolved oxygen content about 1–2 mg/L. Sulfate concentrations range between 219 mg/l and 1 mg/l, and chloride concentrations range between 22 and 760 mg/l. Aluminum can be as high as 620 mg/l, and nickel concentrations average around 8.6 mg/l. Calcium, sodium, magnesium, and manganese are other metals detected at significant concentrations (>100 mg/l) at the site. Tetrachloroethylene (120 ug/l), acetone (230 ug/l), and some other volatile organic compounds (VOCs) are also detected at the Area 1 field plot. As much as 375 mg/kg of uranium is associated with the solid phase material.

Additional Information for Applications

It is anticipated that up to $2 million will be available for multiple awards to be made in late Fiscal Year 2002 and early Fiscal Year 2003, in the categories described above, contingent on availability of appropriated funds. An additional sum, up to $2 million, will be available for competition by DOE National Laboratories under a separate solicitation (LAB 02–12). Applications may request project support up to three years, with out-year support contingent on availability of funds, progress of the research and programmatic needs. Annual budgets for projects in the Biomolecular Science and Engineering are expected to range from $100,000 to $300,000 total costs. Annual budgets for interdisciplinary field research projects at the FRC are expected to range from $300,000–$1,000,000 for total costs. Costs for drilling at the FRC should not be included in the applicant's budget. DOE may encourage collaboration among prospective investigators to promote joint applications or joint research projects by using information obtained through the preliminary applications or through other forms of communication.

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

Also, as part of the evaluation, program policy factors become a selection priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Federal and non-federal reviewers will be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. In addition, for this notice, the research description must be 20 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). Applicants who have had prior NABIR support must include a Progress Section with a brief description of results and a list of publications derived from that funding. Attachments should include short (2 pages) curriculum vitae, QA/QC plan, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: *http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9.*

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health (NIH) ''Guidelines for Research Involving Recombinant DNA Molecules,'' which is available via the world wide web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf,* (59 FR 34496, July 5, 1994,) or such later revision of those guidelines as may be published in the **Federal Register**.

Grantees must also comply with other federal and state laws and regulations as appropriate; for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation.

Additional information on the NABIR Program is available at the following web site: *http://www.lbl.gov/NABIR/.* For researchers who do not have access to the world wide web, please contact Karen Carlson; Environmental Sciences Division, SC–74; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; phone: (301) 903–3338; fax: (301) 903–8519; E-mail: *karen.carlson@science.doe.gov;* for hard copies of background material mentioned in this solicitation.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on December 28, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–501 Filed 1–8–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–044]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

January 3, 2002.

Take notice that on December 28, 2001, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of February 1, 2002:

Fifty-fifth Revised Sheet No. 25
Fifty-fifth Revised Sheet No. 26
Fifty-fifth Revised Sheet No. 27
Forty-eighth Revised Sheet No. 28
Sixth Revised Sheet No. 28B
Seventeenth Revised Sheet No. 29
Twenty-fifth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to an order issued September 15, 1999, by the Commission approving an uncontested settlement that resolves environmental cost recovery issues in the above-referenced proceeding. Columbia Gas Transmission Corporation, 88 FERC 61,217 (1999). The settlement established environmental cost recovery through unit components of base rates, all as more fully set forth in Article VI of the settlement agreement filed April 5, 1999 (Phase II Settlement).

Columbia is required to file annually a limited NGA Section 4 filing to adjust its environmental unit components effective February 1 to recover its environmental costs covered by the Phase II Settlement, within agreed-upon ceilings and recovery percentages. For the annual period February 1, 2002 through January 31, 2003, the Phase II Settlement permits Columbia to collect ''no more than $14 million annually in Main Program Costs'', and ''no more than $3 million annually in Storage Well Program Costs.'' per Article VI(B) of the Phase II Settlement. The instant filing satisfies that requirement. It provides for the February 1, 2002 effectiveness of revised unit components designed to collect $12 million in Main Program Costs and to flowback an overrecovery of $ 0.5 million of Storage Well Program Costs.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–465 Filed 1–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–39–002]

Columbia Gulf Transmission Company; Notice of Compliance Filing

January 3, 2002.

Take notice that on December 28, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective December 1, 2001:

Substitute Sixth Revised Sheet No. 19A
First Revised Sheet No. 83
Substitute Original Sheet No. 87
Original Sheet No. 88
Original Sheet No. 89
Second Revised Sheet No. 331
Original Sheet No. 334

Columbia Gulf states that it is filing the tariff sheets to comply with the Commission's November 30, 2001 order accepting its Rate Schedule PAL effective December 1, 2001.

Columbia Gulf states further that it has served copies of the filing on all parties identified on the official service list in Docket No. RP02–39–000. Copies also have been mailed by first class mail to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are

available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–466 Filed 1–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–025–000]

Copiah County Storage Company; Notice of Route and Site Review

January 3, 2002.

On January 16, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site review of the proposed Copiah Storage Project. The Copiah Storage Project facilities are proposed for construction by Copiah County Storage Company (Copiah). The proposed compressor site and natural gas storage cavern site, located in Copiah County, Mississippi, will be reviewed on January 16, 2002. Representatives of Copiah will accompany the OEP staff.

Anyone interested in attending the route and site review or obtaining further information may contact the Commission's Office of External Affairs at (202) 208–1088. Attendees must provide their own transportation.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–463 Filed 1–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–517–000]

UtiliGroup, Inc.; Notice of Filing

January 3, 2002.

Take notice that on December 10, 2001, UtiliGroup, Inc. (UtiliGroup), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition For Acceptance of Initial Rate Schedule, Waivers and Blanket Authority. The Petition request acceptance of UtiliGroup Rate Schedule FERC No. 1, under which UtiliGroup will engage in wholesale electric power and energy transactions as a marketer.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site 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.

Comment Date: January 11, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–464 Filed 1–8–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7127–2]

Integrated Risk Information System (IRIS); Announcement of 2002 Program; Request for Information

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of IRIS 2002 program and request for scientific information on health effects that may result from exposure to chemical substances.

SUMMARY: IRIS is an Environmental Protection Agency (EPA) data base that contains EPA scientific consensus positions on human health effects that may result from chronic exposure to chemical substances in the environment. On February 22, 2001, EPA announced the 2001 IRIS agenda and solicited scientific information from the public for consideration in assessing health effects from specific chemical substances (66 FR 11165). Most of the health assessments listed in the notice are in progress or near completion. Today, EPA is adding some additional health assessments to the IRIS agenda. This notice describes the Agency's plans, and solicits scientific data and evaluations for consideration in EPA's new assessments. Additional new assessments may be announced in the **Federal Register** later this year.

DATES: Please submit any response to this notice in the form of an initial ''submission inventory'' in accordance with the instructions in this notice by March 11, 2002.

ADDRESSES: A ''submission inventory'' should be sent to the IRIS Submission Desk in accordance with the instructions provided under ''Submission of Information'' in this notice.

FOR FURTHER INFORMATION: For information on the IRIS program, contact Amy Mills, National Center for Environmental Assessment, (mail code 8601D), U.S. Environmental Protection Agency, Washington, DC 20460, or call (202) 564–3204, or send electronic mail inquiries to *mills.amy@epa.gov.* For general questions about access to IRIS, or the content of IRIS, please call the IRIS Hotline at (301) 345–2870 or send electronic mail inquiries to *hotline.iris@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to chemical substances found in the environment. IRIS currently provides health effects information on over 500 specific chemical substances.

IRIS contains chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, i.e., hazard identification and dose-response evaluation. IRIS information includes the reference dose for noncancer health effects resulting from oral exposure, the reference concentration for non-cancer health effects resulting from inhalation exposure, and the carcinogen assessment for both oral and inhalation exposure. Combined with specific situational exposure assessment information, the summary health hazard information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

The IRIS Program

EPA's process for developing IRIS consists of: (1) An annual **Federal Register** announcement of EPA's IRIS agenda and call for scientific information from the public on the selected chemical substances, (2) a search of the current literature, (3) development of health assessments and draft IRIS summaries, (4) peer review within EPA, (5) peer review outside EPA, (6) EPA consensus review and management approval, (7) preparation of final IRIS summaries and supporting documents, and (8) entry of summaries and supporting documents into the IRIS data base.

This notice provides: (1) A list of the IRIS assessments completed in FY 2001 and early FY 2002, (2) a list of the IRIS assessments in progress that the Agency expects to complete in FY 2002 or FY 2003, (3) a list of the IRIS assessments in progress that the Agency expects to complete in FY 2004 or FY 2005, (4) a list of the IRIS assessments announced in the previous IRIS agenda (66 FR 11165) that have been discontinued, (5) information about EPA's IRIS ''needs assessment'' report underway, (6) a list of the new assessments beginning in FY 2002, and (7) instructions to the public for submitting scientific information to EPA pertinent to the development of IRIS assessments.

Assessments Completed in FY 2001 and Early FY 2002

The following assessments were completed and entered into IRIS in FY 2001 and early FY 2002. These assessments were listed in the **Federal Register** of February 22, 2001. All health endpoints, cancer and noncancer, were assessed unless otherwise noted. Where information was available, both qualitative and quantitative assessments were developed.

Name	CAS No.
Bromate	7758–01–2
Chlorine dioxide	10049–04–4
Chlorite (sodium salts)	7758–19–2
Chloroform (oral route)	67–66–3
Hexachlorocyclopentadiene	77–47–4
Methylmercury (noncancer endpoints)	22967–92–6
Methyl chloride	74–87–3
Quinoline	91–22–5

Assessments in Progress—Completion Planned for FY 2002 or FY 2003

The following assessments are underway or generally complete, and are planned for entry into IRIS in FY 2002 or FY 2003. These assessments were announced in the February 22, 2001, **Federal Register**. All health endpoints, cancer and noncancer, are being assessed unless otherwise noted. For all endpoints assessed, both qualitative and quantitative assessments are being developed where information is available. Pesticides denoted with an asterisk (*) will have only oral reference dose and carcinogenicity endpoints assessed.

Name	CAS No.
Acetaldehyde	75–07–0
Acetone	67–64–1
Acrolein	107–02–8
Alachlor*	15972–60–8
Ammonium perchlorate (and other perchlorate salts)	7790–98–9
Antimony and compounds	7440–36–0
Azinphos Methyl*	86–50–0
Benzene (noncancer endpoints)	71–43–2
Benzo(a)pyrene	50–32–8
Bromoxynil*	1689–84–5
Boron	7440–42–8
1,3-Butadiene	106–99–0
Cadmium	7440–43–9
Carbon tetrachloride	56–23–5
Chloroethane	75–00–3
Chloroform (inhalation route)	67–66–3
Chloroprene	126–99–8
Chlorothalonil*	1897–45–6
Chlorpyrifos*	2921–88–2
Copper	7440–50–8
Cyclohexane	110–82–7
Diazinon*	333–41–5
Dichloroacetic acid	79–43–6
1,2-Dichlorobenzene	95–50–1
1,3-Dichlorobenzene	541–73–1
1,4-Dichlorobenzene	106–46–7
1,1-Dichloroethylene	75–35–4
Diesel exhaust	[N.A.]
Di(2-ethylhexyl)phthalate	117–81–7
Diflubenzuron	35367–38–5
Ethanol	64–17–5
Ethion*	563–12–2
Ethylbenzene	100–41–4
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Formaldehyde	50–00–0
Glyphosate*	1071–83–6
Hexachlorobutadiene	87–68–3
Hydrogen sulfide	7783–06–4
Isopropanol	67–63–0
Metolachlor*	51218–45–2
Methidathion*	950–37–8
Methyl isobutyl ketone (MIBK)	108–10–1
Methyl parathion*	298–00–0
Methyl tert-butyl ether (MTBE)	1634–04–4
Mirex	2385–85–5
Nickel (soluble salts)	[N.A.]
Nitrobenzene	98–95–3
Pendimethalin*	40487–42–1
Phenol	108–95–2
Pebulate*	1114–71–2
Pentachlorophenol	87–86–5
Phosgene	75–44–5
Polychlorinated biphenyls (PCBs-noncancer endpoints)	1336–36–3
Refractory ceramic fibers	[N.A.]
Styrene	100–42–5
2,3,7,8-TCDD (dioxin)	1746–01–6
Tetrachloroethylene (perchloroethylene)	127–18–4
Tetrahydrofuran	109–99–9
Toluene	108–88–3
Triallate*	2303–17–5
Trichlopyr*	55335–06–3
Trichloroethylene	79–01–6
Uranium (natural)	7440–61–1
Vinyl acetate	108–05–4
Xylenes	1330–20–7
Zinc and compounds	7440–66–6

Assessments in Progress—Completion Planned for FY 2004 or FY 2005

The following assessments in progress have been delayed and are now expected for completion in FY 2004 or FY 2005:

Name	CAS No.
Acrylamide	79–06–1
Asbestos	1332–21–4
Hexahydro-1,3,5-trinitro-triazine (RDX)	121–82–4
Methanol	67–56–1
Silica (crystalline)	14808–60–7

IRIS summaries and support documents for all substances listed above will be provided on the IRIS web site at *www.epa.gov/iris* as they are completed. This publicly available web site is EPA's primary location for IRIS documents. In addition, external peer review drafts of IRIS documents can be found during their peer review periods via the ''What's New'' page of the IRIS web site. Interested parties should check the ''What's New'' page frequently for the availability of these drafts.

Assessments Discontinued

The following assessments have been removed from the IRIS agenda for FY 2002, but may be reconsidered at a later date:

Name	CAS No.
Arsenic, inorganic	7440–38–2
Bisphenol-A	80–05–7
Hexachlorobenzene	118–74–1
Methylene chloride	75–09–2
Toxaphene	8001–35–2

IRIS ''Needs Assessment''

On July 20, 2001, EPA published a **Federal Register** notice (66 FR 37958) requesting public input to compile a ''needs assessment'' for planning the IRIS program. This notice requested that the public identify those chemical substances for which assessments either need to be added to IRIS or updated. The responses were considered along with EPA program priorities in the development of new starts for the FY 2002 agenda below. The notice also requested input on whether other types of evaluations are needed on IRIS, such

as toxicological evaluations for health effects associated with less-than-lifetime (i.e., acute or subchronic) exposure durations. The notice also requested input on what priority any new type of evaluation should have compared to evaluation of health effects associated with chronic exposures.

Further, the notice asked whether or how EPA should work with external parties, such as other government agencies, industries, or other organizations to develop health assessments that may be used as supporting documents for IRIS. A pilot effort to provide dialogue and feedback to external parties developing health assessments for IRIS was described in the February 22, 2001 notice, and preceding IRIS **Federal Register** notices. Of the six pilot efforts discussed, four are still in progress and two are discontinued. In FY 2002, EPA will continue to evaluate its experience with the current efforts to determine process efficiency and quality of the documents produced.

A separate ''IRIS Needs Assessment'' report will be made available on the IRIS web site when it is completed.

Information Requested on New Assessments for FY 2002

EPA will continue building and updating the IRIS data base. The Agency recognizes that a number of the assessments on IRIS need updating to incorporate new scientific information and methodologies. Further, many additional substances are candidates for adding to IRIS. However, due to limited resources in the Agency to address the spectrum of needs, EPA developed a list of priority substances for attention beginning in FY 2002. The following substances are priorities for IRIS due to one or more reasons: (1) Agency statutory, regulatory, or program implementation needs; (2) new scientific information or methodology is available that might significantly change current IRIS information; (3) interest to other levels of government or the public, including interest expressed via responses to 66 FR 37958; (4) most of the scientific assessment work has been completed while meeting other Agency requirements, and only a modest additional effort will be needed to complete the review and documentation for IRIS.

The following IRIS health assessments have recently begun or will be started in FY 2002, with completion expected in FY 2003 or FY 2004, unless otherwise noted. It is for these substances that the Agency is primarily requesting information from the public for consideration in the assessments. Unless otherwise noted, noncancer and cancer endpoints will be assessed for each substance. Pesticides denoted with an asterisk (*) will have only oral reference dose and carcinogenicity endpoints assessed. Substances denoted with a double asterisk (**) will be evaluated for effects from acute and subchronic exposure, in addition to chronic exposure. These substances constitute a pilot test to evaluate the application of methods, procedures, and resource needs for adding less-than-lifetime information to IRIS. For all endpoints assessed, both qualitative and quantitative assessments are being developed where information is available.

Name	CAS No.
Atrazine*	1912–24–9
Captan*	133–06–2
Di(2-ethylhexyl)adipate (DEHA)	103–23–1
Dibutyl phthalate	84–74–2
Ethalfluralin*	55283–68–6
gamma-Hexachlorocyclohexane (Lindane)*	58–89–9
Hydrogen cyanide †	74–90–8
Methyl ethyl ketone	78–93–3
2-Methylnaphthalene	91–57–6
Methomyl*	16752–77–5
Naphthalene (cancer; inh. route)	91–20–3
PAH mixtures	N.A.
Perfluorooctanoic acid—ammonium salt**	3825–26–1
Perfluorooctane sulfonate—potassium salt**	2795–39–3
Propachlor*	1918–16–7
Thallium†	7440–28–0
1,1,1-Trichloroethane**	71–55–6

† = completion expected FY 2004/FY 2005.

Submission of Information

As in previous **Federal Register** notices announcing the annual IRIS agenda, EPA is soliciting public involvement in new assessments starting in FY 2002. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. We would greatly appreciate receiving scientific information from the public during the information gathering stage for the list of ''new assessments'' listed above. Interested persons should provide scientific analyses, studies, and other pertinent scientific information. Also note that if you have submitted certain information previously, then there is no need to resubmit that information. While EPA is primarily soliciting information on new assessments announced in this notice, the public may submit information on any chemical substance at any time.

Procedures for Submission

Similar to the process described in the February 22, 2001, **Federal Register**, submissions will be handled in a three-step process:

1. *Submission Inventory:* First, you should simply provide a list within 60 days of this notice briefly identifying all the information (studies, reports, articles, etc.) you wish to submit. The list should specify by name and CASRN (Chemical Abstract Service Registry Number) the chemical substance(s) to which the information pertains, state the type of assessment that is being addressed (e.g., carcinogenicity), and describe briefly the information to be submitted for consideration. Where possible, documents should be listed in scientific citation format, that is, author(s), title, journal, and date. Your cover letter should state that the correspondence is an IRIS submission, describe in general terms the purpose of the submission, and include names, addresses, and telephone numbers of person(s) to contact for additional information. Mail two copies of the submission inventory to the IRIS Submission Desk, c/o ASRC, 6301 Ivy Lane, Suite 300, Greenbelt, MD 20770. Note that this is a new address for the Submission Desk.

Alternatively, you may submit the submission inventory and cover letter electronically to *IRIS.desk@epa.gov.* Electronic information must be submitted in WordPerfect format or as an ASCII file. Information also will be accepted on 3.5'' floppy disks. All information in electronic form must be identified as an IRIS submission.

2. *EPA Replies to Submission Inventory:* In the second step, EPA will compare the submission inventory to existing files and identify the information that should be submitted. This step will help prevent an influx of duplicative information. You will receive notification of whether full submission of the information is requested.

3. *Full Submission of Selected Material:* In the third step, you should send in the information indicated by EPA within 30 days of EPA's reply. Prompt response to EPA will ensure that your material can be considered in the assessment in a timely fashion. Submissions should include a cover letter addressing all of the points in Item 1 above. In addition, when you submit results of new health effects studies concerning existing substances on IRIS, you should include a specific explanation of how and why the study results could change the information in IRIS.

Please send two copies, at least one of which should be unbound, to the IRIS Submission Desk, as described in Item 1. The IRIS Submission Desk will acknowledge receipt of your information.

Confidential Business Information (CBI) should not be submitted to the IRIS Submission Desk. CBI must be submitted to the appropriate EPA Office via established procedures for submission of CBI (see 40 CFR, Part 2, Subpart B). If you believe that a CBI submission contains information with implications for IRIS, please note that in the cover letter accompanying the submission to the appropriate office.

You may also request to augment your submission with a scientific briefing to EPA staff. Such requests should be made directly to Amy Mills, IRIS Program Director (see **FOR FURTHER INFORMATION**).

Dated: January 2, 2002.

Art Payne,

Acting Deputy Director, National Center for Environmental Assessment.

[FR Doc. 02–511 Filed 1–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7127–1]

Clean Air Act Advisory Committee: Accident Prevention Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Clean Air Act section 112(r) required EPA to publish regulations to prevent accidental releases of chemicals and to reduce the severity of those releases that do occur. These accidental release prevention requirements build on the chemical safety work begun by the Emergency Planning and Community Right-to-Know Act (EPCRA) which sets forth requirements for industry, State and local governments. On June 20, 1996, EPA published the final rule for risk management programs to address prevention of accidental releases. Facilities that are subject to the rule are required to implement a risk management program at their facility, and submit a summary of this information (the Risk Management Plan, RMP) to EPA. Approximately 15,000 RMPs have been submitted to EPA.

The Accident Prevention Subcommittee was created in September 1996 to advise EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) on these chemical accident prevention issues, specifically, section 112(r) of the Clean Air Act.

DATES: The Accident Prevention Subcommittee of the Clean Air Act Advisory Committee will hold a public meeting on January 24, 2002 from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Ariel Rios North, Emergency Operations Center, Room B444, 1200 Pennsylvania Avenue, NW, Washington DC. Members of the public are welcome to attend in person.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about this meeting, should contact William Finan, Designated Federal Official, U.S. EPA (5104A), 1200 Pennsylvania Avenue, NW, Washington DC 20460, via the Internet at: *finan.bill@epa.gov,* by telephone at (202) 564–7981 or FAX at (202) 564–8444.

SUPPLEMENTARY INFORMATION:

Agenda

Opening Remarks—Jim Makris (8:30–9:00)

Update on Risk Management Plans Submitted to Date (9:00–9:45)

Proposed Third-Party Audits for the RMP Program (9:45–10:45)

National Chemical Safety Assessment (10:45–11:30)

Options on improving site security at chemical facilities (e.g., inclusion in company safety, health, and environment programs; legislation, regulation, standards, voluntary programs) (12:30–1:30)

How we can use upcoming Organization for Economic Cooperation and Development (OECD) publications in the US (the OECD publications are: Guidance on Safety Performance Indicators; and Guiding Principles for Chemical Accident Prevention, Preparedness, and Response (1:30—2:30) Comments from the public (2:30–3:00)

Members of the public who wish to make a brief oral presentation in person in Washington DC to the Subcommittee at the January 24 meeting must contact William Finan in writing (by letter, fax, or email—see previously stated information) no later than January 21, 2002 in order to be included on the agenda. Written comments may be submitted to the Accident Prevention Subcommittee up through the date of the meeting. Please address such material to William Finan at the above address.

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously submitted oral or written statements. In general, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than thirty minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting.

Additional information on the Accident Prevention Subcommittee is available on the Internet at: *http://www.epa.gov/swercepp/acc-pre.html.*

If you would like to automatically receive future information on the Accident Prevention Subcommittee and its Workgroups by email, you can subscribe to the EPA–CEPPO Listserve by following directions at *www.epa.gov/ceppo.*

Dated: January 3, 2002.

William Finan,

Designated Federal Official.

[FR Doc. 02–510 Filed 1–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64062; FRL–6815–9]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on July 8, 2002, unless indicated otherwise.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 266A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select ''Laws and Regulations'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person*. Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 232, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in 12 pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient and specific uses deleted:

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product	Chemical Name	Delete From Label
000769–00229	Suregard 10% Sevin Dust	Carbaryl	Cotton
005905–00521	Trifluralin 60D	Trifluralin	Rapeseed, clover and flax
005905–00532	Trifluralin HFP	Trifluralin	Rapeseed, clover and flax
009779–00303	Trust 4EC	Trifluralin	Clover
009779–00326	Trific 10G	Trifluralin	Clover
033660–00003	Trifluralin Technical	Trifluralin	Mexican clover
033660–00031	Flutrix Five EC	Trifluralin	Mexican clover
033660–00032	Flutrix 4EC ATT	Trifluralin	Mexican clover
033660–00033	Flutrix 4EC	Trifluralin	Mexican clover
033660–00036	VLN Trifluralin Technical	Trifluralin	Mexican clover
042750–00032	Albaugh Trifluralin 4EC	Trifluralin	Rapeseed and flax
042750–00034	Albaugh Trifluralin 10G	Trifluralin	Rapeseed and flax

Note: EPA company numbers 005905 has requested a 30–day comment period for registrations listed.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before July 8, 2002 unless indicated otherwise, to discuss withdrawal of the application for amendment. This 180–day period also permits interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000769 ...	Value Gardens Supply, LLC, Box 585, St. Joseph, MO 64502.
005905 ...	Helena Chemical Co, 225 Schilling Blvd., Suite 300, Collierville, TN 38017.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION— Continued

EPA Company No.	Company Name and Address
009779 ...	Agriliance, LLC, Box 64089, St Paul, MN 55164.
033660 ...	Lewis & Harrison, Agent For: Industria Prodotti Chimici S., 122 C St NW, Ste. 740, Washington, DC 20001.
042750 ...	Pyxis Regulatory Consulting, Agent For: Albaugh Inc., 11324 17th Ave., Ct. NW, Gig Harbor, WA 98332.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail*: Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked February 8, 2002.

2. *In person or by courier*: Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 266A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically*. You may submit your withdrawal request electronically

by e-mail to: hollins.james@epa.gov. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: December 27, 2001.

Donald J. Huddleston,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 02–412 Filed 1–8–02; 8:45 a.m.]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 10, 2002, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes
- December 13, 2001 (Open and Closed)

B. Reports
- Report on Corporate Approvals
- Bookletter ‘‘ Guidance for Involvement by Employees, Agents, and Board Members in the Nominating Committee Process
- 2001 Financial Statement Audit Report

Dated: January 7, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–638 Filed 1–7–02; 1:44 pm]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010786–013.

Title: Contship/Italia Space Charter and Sailing Agreement.

Parties: Contship Containerlines, Italia di Navagazione SpA.

Synopsis: The proposed modification: (1) Replaces Article 5.4 with new language concerning Italia's use of Contship terminals; (2) clarifies procedures in Article 5.7 concerning outside slot charters by Italia; (3) adds an Article 7.2, which provides for termination under conditions of insolvency; (4) restates the force majeure provisions of Article 10; (5) combines present Articles 11 and 12 into a new Article 11 concerning governing law and arbitration; and (6) adds a new Article 12 limiting assignment of rights and obligations under the agreement to related companies.

Agreement No.: 011671–005.

Title: Italia/CP Ships Space Charter and Sailing Agreement.

Parties: Italia di Navigazione, S.p.A., Contship Containerlines, TMM Lines Limited, LLC.

Synopsis: The proposed amendment: narrows the geographic scope of the agreement to the trade between U.S. Pacific ports and points and ports and points in Spain and Italy; provides for a future adjustment in slot allocations and the purchase/sale of slots on an ad hoc basis; adds language regarding exceptional costs; adds new provisions dealing with non-assignment and force majeure; and restates and combines certain existing agreement articles.

Dated: January 4, 2002.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–564 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information

The Commission gives notice that it has requested that the parties to the below identified agreement modification provide additional information pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* The Commission has determined that further information is necessary to evaluate the implications of the proposed modification. This action may prevent the agreement from becoming effective as originally scheduled.

Agreement No.: 011548–005.

Title: Hanjin/SinoTrans Cross Space Charter & Sailing Agreement.

Parties: Hanjin Shipping Co., Ltd. Sinotrans Container Lines, Co., Ltd.

Dated: January 4, 2002.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–560 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 13064N.

Name : Archer International, Inc.

Address : 3340 A Greens Rd, Suite #300, Houston, TX 77032.

Date Revoked: November 8, 2001.

Reason: Failed to maintain a valid bond.

License Number: 3647F.

Name: Frama Forwarding Corp.

Address: 1231 NW 87th Way, Pembroke Pines, FL 33024.

Date Revoked: November 10, 2001.

Reason: Failed to maintain a valid bond.

License Number: 14323N

Name: Hefco International, Inc., dba Hefco International dba Sea Viper Shipping.

Address: 16725 Aldine Westfield, Houston, TX 77032.

Date Revoked: November 8, 2001.

Reason: Failed to maintain a valid bond.

License Number: 14646N.

Name: Mar Shipping Corp.

Address: 8456 N.W. 72nd Street, Miami, FL 33166.

Date Revoked: November 10, 2001.

Reason: Failed to maintain a valid bond.

License Number: 16400N.

Name: North American (U.K.) Limited.

Address: 7–8 Borrowdale Rd., Wokingham, Berkshire RG41 5UX, United Kingdom.

Date Revoked: November 4, 2001.

Reason: Failed to maintain a valid bond.

License Number: 3927F.

Name: S & K 2000, Inc.

Address: One Madison Street, Rutherford, NJ 07073.

Date Revoked: November 11, 2001.

Reason: Failed to maintain a valid bond.

License Number: 14356N.

Name: Zoom Logistics Corp. dba Zoom Line.

Address: 17595 Almhurst Rd., Suite #203–8, City of Industry, CA 91748.

Date Revoked: November 15, 2001.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–563 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
4425F ...	Esprit International Shipping Combined Transport, Inc. dba Capital Freight Management, 701 S. Atlantic Blvd., #200, Monterey Park, CA 91754.	September 5, 2001.
3644N ..	Forward Logistics Group, Inc., 1902 Cypress Lake Drive, Suite 200, Orlando, FL 32837	September 30, 2001.
4513F ...	Kevin C. Ahn dba Baytop Container Co., 2800 Plaza Del Amo Blvd., Torrance, CA 90503	September 30, 2001.
16470F	South Beach Maritime Company, 8626 NW 55th Place, Coral Springs, FL 33067	November 6, 2001.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–562 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have been filed with the Federal Maritime Commission an application for license as Non–Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Grace Lines,Inc., 1521 Santa Fe Trail, Grand Prairie, TX 75052, Officers: Timothy Stephen Mansfield, Vice President, (Qualifying Individual), Glenda Marie Norman, President.

Hyun Dae Trucking Co., Inc., 3022 S. Western Avenue, Los Angeles, CA 90018, Officer: Hong Rul Kook, President, (Qualifying Individual).

International Services Freight Forwarding Co., 1000 Ponce de Leon Blvd., Suite 212, Coral Gables, FL 33034, Officers: Jose Nunez, Vice President, (Qualifying Individual), Haydee S. Teperman, President.

Jetlink Logistics Bangladesh Ltd., LLC, 2927 41st Avenue, Suite 502D, Long Island City, NY 11101, Officers: Mir A. Rob, President, (Qualifying Individual), Mir N. Haque, Managing Director.

Master Freight Transportes Internacionais Ltd, LLC, 7949 NW 21 Street, Miami, FL 33122, Officer: Oswaldo Santiago De Mesquita, President, (Qualifying Individual).

Seabreeze Logistics Inc., 890 Airport Park Road, Suite 118, Glen Burnie, MD 21061, Officers: Jean Hamilton, President, (Qualifying Individual), Charles Russell, CEO.

United Cargo International, Inc., 1916 NW 82 Avenue, Miami, FL 33126, Officers: Eduardo de Quesada, President, (Qualifying Individual), Michelangelo Lamorte, Vice President.

Unifield Parcel Express dba UPE X, Cargo Building 80, Room 223, Jamaica, NY 11430, Officers: Guido Derlly, President, (Qualifying Individual), Avedik Grigorian, Vice President.

Vankor Logistics Int'l (U.S.A.), Inc., 500 Carson Plaza Dr., Suite #118, Carson, CA 90746, Officers: Eun K. Han, Secretary, (Qualifying Individual).

Chul Heui Choi, President.

Worldtrans Co. dba Worldtrans Container Line, 2300 North Barrington Road, S–400, Hoffman Estates, IL 60195, Officer: Charles B. Ozburn, President, (Qualifying Individual).

Tomcar Investment USA, Inc., 2801 NW 74th Avenue, #170, Miami, FL 33122, Officers: Humberto A. Jimenez, Shipping Manager, (Qualifying Individual), Jose Tomas Duche Pina, Director/President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder, Transportation Intermediary Applicants

American Maritime Services and Supplies, Inc., 1922 Tigertail Blvd, Bldg. #12, Dania, FL 33004, Officer: Alberto Pacchioni, President, (Qualifying Individual).

Dolphin Shipping dba Dolphin USA, 5150 E. Pacific Coast Highway, 2nd Fl., Long Beach, CA 90804, Hans J. Dolnitzki, Sole Proprietor.

FMS Logistics, Ltd., 44190 Mercure Circle, Suite 195, Dulles, VA 20166, Officers: Gerard Trampler, Director, (Qualifying Individual), Michael Moore, President.

KCTC International (America), Inc., dba World Bridge Line, 11099 S. La Cienega Blvd., #153, Los Angeles, CA 90045, Officer: Byung Do Moon, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Rose Air, Inc., 181 Hudson Street, 2F, New York, NY 10013, Officers: Luis Garcia, Traffic Coordinator, (Qualifying Individual), Neal Rosenberg, President.

Dated: January 4, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–561 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Population Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for prevention grants under the Adolescent Family Life (AFL) Demonstration Projects Program, as authorized by Title XX of the Public Health Service Act. These grants are for community-based and community-supported demonstration projects to find effective means of preventing pregnancy by encouraging adolescents to abstain from sexual activity through provision of age-appropriate education on sexuality and decision-making skills. Faith-based organizations are eligible to apply for these demonstration grants. These Title XX grants should clearly and consistently focus on promoting abstinence as the most effective way of preventing unintended pregnancy and sexually transmitted infections (STIs), including HIV. All adolescents under age 19 are eligible for services. Funds will be available for approximately 35 projects, which may be located in any State, the District of Columbia, and United States territories, commonwealths and possessions.

DATES: The closing date for this grant announcement is March 11, 2002. Applications will be considered as meeting the deadline if they are postmarked on or before the closing date. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. All hand delivered applications must be received between the hours of 8:30 am and 5 pm on or before the above closing date. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant. *Applications will not be accepted by fax or e-mail. The submission deadline will not be extended.*

ADDRESSES: Application kits consisting of the appropriate forms, a copy of the Title XX legislation, and guidance on the preparation of the application may be downloaded from the following INTERNET address: *http://opa.osophs.dhhs.gov.* If you do not have access to the INTERNET, you may obtain a kit from the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. Written requests for application kits may be faxed to (301) 594–5981. *All completed applications must be submitted to the Grants Management Office at the above mailing address. In preparing the application, it is important to follow ALL instructions contained in the application kit.*

FOR FURTHER INFORMATION CONTACT: The OAPP Program Office at (301) 594–4004. OAPP staff members are available to answer questions and provide limited technical assistance in the preparation of grant applications. Questions may also be sent to OAPP staff via e-mail at *opa@osophs.dhhs.gov*. If contacting the OAPP by e-mail, please place the phrase ''AFL Prevention Question'' in the subject heading.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z. *et seq.,* authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families (Catalog of Federal Domestic Assistance Number 93.995).

Under this program announcement, OAPP intends to make available approximately $6.5 million to support an estimated 35 new PREVENTION demonstration projects only. The awards will range from $150,000 to $250,000.

Please note, in Fiscal Year (FY) 1999, OAPP issued a similar Request for Applications (RFA) announcing approximately $3 million for new abstinence education prevention demonstration projects. In response to that FRA, OAPP received 142 grant applications and was able to fund only 17 new projects.

Grants may be approved for project periods of up to five years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds. A grant award may not exceed 70 percent of the total costs of the project for the first and second years, 60 percent of the total costs for the third year, 50 percent for the fourth year and 40 percent for the fifth year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including facilities, equipment and services.

Applications are encouraged from organizations which are currently operating programs and which have the capability of expanding and enhancing these services to serve significant numbers of adolescents according to the guidelines specified in this announcement.

The specific services which may be funded under Title XX are listed below under the heading entitled ''PREVENTION SERVICES.''

The following application requirements contain information collections subject to OMB approval under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). These information collections have been approved by OMB under control number 0937–0198.

Technical Assistance

The OAPP has scheduled a series of technical assistance workshops to help prospective applicants. At each of the one-day workshops, the public will be able to learn more about the purposes and requirements of the Title XX program, how to apply for funds under this program announcement, program

eligibility requirements, the application selection process, and considerations that might help to improve the quality of grant applications. These workshops are offered at no cost. However, all participants must preregister using the form at *http://opa.osophs.dhhs.gov* or you may obtain a registration form from the OAPP at (301) 594–4004. Written requests for registration forms may be faxed to (301) 594–5981. The address of workshop locations and logistical information will be faxed or e-mailed back to you upon receipt of your registration.

Workshop Dates and Locations: January 22, 2002—Omaha, NE; January 23, 2002—Billings, MT; January 24, 2002—Seattle, WA; January 25, 2002—Las Vegas, NV; January 28, 2002—Charleston, SC; January 29, 2002—Dallas, TX; January 29, 2002—Indianapolis, IN; January 30, 2002—Providence, RI; January 31, 2002—Newark, NJ; and February 1, 2002—Dulles, VA.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. However, only those organizations or agencies which demonstrate the capability of providing the proposed services and meet the statutory requirements are considered for grant awards.

Youth Development or Developmental Assets Approach

Holistic approaches to preventing teen pregnancy are often termed ''youth development'' or ''developmental assets.'' It has been documented that successful holistic projects are those where adolescents themselves are an integral part of the design, implementation, and evaluation phases over the life of the project. Adolescents need to see hope for a future, acquire the skills necessary to turn hopes into reality, and be provided with an array of opportunities to get them to that reality.

The OAPP encourages applicants to take a holistic approach that addresses the societal disparities that contribute adolescent pregnancy, such as unequal access to enrichment programs, job opportunities, support groups, etc. In addition, the OAPP encourages applicants to provide opportunities for improving the adolescents' sense of self through cultural understanding, sports and recreation, visual and performing arts, and other activities that build an adolescent's sense of self-worth and self-efficacy, as long as these activities contain an educational component. All services provided by AFL grantees, however, including all activities that are part of a holistic approach, must be within the scope of the Title XX prevention services listed below and must not be inconsistent with ''abstinence education'' as defined in the ''Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' Pub. L. No. 104–193.

Prevention Services

Under this announcement, funds are available for abstinence education PREVENTION projects only. Community-based, community-supported, faith-based and school-based applicants are encouraged to apply. The project site must be identified in the application rather than selected after the grant is awarded.

Under the Title XX statute, the primary purpose of prevention programs is to find effective means of reaching adolescents, both male and female, before they become sexually active in order to encourage them to abstain from sexual activity. There is general agreement that early initiation of sexual activity brings not only the risk of unintended pregnancy but also substantial health risks to adolescents, primarily infection with STIs, including HIV. Accordingly, applicants must clearly and consistently focus on abstinence as the most effective way of preventing unintended pregnancy and STIs and must provide services that help pre-adolescents and adolescents acquire knowledge and skills that will instill healthy attitudes and encourage and support abstinence from sexual activity. Any information provided for adolescents who may be or become sexually active, which relates to reducing the risk of unintended pregnancy and disease, must be medically accurate and must be presented within the context that abstinence is the most effective choice and is what the project recommends.

Under the statutory requirements of Title XX, applicants for prevention programs are not required to provide any specific array of services. OAPP encourages the submission of applications which focus on educational services relating to family life and which teach the social, psychological and health gains to be realized by abstaining from sexual activity. The legislation also permits a proposal to include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person;

(4) Transportation;

(5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors; and

(6) Nutrition information and counseling.

In addition to the Title XX statutory requirements, programs must not be inconsistent with abstinence education as defined in the ''Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' Pub. L. No. 104–193. Accordingly, under this announcement the term ''abstinence education'' means an educational or motivational program which:

A. Has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

B. Teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

C. Teaches that abstinence from sexual activity is the only certain way to avid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

D. Teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

E. Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

F. Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

G. Teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

H. Teaches the importance of attaining self-sufficiency before engaging in sexual activity.

Faith-based and community-based organizations are eligible to apply for AFL grants. Please note, however, that no funds provided through the AFL program may be expended for sectarian

instruction, worship, prayer, or proselytization. If a religious organization offers such activities, they shall be voluntary for the individuals receiving services and offered separately from the program funded under the AFL program. An AFL program cannot discriminate in providing program services to an individual on the basis of religion, a religious belief, or refusal to hold a religious belief.

The grantee shall submit all curricula and educational materials for use in the AFL project, whether currently available or to be developed, to OAPP for review and approval prior to use in the AFL project, to ensure that these materials are medically accurate, do not violate the restrictions on sectarian activities, and comply with the statutory prohibition on advocating, promoting, encouraging or providing abortions.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at lease one percent but not more than five percent of the Federal funds received under Title XX on evaluation of the project. Waivers of the five percent limit on evaluation may be granted by OAPP in cases where a more rigorous or comprehensive evaluation effort is proposed (*see* sec. 2006(b)(1)). As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding level. *All project evaluations should monitor program processes to determine whether the program has been carried out as planned and measure the program's outcomes.*

The OAPP encourages applications to include a proposed goal(s) statement and related outcome objectives. A goal is a general statement of what the project hopes to accomplish. It should reflect the long-term desired impact of the project on the target group(s) as well as reflect the program goals contained in this program announcement. An outcome objective is a statement which defines a measurable result the project expects to accomplish. Outcome objectives should be described in terms that measure the results the project will bring about (*e.g.*, decrease in premarital sexual activity among the treatment group, increase in intent to remain abstinent among the treatment group). Good applications should contain a few outcome objectives that are specific, measurable, achievable, realistic and time-framed (S.M.A.R.T.).

*S*pecific: An objective should specify one major result directly related to the program goal, state who is going to be doing what, to whom, by how much, and in what time-frame. It should specify what will be accomplished and how the accomplishment will be measured.

*M*easurable: An objective should be able to describe in realistic terms the expected results and specify how such results will be measured.

*A*chievable: The accomplishment specified in the objective should be achievable within the proposed time line and as a direct result of program activities.

*R*ealistic: The objective should be reasonable in nature. The specified outcomes, expected results, should be described in realistic terms.

*T*ime-framed: An outcome objective should specify a target date or time for its accomplishments. It should state who is going to be doing what, by when, etc. The Public Management Institute, *How to Get Grants* (1981).

Section 2006(b)(2) of Title XX requires that the evaluations be conducted by an organization or entity independent of the grantee providing services. To assist in conducting the evaluations, each grantee shall develop a working relationship with a college or university located in the grantee's state which will provide or assist in providing monitoring and evaluation of the proposed program. The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the program goals and objectives of the intervention, identification of the variables to be measured, a clear and organized timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis strategies. Additionally, it is important to establish this collaborative relationship between the applicant organization and the proposed evaluator when preparing the application to ensure that the project's proposed goals and objectives and the evaluation are consistent with each other. The proposed evaluator should be included in the program planning meetings to ensure that there is uniformity in the intended outcomes of the program.

Application Requirements

Applications must be submitted on the forms supplied (OPHS–1, Revised 6/2001) and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The program narrative should not be longer than 50 double-spaced pages.

Applicants must be familiar with Title XX in its entirety to ensure that they have complied with all applicable requirements. A copy of the legislation is included in the application kit.

Additional Requirements

Applicants for grants must also meet *both* of the following requirements (each year):

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant. An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Requirements for Review of an Application Pursuant to Executive Order 12372 (SPOC Requirements).* Applications under this announcement are subject to the review requirements of E.O. 12372, ''Intergovernmental Review of Federal Programs,'' as implemented by 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible, the applicant (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding submission to the relevant SPOC. The SPOC's comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. The SPOC has 60 days from the closing date of this announcement to submit any comments.

Application Assessment and Evaluation Criteria

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All other applications will be reviewed by a multi-disciplinary panel of independent reviewers and assessed according to the following criteria:

(1) The applicant's provision of a clear statement of mission, goals, measurable (outcome) objectives, reasonable methods for achieving the objectives, a reasonable workplan and timetable, and clear statements of expected results. (25 points)

(2) The capacity of the applicant to implement the program, including personnel and other resources, and the applicant's experience and expertise in providing programs for adolescents. (15 points)

(3) The population the project proposes to serve, including ethnic composition, number of adolescent and pre-adolescent clients, family members and community members. [Healthy People 2010 is a set of health objectives for the Nation to achieve over the first decade of the new century. The two goals of Healthy People 2010 are to increase quality of years of healthy life and to eliminate health disparities. In evaluating this criterion, priority will be given to programs which serve minority populations in order to eliminate health disparities.] (15 points)

(4) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods, and reflecting a practical and technically sound approach to assessing the project's achievement of program objectives. (15 points)

(5) The applicant's presentation of the need for the project, including the incidence of adolescent pregnancy in the geographic area to be served and the availability of services for adolescents within this geographic area. (10 points)

(6) The applicant's presentation of an organizational model for service delivery with appropriate design, consistent with the requirements of Title XX. (10 points)

(7) The community commitment to and involvement in planning and implementation of the project, as demonstrated by letters of commitment and willingness to participate in the project's implementation, acceptance of referrals, etc. (10 points)

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs. In making these decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which applications recommended for approval will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and other factors including:

(1) Recommendations and scores submitted by the review panels;

(2) The geographic area to be served, particularly the needs of rural areas;

(3) The reasonableness of the estimated cost of the project based on factors such as the incidence of adolescent pregnancy in the geographic area to be served and the availability of services for adolescents in this geographic area; and

(4) The usefulness for policymakers and service providers of the proposed project and its potential for replication.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: January 4, 2002.

Mireille B. Kanda,

Acting Director, Office of Population Affairs.

[FR Doc. 02–517 Filed 1–8–02; 8:45 am]

BILLING CODE 4150–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the National Human Research Protections Advisory Committee (NHRPAC)

AGENCY: Office of Public Health and Science, Office for Human Research Protections, DHHS.

ACTION: Notice of January 28–29, 2002 Meeting.

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Human Research Protections Advisory Committee (NHRPAC).

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below. Individuals planning on attending the meeting and who want to ask questions must submit their requests in writing in advance of the meeting to the contact person listed below.

DATES: The Committee will hold its next meeting on January 28–29, 2002. The meeting will convene EST from 8:30 a.m. to its recess at approximately 5:30 p.m. on January 28 and resume at 8:30 a.m. to 5:00 p.m. on January 29.

ADDRESSES: Hyatt Regency Bethesda Hotel, One Bethesda Metro, Bethesda, MD, (301) 657–1234.

FOR FURTHER INFORMATION CONTACT: Ms. Kate-Louise Gottfried, Executive Director, National Human Research Protections Advisory Committee, Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852, (301) 435–4917. The electronic mail address is: *kogottfried@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: The National Human Research Protections Advisory Committee was established on June 6, 2000, to provide expert advice and recommendations to the Secretary of HHS, Assistant Secretary for Health, the Director, Office for Human Research Protections, and other departmental officials on a broad range of issues and topics pertaining to or associated with the protection of human research subjects.

Information about NHRPAC, and the draft agenda for the Committee's January 2002 meeting, will be posted on the NHRPAC website at: http://ohrp.osophs.dhhs.gov/nhrpac/nhrpac.htm.

Dated: January 4, 2002.

Greg Koski,

Executive Secretary, National Human Research Protections Advisory Committee.

[FR Doc. 02–516 Filed 1–8–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0563]

Beauregard Plasma, Inc., Jackson Plasma, Inc., Baton Rouge Plasma, Inc., and Claiborne Plasma, Inc.; Opportunity for Hearing on a Proposal to Revoke U.S. License Nos. 1030, 1031, 1032, and 1033

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on a proposal to revoke the biologics licenses (U.S. License Nos. 1030, 1031, 1032, and 1033) issued to Beauregard Plasma, Inc.; Jackson Plasma, Inc.; Baton Rouge Plasma, Inc.; and Claiborne Plasma, Inc., respectively, for the manufacture of Source Plasma. The proposed revocations are based on the fact that authorized FDA employees have been unable to gain access to these establishments' locations for the purpose of carrying out required inspections of the facilities, which are no longer in operation, and manufacturing of products has been discontinued to an extent that meaningful inspections cannot be made.

DATES: The establishments may submit written or electronic requests for a hearing by February 8, 2002, and any data and information justifying a hearing by March 11, 2002. Other interested persons may submit written or electronic comments on the proposed revocations by March 11, 2002.

ADDRESSES: Submit written requests for a hearing, any data and information justifying a hearing, and any written comments on the proposed revocations to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is initiating proceedings to revoke the biologics license (U.S. License No. 1030) issued to Beauregard Plasma, Inc., P.O. Box 96, Hwy. 27, DeQuincy, LA 70633; the biologics license (U.S. License No. 1031) issued to Jackson Plasma, Inc., P.O. Box 788, Hwy. 68, Jackson, LA 70748; the biologics license (U.S. License No. 1032) issued to Baton Rouge Plasma, Inc., P.O. Box 174, Hwy. 74, St. Gabriel, LA 70776; and the biologics license (U.S. License No. 1033) issued to Claiborne Plasma, Inc., Route 2, Box 75, Homer, LA 71040, for the manufacture of Source Plasma. FDA is initiating proceedings to revoke the licenses because authorized FDA employees have been unable to gain access to any of the establishments for the purpose of carrying out required inspections of the facilities, and manufacturing of products has been discontinued to an extent that meaningful inspections cannot be made.

In a certified return-receipt letter dated May 11, 2001, FDA notified the authorized official of the establishments that attempts to conduct inspections of the establishments were unsuccessful because the establishments were apparently no longer in operation, and the manufacture of Source Plasma had been discontinued. The letter advised the authorized official that, under 21 CFR 601.5(b)(1)(i) and (b)(1)(ii) (formerly codified as 21 CFR 601.5(b)(1) and (b)(2)), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection under 21 CFR 600.21 or that manufacturing of a product has been discontinued to an extent that a meaningful inspection cannot be made, the Commissioner of Food and Drugs (the Commissioner) shall institute proceedings for license revocation. In the same letter, FDA notified the establishments of FDA's intent to revoke U.S. License Nos. 1030, 1031, 1032, and 1033 and its intent to offer an opportunity for a hearing.

Because FDA has notified the establishments of the proposed license revocations and has received no response from the establishments, FDA is proceeding under 21 CFR 12.21(b) and publishing an opportunity for a hearing on a proposal to revoke the licenses.

FDA has placed a copy of the May 11, 2001, letter to the establishments on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice. The document is available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Beauregard Plasma, Inc.; Jackson Plasma, Inc.; Baton Rouge Plasma, Inc.; and Claiborne Plasma, Inc., may submit a written or electronic request for a hearing to the Dockets Management Branch by February 8, 2002, and any data and information justifying a hearing must be submitted by March 11, 2002. Other interested persons may submit written or electronic comments on the proposed license revocations to the Dockets Management Branch by March 11, 2002. The failure of the licensees to file timely written requests for hearings constitutes an election by the licensees not to avail themselves of the opportunity for a hearing concerning the proposed license revocations.

FDA's procedures and requirements governing a notice of opportunity for a hearing, notice of appearance and request for a hearing, grant or denial of a hearing, and submission of data to justify a hearing on proposed revocation of a license are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials but must be set forth a genuine and substantial issue of fact. If the Commissioner determines upon review of any objections or requests for a hearing that a hearing is not justified, in whole or in part, or if a request for a hearing is not made within the required time with the required format or required analyses, the Commissioner will deny the hearing request, with an explanation for the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 CFR 10.20(j)(2)(i), 21 U.S.C. 331(j), or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. or 4 p.m. Monday through Friday.

This notice is issued under section 351 of the Public Health Service Act (42 U.S.C. 262) and sections 201, 501, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, and 371), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Biologics Evaluation and Research (21 CFR 5.67).

Dated: December 27, 2001.

Mark Elengold,

Deputy Director for Operations, Center for Biologics Evaluation and Research.

[FR Doc. 02–483 Filed 1–8–02; 8:45 am]

BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0583]

Food Security Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two guidance documents related to food security entitled ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance'' and ''Importers and Filers: Food Security Preventive Measures Guidance.'' ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance'' is designed as an aid to operators of food establishments (i.e., firms that produce, process, store, repack, relabel, distribute, or transport food or food ingredients, or that prepare or distribute food at retail). It identifies the kinds of preventive measures that they can take to minimize the risk that food under their control will be subject to tampering or criminal or terrorist actions. ''Importers and Filers: Food Security Preventive Measures Guidance'' is designed as an aid to operators of food importing establishments, storage warehouses, and filers. It identifies the kinds of preventive measures that they can take to minimize the risk that food under their control will be subject to tampering or criminal or terrorist actions.

DATES: Submit written or electronic comments by March 11, 2002 to ensure their adequate consideration in the preparation of revised guidance, if warranted. However, you may submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance'' or ''Importers and Filers: Food Security Preventive Measures Guidance'' to John Kvenberg, Office of Field Programs (HFS–600), Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Include a self-addressed adhesive label to assist that office in processing your request.

Submit written comments on the guidance documents to Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance documents.

FOR FURTHER INFORMATION CONTACT: John Kvenberg, Office of Field Programs (HFS–600), CFSAN, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–205–4187, e-mail:jkvenberg@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Operators of food establishments, food importing establishments, and filers are encouraged to review their current procedures and controls in light of the potential for tampering or criminal or terrorist actions and make appropriate improvements. ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance'' aids operators of food establishments (i.e., firms that produce, process, store, repack, relabel, distribute, or transport food or food ingredients, or that prepare or distribute food at retail). It is relevant to all sectors of the food system (i.e., from farm-to-table), including farms, aquaculture facilities, fishing vessels, producers, transportation operations, processing facilities, packing facilities, warehouses, retail, and food-service establishments. ''Importers and Filers: Food Security Preventive Measures Guidance'' aids operators of food importing establishments, storage warehouses, and filers. Both guidance documents identify the kinds of preventive measures that operators can take to minimize the risk that food under their control will be subject to tampering or to criminal or terrorist actions. They take the operator through each segment of the farm-to-table system that is within their control, in order to minimize the risk of tampering or of criminal or terrorist action at each segment. Implementation of these measures requires commitment from both management and employees to be successful and, therefore, both should participate in their development and review.

The two guidance documents are level 1 guidances issued consistent with FDA's good guidance practices regulation (GGPs) (21 CFR 10.115). The agency is soliciting public comment, but is implementing these two guidance documents immediately in accordance with § 10.115(g)(2) (21 CFR 10.115(g)(2)). The two guidance documents were prompted by the tragedies of September 11, 2001, and the resulting scrutiny of, and interest in, food safety and security that followed. FDA believes it is critical to our national interest and the public health to make guidance on food security available to the food industry quickly. Thus, the agency has determined that prior public participation is not feasible or appropriate.

FDA is also interested in comments on whether the guidance documents ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance'' and ''Importers and Filers: Food Security Preventive Measures Guidance'' should be revised to include the following additional preventive measures:

- The use of tamper-evident packaging. FDA is particularly interested in information on: the utility of the various methods of tamper-evident packaging in minimizing the risk that foods so packaged will be subject to tampering or criminal or terrorist actions; and, the practicality of applying tamper-evident packaging to the broad spectrum of foods presently in commerce;
- The use of procedures and/or records that enable shipments of food from a food establishment or food importing establishment to be traced to shipments of food received by the food establishment or food importing establishment and vise versa. FDA is particularly interested in information on the types of procedures and/or records that are both practical and effective in facilitating trace-back of incoming shipments, trace-forward of outgoing shipments, and linkages between the two.

These guidance documents represent the agency's current thinking on appropriate measures that can be taken by operators of food establishments, food importing establishments, storage warehouses, and filers to minimize the risk of food being subjected to tampering or criminal or terrorist actions. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the guidance documents at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance documents

and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of these guidance documents also are available on the Internet at http://www.cfsan.fda.gov/~dms/guidance.html. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

Dated: January 3, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–542 Filed 1–4–02; 4:12 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0044]

Small Entity Compliance Guide: ''Structure/Function Claims;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide (SECG) for a final rule published in the **Federal Register** of January 6, 2000 (65 FR 1000), entitled ''Regulations on Statements Made for Dietary Supplements Concerning the Effect on the Structure or Function of the Body.'' This SECG is intended to set forth the requirements of that final rule in plain language and to help small businesses understand the regulation.

DATES: Submit written or electronic comments on the SECG at any time.

ADDRESSES: Submit written comments concerning this SECG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written requests for single copies of the SECG to the Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send one self-adhesive address label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Robert Moore, Center for Food Safety and Applied Nutrition (HFS–811), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4605, FAX 202–205–4594.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 6, 2000 (65 FR 1000), FDA issued a final rule defining the types of statements that can be made concerning the effect of a dietary supplement on the structure or function of the body. The regulation also established criteria for determining when a statement about a dietary supplement is a claim to diagnose, cure, mitigate, treat, or prevent disease. The final rule clarified the types of claims that may be made for dietary supplements without prior review by FDA and the types of claims that require prior authorization as health claims or prior approval as drug claims. This final rule became effective February 7, 2000.

FDA examined the economic implications of that final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–602). The agency determined that the final rule would have a significant economic impact on a substantial number of small entities.

In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), FDA is making available this SECG stating in plain language the requirements of this regulation.

FDA is issuing this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

I. Comments

Interested persons may, at any time, submit written or electronic comments on the SECG entitled ''Structure/Function Claims; Small Entity Compliance Guide'' to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the SECG and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

II. Electronic Access

Copies of the SECG may also be viewed on a personal computer with access to the Internet. The Center for Food Safety and Applied Nutrition's home page includes the SECG, which can be found at http://www.cfsan.fda.gov/dms/guidance.html.

Dated: December 26, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–451 Filed 1–8–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: February 7–8, 2002.

Open: February 7, 2002, 8:30 a.m. to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: February 7, 2002, 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive,

Bethesda, MD 20892, 301/435–0260, *beebed@nhlbi.nih.gov*.

Information is also available on the Institutes's/Center's homepage: *www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 2, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–476 Filed 1–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel SLEEP AND SLEEP DISORDERS IN CHILDREN.

Date: February 20, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Arthur N. Freed, PhD, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 3, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–477 Filed 1–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Permits; Draft Environmental Impact Statement on Double-Crested Cormorant Management

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) announces the rescheduling of two of the public meetings associated with the comment period for a Draft Environmental Impact Statement (DEIS) on double-crested cormorant management. The DEIS has been prepared under the authority of the National Environmental Policy Act and the Migratory Bird Treaty Act and analyzes the potential environmental impacts of several management alternatives to address conflicts associated with double-crested cormorants. This notice identifies the locations, dates, and times of public meetings and identifies the Service official to whom comments may be directed.

DATES: Written comments regarding the DEIS should be submitted by February 28, 2002, to the address below. Dates and times for ten public meetings are listed in the table under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Requests for copies of the DEIS should be mailed to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 634, Arlington, VA 22203. Written comments on the DEIS can be sent by the following two methods:

(1) By mail to the above address; or

(2) by email to: cormorant_eis@fws.gov.

Please include your name and mailing address in all comments submitted; anonymous comments will not be considered. The public meetings will be held at the locations listed in the table under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Division of Migratory Bird Management, (703) 358–1714.

SUPPLEMENTARY INFORMATION: On December 19, 2001, we published a notice of meetings in the **Federal Register** announcing ten public meetings associated with the comment period for a DEIS on double-crested cormorant management. Because of a conflict with the previously-scheduled meeting dates and the World Aquaculture Association annual meeting, we are rescheduling the Little Rock, Arkansas, and Jackson, Mississippi, meetings. These are listed in the table below.

Date	City	Location	Time
January 7, 2002	Green Bay, Wisconsin	Ramada Plaza Hotel 2750 Ramada Way	7:00 PM
January 8, 2002	Mackinaw City, Michigan	Hamilton Inn Select 701 S. Huron Avenue	7:00 PM
January 16, 2002	Washington, DC	Main Interior Building Auditorium 1849 C Street, NW.	10:00 AM
February 4, 2001	Athens, Texas	Texas Freshwater Fisheries Center 5550 Flat Creek Road (Farm Road 2495).	7:00 PM
February 5, 2002	Jackson, Mississippi	Clarion Hotel and Convention Center 400 Greymont Avenue.	6:00 PM
February 6, 2002	Little Rock, Arkansas	University of Arkansas Division of Agriculture Cooperative Extension Service 2301 S. University Avenue.	6:00 PM
February 11, 2002	South Burlington, Vermont	Clarion Hotel 1117 Williston Road	7:00 PM
February 12, 2002	Watertown, New York	Dulles State Office Building 317 Washington Street	7:00 PM
February 13, 2002	Syracuse, New York	Sheraton University Hotel 801 University Avenue	7:00 PM
February 19, 2002	Portland, Oregon	Doubletree Hotel—Lloyd Center 1000 NE Multnomah.	7:00 PM

Dated: December 26, 2001.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish & Wildlife Service.

[FR Doc. 02–531 Filed 1–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information under 30 CFR part 842 which allows the collection and processing of citizen complaints and requests for inspection.

DATES: Comments on the proposed information collection must be received by March 11, 2002, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in 30 CFR Part 842, Federal inspections and monitoring. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Federal inspections and monitoring—30 CFR part 842.

OMB Control Number: 1029–0118.

Summary: For purposes of information collection, this part establishes the procedures for any person to notify the Office of Surface Mining in writing of any violation that may exist at a surface coal mining operation. The information will be used to investigate potential violations of the Act or applicable State regulations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Citizens, State governments.

Total Annual Responses: 126.

Total Annual Burden Hours: 95 hours.

Dated: December 12, 2001.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–480 Filed 1–8–02; 8:45 am]

BILLING CODE 4310–05–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States. Advisory Committee on Rules of Evidence.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The public hearing on proposed amendments to the Federal Rules of Evidence, scheduled for January 23, 2002, in Washington, DC, has been canceled. [Original notice of hearing appeared in the **Federal Register** of August 29, 2001.]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 3, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–478 Filed 1–8–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: January 23, 2002.

TIME: 8:30 a.m to 5:00 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 3, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–479 Filed 1–8–02; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No.—2178–01]

Immigration and Naturalization Service Airport and Seaport Inspections User Fee Advisory Committee Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service Airport and Seaport Inspections User Fee Federal Advisory Committee.

Date and time: Wednesday, February 6, 2002, at 1 p.m.

Place: Immigration and Naturalization Service Headquarters, 425 I Street, NW., Washington, DC 20536, Shaughnessy Conference Room, Sixth Floor.

Status: Open. Twenty-third meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2. The responsibility of this standing Advisory Committee is to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspection services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Advisory Committee focuses its attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least 5 days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received by the contact person at least 5 days prior to the meeting will be considered for discussion at the meeting.

Contact person: Charles D. Montgomery, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 4064, 425 I Street, NW., Washington, DC 20536; telephone: (202) 616–7498; fax: (202) 514–8345; E-mail: *charles.d.montgomery@usdoj.gov*.

Dated: December 28, 2001.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–508 Filed 1–8–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Availability of Funds and Solicitation for Grant Applications (SGA) for the Purpose of Training Child Care Providers

AGENCY: Employment and Training Administration, Department of Labor.

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, invites proposals for up to ten (10) awards. These awards will be for the implementation of the Quality Child Care Initiative. It will assist with the initiation of building a national system for the education and training of professional child care providers and expand the National Apprenticeship System by incorporating diversification of occupational entities through development of new and innovative strategies for increasing the participation among the child care industry.

DATES: Applications will be accepted commencing January 9, 2002. The closing date for receipt of applications is March 11, 2002, at 4 P.M., (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mamie D. Williams, Reference: SGA/DFA 02–103, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Mamie D. Williams, Grants Management Specialist, Division of Federal Assistance, Fax (202) 693–2879. This is not a toll-free number. All inquiries should include the SGA number (SGA/DFA 02–103) and a contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's Homepage at *http://www.doleta.gov*. Award notifications will also be published on this Homepage.

Quality Child Care Initiative Solicitation

Part I. Purpose

To invite proposals for providing a credentialed career path for development of professional child care provider through the utilization of the National Registered Apprenticeship System; which will reduce turnover, increase wages for providers, provide a more stable environment for children and lower the concern of parents.

Part II. Background

The Child Care Industry is in trouble. A 1989 study by the national Center of Early Childhood Workforce found that the quality of services provided by most day care centers was rated as Abarely adequate,'' and a more recent four-State study by the University of Colorado at Denver found that only 14 percent of child care centers were rated as good quality. In addition, child care workers are faced with relatively low wages, inadequate benefit coverage, and high job turnover.

On October 23, 1997, former President and Mrs. Clinton hosted the White House Conference on child care—to focus the Nation's attention on the importance of addressing the need for safe affordable, available, quality child care. Integral to providing the ''right'' care is the quality of the child care worker.

Quality child care service goes hand in glove with having an adequate supply of competent, professional child care providers. This requires enhanced training opportunities and a redefinition of the basic concept of what constitutes a child care provider. A national focus on accreditation demands that practitioners have access to education and training that will promote professional development. As the field of early care and education becomes established as a profession, practitioners are required to master basic knowledge, skills and core competencies of early childhood development. As professionals, practitioners must develop practical knowledge that will enable them to apply new approaches and strategies for working effectively with young children.

Part III. Statement of Work

As our society continues to evolve and demands are placed on parents to secure full time job/careers, the need for safe, affordable, available, quality child care has been brought to the forefront. Utilization of the National

Apprenticeship System can provide needed training for early care and education practitioners. High quality training has the potential to change the culture of the child care industry from one dominated by low pay and high turnover to one of respected professional service. No longer would child care be equated to baby-sitting.

The apprenticeship model validates the integral part that child care plays in the economy, as working families rely on dependable, accessible care for their children. As families move from welfare to work, additional sources of training child care providers are in demand.

Note: All successful applicants are expected to provide information relative to the projected number of participants (i.e., employers, apprentices and the diverse make-up of the participants) in order to assist the grantor in determining the amount of awards to be given.

The major tasks of this project will be, but not limited, to the following:

- System and capacity building by incorporating in a collaborative spirit organizations, agencies, employers, associations and higher education to develop a vision for implementation of an individual statewide sustainable infrastructure built upon successful registered apprenticeship and best practice models;
- From the above activity, establishment of an oversight body to provide direction and guidance to the vision, utilizing the services of an Apprenticeship and Training Representative;
- Utilization of an established curriculum or development of a curriculum based on developmentally appropriate inclusive practices for young children and an interactive adult education teaching approach that is effective for adult learners;
- Adoption of or establishment of a train-the-trainer system that will ensure the availability of knowledge, experienced, skilled instructors for the related instruction course work;
- Development of a process to promote career lattice for those graduates of the registered apprenticeship system (i.e., articulation into an Associates Degree or higher);
- Ensuring the inclusion of those with other nationally recognized credentials such as the Child Development Associate (CDA) through previous credit for documented prior experience;
- Demonstration of in-kind support from institutions involved in the process (i.e., time spent to facilitate and foster the process and/or free facilities to conduct related instruction);
- Development and implementation of a strategy or strategies to ensure inclusion of practitioners representing diversity of culture, ethnicity, gender and ability;
- Development of policies, procedures and formulas to ensure the consistency and integrity of system implementation and beyond. The system will be sustainable and ownership established, if the process is followed throughout the state;

Part IV. Eligible Applicants

Eligible Applicants: Those eligible to apply are as follows: States that have a State Apprenticeship Agency (SAA) , State Agencies designated by the Governor, Governor's Early Childhood Initiative, other State Agencies with responsibility for child care regulations or funding. Only one proposal will be accepted per State and for States without a SAA a letter from the Governor designating the agency must accompany the proposal. Those States who received Child Care Initiative awards in Round 1 (1999) and Round 2 (2000), are not eligible to compete for this procurement action.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement prodedures must require thall all procurement transaction must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

Note: Administrative Costs: Pursuant to 20 CFR 667.210(b), grantees are advised that there is a 10% limitation on administrative costs on funds administered under this grant. The Grant Officer may, however, approve additional administrative costs up to a maximum of 15% of the total award amount, if adequate justification is provided by the grantee at the time of the award. In no event, may administrative costs exceed 15% of the total award amount. The cost of administration shall include those disciplines enumerated in 20CFR 667.220(b) and (c).

Part V. Application Process

Application Submittal. Applicants must submit one (1) copy of their proposal with an A. original signature and two (2) additional copies of their proposal. The applications shall be divided into two distinct parts: Part I—which contains the Standard Form (SF) 424, ''Application for Federal Assistance,'' (Appendix A) and ''Budget Information Sheet,'' (Appendix B). All copies of the (SF) 424 MUST have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the (SF) 424 the organization's IRS Status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c) 4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The Catalog of Federal Domestic Assistance number is 17.262. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Part II shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this section. Applicants must describe their plan in light of each of the Evaluation Criteria. Applicants MUST limit the program narrative section to no more than 30 double-spaced pages, on single-sided numbered pages with the exception of the Executive Summary. The Executive Summary must be limited to no more than two single-spaced, single-sided pages. Note: The Executive Summary is not included in the 30 page limitation. A font size of at least twelve (12) pitch is required throughout on 8.5 × 11 inch paper with 1-inch margins. This includes any attachments. Letters of general support or recommendation for a proposal should NOT be submitted and will count against the page limits. Applications that fail to meet the page limitation requirement will not be considered.

Part VI. Late Applications

Any application received after the exact date and time specified for receipt at the office designed in this notice will not be considered, unless it is received before awards are made and it—(a) was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or (b) was sent by the U.S. Postal Service Express Mail Next Day Service to addresses not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term ''working days'' excludes weekends and federal holidays. The term ''''post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression)

that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

Part VII. Hand Delivered Proposals

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, Hand-delivered applications must be received by 4:00 P.M., (Eastern Time), on the closing date at the specified address. TELEGRAPHED AND/FAXED APPLICATIONS WILL NOT BE HONORED. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and MUST BE RECEIVED by the above specified date and time.

Part VIII. Funding Availability and Period of Performance

The Department expects to makeup to 10 awards with a maximum total investment for these projects of $3.3 million. Grants will be awarded up to $325,000. The period of performance will be for 18 months from the date the grant is awarded.

Part IX. Review Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

Evaluation Criteria

A. *System and Capacity Building*—The extent to which the offeror has delineated collaboration strategies to develop a vision and implementation plan for a statewide infrastructure utilizing the registered apprenticeship system of training and forecast of implementation. (25 points)

B. *Sustainability*—Plan for long term viability of the system after this funding ends. (15 points)

C. *Curriculum*—Delineation of utilization or development of curriculum based on developmentally appropriate inclusive practices for young children and an interactive adult educational component for effective adult learners and a forecast of implementation. (15 points)

D. *Career Lattice*—Describe the process for inclusion of participants with documented prior experience linked with substantial increases in compensation and next steps for apprenticeship graduates in the process (awarding of college credit and articulation with higher education). (20 points)

E. *Diversity*—Outline the strategy or strategies developed to ensure inclusion of participants representing diversity of culture, ethnicity, gender and ability (i.e., projected number of employers and apprentices) and a forecast of implementation. (15 points)

F. *Consistency and Integrity*—Delineation of the policies, procedures, and formulas developed to ensure consistency and integrity of the statewide system. (10 points)

The grants will be awarded based on applicant response to the above mentioned criteria and what is otherwise most advantageous to the Department.

Part X. Reporting Requirements

- Attendance to a post award orientation briefing, is tentatively scheduled to take place in Atlanta, Georgia, where BAT will reiterate and delineate the overall desired outcomes of the project;
- Detailed work plan, budget, and schedule within 30 days of grant award;
- Quarterly Status Reports within 30 days of quarters' end;
- Monthly cost vouchers;
- Final report on completed tasks, and specific recommendations for future grants for Child Care Initiatives, no later than 45 days following the end of the grant.

Signed in Washington, DC, this 3rd day of January, 2002.

James W. Stockton,

Grant Officer.

Appendix A: (SF) 424—Application Form

Appendix B: Budget Information Form

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):
_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable
Authorized for Local Reproduction

Standard Form 424 (REV 4-88
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: ***Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).***

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 02–495 Filed 1–8–02; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act, Sections 127 and 167 Migrant and Seasonal Farmworker Youth Program

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Migrant and Seasonal Farmworker (MSFW) Youth Program under the Workforce Investment Act (WIA).

SUMMARY: All information required to submit a grant application is contained in this announcement. The U.S. Department of Labor (the Department), Employment and Training Administration (ETA), announces the availability of funds as authorized in section 127(b)(1)(A)(iii) of the Workforce Investment Act, to provide MSFW youth workforce investment activities.

It is anticipated that up to $10,000,000 will be available for the grant year (commencing April 1, 2002) for funding up to 15 projects covered by this Solicitation. It is the Department's intent to fund grants in the 12 agricultural geographic areas of the United States. Grantees will be selected for a two-year designation period. The Department intends to provide non-competitive funding for the succeeding one-year period for grantees that perform satisfactorily during the first year, subject to availability of federal funds.

DATES: Applications will be accepted commencing on the date of publication. The closing date for receipt of applications under this announcement is February 15, 2002, at 4:00 p.m. Eastern Standard Time (EST). No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered.

ADDRESSES: Applications shall be mailed or hand-carried to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mrs. Serena Boyd, SGA/DFA 02–104, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to (202) 693–2879 (this is not a toll-free number) to the attention of Mrs. Serena Boyd. All inquiries should include the SGA number 02–104, and a contact name, fax, and telephone numbers. This Solicitation is also being published on the Internet at ETA's homepage at *http://www.doleta.gov*. Award notifications will also be published on the ETA homepage.

Part I. General Information

A. Background

The purpose of the MSFW youth program is to provide an effective and comprehensive array of educational opportunities, employment skills, and life enhancement activities to at-risk MSFW youth that lead to academic success, economic stability and development into productive members of society.

The MSFW Youth program is described at 20 CFR 669.600 through 669.680. It is designed:

(1) to strengthen the ability of eligible farmworker youth to obtain or retain unsubsidized employment, or

(2) to stabilize their unsubsidized employment by providing related assistance, integrated and coordinated with other appropriate services.

B. MSFW Youth Participant Eligibility

Eligible participants must be 14 to 21 years of age, and a farmworker or a dependent of farmworker parent(s) (or guardian(s)) as defined in section 167(h) of the Workforce Investment Act and at 20 CFR part 669.

Eligible farmworkers are those economically disadvantaged persons who, for 12 consecutive months out of the 24 months preceding their application for services, have been primarily employed in agricultural labor that is characterized by chronic unemployment or underemployment. Complete eligibility requirements will be provided upon request.

C. Eligible Entities

To be eligible for receipt of funds under this program, an organization must have:

(1) Documented experience in providing services to migrant and seasonal farmworker youth;

(2) a working familiarity with the geographic area to be served and be able to show its ability to work within the existing service environment;

(3) the capacity to administer the program of activities and services proposed for MSFW youth; and

(4) the appropriate legal status to enter into a grant agreement with the U.S. Department of Labor (e.g. a private non-profit corporation or a unit of State or local government).

D. Consultation With Governors and Local Boards

Executive Order No. 12372, ''Intergovernmental Review of Federal Programs,'' and the implementing regulations at 29 CFR part 17, are applicable to this program. Under these requirements, the applicant must provide a copy of the application for comment to the States that have established a consultation process under the Executive Order. Applications must be submitted to the State's Single Point of Contact (SPOC) no later than the deadline for submission of the application to the Department.

For States that have not established a consultative process under Executive Order No. 12372, and have established a State Workforce Investment Board (State Board), the State Board will be the SPOC. For WIA implementation purposes, this consultation process fulfills the requirement of WIA section 167(e) concerning consultation with Governors and Local Boards. To strengthen the implementation of Executive Order No. 12372, the Department establishes the following time-frame for its treatment of comments from the State's SPOC on WIA section 167 applications:

1. The SPOC must submit comments, if any, to the Department and to the applicant, no later than 30 days after the deadline date for submission of applications;
2. The applicant's response to the SPOC comments, if any, must be submitted to the Department no later than 15 days after the post-marked date of the comments from the SPOC;
3. The Department will notify the SPOC of its decision regarding the SPOC comments and applicant response; and
4. The Department will implement that decision within 10 days after it has notified the SPOC.

E. Grant Duration and Period of Performance

The Department anticipates that grants will be funded for two one-year time periods—with funding in the second year contingent on satisfactory performance during the first year and the availability of funding in the second year. The period of performance for the first year is expected to commence April 1, 2002.

Part II. Application Process and Guidelines

A. Submission of the Grant Application Package

Applicants must submit an original and three (3) copies of the complete application package for review.

Applications must be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they must be received at the designated place by 4:00 p.m., Eastern Standard Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received by the specified time and closing date. Telegraphed, faxed and e-mailed proposals will not be honored. Applications that do not adhere to the above instructions will not be honored.

B. Late Applications

Any applications received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g. an offer submitted in response to a solicitation requiring a receipt of application by the 30th of January must have been mailed by the 25th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days prior to the date specified for receipt of application. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal will be processed as if it had been mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been applied or affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applications should request the postal clerk to place a legible hand cancellation ''bulls eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by ''Express Mail Next Day Service-Post Office to Addressee'' is the date entered by the post office receiving clerk on the Express Mail Next Day Service-Post Office to Addressee label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

C. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before the award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and representative signs a receipt for the proposal.

D. Grant Application Package

The grant application package must consist of:

(1) A Standard Form 424 (Application for Federal Assistance) found in OMB Circular A–102 and as an attachment to this Solicitation.

(2) A Standard Form 424A (Budget) found in OMB Circular A–102 and as an attachment to this Solicitation. Costs in section B (Budget Categories), Item 6 (Object Cost Categories) should be budgeted by Administrative, Program, and Total. Administrative costs are to be included in column (1), program costs in column (2), and the total cost in column (5) of Form 424A. Budgets are required only for the first year of the two-year plan and designation period. Administrative costs are limited to 15 percent of the total grant award.

(3) A certification, prepared within the last six months prior to the submission of this application, attesting to the adequacy of the entity's fiscal management and accounting systems to account for and safeguard Federal funds properly. The required certification must be obtained as follows:

a. For incorporated organizations, from a Certified Public Accountant.

b. For public agencies, by its Chief Fiscal Officer.

(4) A statement describing the entity's legally constituted authority under which the organization functions. A nonprofit organization should submit a copy of its Charter or Articles of Incorporation, including proof of the organization's nonprofit status;

(5) A copy of the current indirect cost rate agreement issued by the cognizant federal agency, if applicable.

(6) The completed grant application as described below.

E. Format of the Grant Application

The grant application is limited to 50 numbered pages, double-spaced, using type no smaller than 11 point. The page number limitation does not include letters of support or the required attachments. Proposals may be fastened using a binder clip. Please do not use 3-ring binders, or otherwise bind your proposal package. To ensure full consideration, the application must follow the numerical sequence of the sections 1 through 5 as presented in II E of this solicitation immediately below. The application must include a table of contents. To ensure your application is considered fully, be sure to respond completely to each section. All attachments should be included at the end under a section 6 heading.

F. Contents of the Grant Application

Specific Rating Criteria for section 1 [15 points]—This factor rates the applicant's understanding of the proposed service area and its experience within the service environment described. Ratings will be based on factors such as the reasonableness of matching the proposed service area to the scope of the program and the amount of funds sought and the applicant's ability to work within the service environment, as evidenced by the existence of appropriate and documented linkages—especially those related to other MSFW program activities.

Section 1—Knowledge of the Area To Be Served and Capacity To Operate Within the Existing Service Environment

(A) Geography:

(1) Identify the geographic boundary of the proposed service area (or areas). An explanation should be provided, wherever there are service areas that are not contiguous. Include a map.

(2) Describe your organization's capacity to operate in the proposed service area.

(B) Community Resources:

(1) Describe the communities where migrant and seasonal farmworker youth, who would be served by the proposed project, reside and where they travel for work purposes. The description must include a discussion of the educational, social, cultural, workforce, community programs and services and other relevant opportunities available for youth. Be sure to explain how these community services are responding to the needs of MSFW youth.

(2) Describe how your organization works with the community resources described above.

(C) NFJP Relationship: Describe the relationship between the grant applicant and the NFJP grantees operating the area under your proposal. Specifically, where the applicant is not the current NFJP grantee in the proposed service area, describe the arrangements that

have been or will be made to coordinate the delivery of services and avoid duplication of services.

(D) One-Stop Coordination: Provide an itemization of Workforce program linkages. Specifically include the name of each entity with whom a linkage has been established, the relationship of each entity to the applicant, the specific service to be provided by the established linkage and an explanation of how the linkage will support the proposed program. Please indicate if documentary evidence of the linkage is provided as an attachment.

Specific Rating Criteria for section 2 [15 points]—This factor rates the applicant's knowledge and understanding of the needs, problems, and demographic characteristics of the target group. Ratings are based on the degree to which the narrative shows how the applicant organization has developed its capacity to understand the MSFW youth population within the proposed service area.

Section 2—The Problems of Migrant and Seasonal Farmworker Youth

Provide a socio-economic analysis of the migrant and seasonal farmworker youth in the area you propose to serve, made as follows:

(A) Describe the demographic and socio-economic characteristics of migrant and seasonal farmworker youth in the service area, and identify the sources (which may include experiences or knowledge developed by your agency) you rely upon;

(B) Describe the needs and problems of farmworker youth you have identified for serving, and show how you have made the identification; and

(C) Describe the farmworker youth that you propose to serve.

Specific Rating Criteria for section 3 [50 points]—Applications will be rated according to how well the proposed program of services is shown to respond to the identified MSFW Youth needs. You must show how your service delivery system will respond by offering services to the MSFW Youth in the area that are appropriate to the needs you have identified for them. Up to 15 points may be earned under part (C).

Section 3—Proposed Program Activities and Services

Noting any differences between the first and second years, provide a detailed description of the proposed program activities:

(A) State two or more goals for the proposed MSFW Youth program.

(B) Provide a detailed description of the proposed program of activities and services. The description must address each of the following program elements:

(1) Core services, including outreach, recruitment and eligibility determination;

(2) Intensive services (Preliminary information from two of the migrant youth demonstration grants is showing there are broad benefits to be gleaned from parental participation in the development of their child's individual service strategy. Include a description of your plans for parental participation);

(3) Training services;

(4) Life skill activities which may include self and interpersonal skills development;

(5) Community service projects;

(6) Small business development, technical assistance and training in conjunction with entrepreneurial training;

(7) Supportive services and other related assistance services, described in 20 CFR 669.430; and

(8) Other proposed activities and services, if any, that conform to the use of funds for youth activities described in 20 CFR part 664.

(C) Provide an analysis that shows how the proposed program of services and activities is responsive to the needs of MSFW Youth described in part (C) of section 2. Provide an explanation how the proposed program will lead to the fulfillment the goals proposed in part (A) of section 3.

Specific Rating Criteria for section 4 [10 points]—Based on the applicant's previous relevant program experience and performance, applicants will be rated according to their relative capacity to provide effectively workforce investment activities for MSFW youth.

Section 4—Capacity To Operate a Workforce Investment Program for MSFW Youth

(A) Provide the published mission or principal goals/objectives of the applicant organization and explain how service to MSFW youth promotes the organization's mission.

(B) Describe the applicant organization's experience providing services to youth, to MSFWs and to MSFW youth.

(C) Describe the programs operated by the applicant organization during the last two years, presented in tabular form. Each entry on the table must include:

(1) Funding source (Name of Agency/Organization, Address, Telephone, and Contact Person);

(2) Program Information (Type of Program, Grant/Contract/Agreement Number, Principle Activities, Period of Performance and Funding Amount);

(3) Customers (Number of participants served, percent of MSFW participant, percent of MSFW youth (age 14–21) served);

(4) Performance standards and outcomes achieved; and

(5) Outcomes achieved specifically for farmworker youth (ages 14–21).

(D) Provide a description of the proposed implementation schedule, which clearly shows exactly when the proposed program will be fully operational.

Specific Rating Criteria for section 5 [10 points]—This factor rates the applicant's managerial experience and the potential for efficient and effective administration of the proposed program and budget.

Section 5—Applicant's Administrative and Management Capability:

(A) Provide a chart depicting the applicant's overall organization structure, including the organizational design of the proposed youth program. The chart must clearly show how the proposed program will be supported by the organizational structure. It must include both staffing patterns and office locations. In addition, the chart must show which parts of the proposed MSFW youth program structure are in place and which parts would be established if the proposal were funded.

(B) Describe the applicant's administrative and program management processes which include the fiscal management systems and the program management systems (including management information system). Program management must describe the applicant's systems for participant tracking, follow-up, program monitoring and oversight, and the provision of training and technical assistance for those individuals who work directly with participants.

(C) Provide a proposed budget and describe in narrative form how the proposed cost categories and amounts were determined. The description should explain and justify the costs budgeted for the first year only. Be sure to include in your description how you believe the budgeted cost supports the proposed program of activities and services and the staffing pattern.

Section 6—Attachments

All attachments referenced in the proposal are to be included under a section 6 heading of your proposal. The first page should itemize the attachments.

Part III—Review Process of Grant Application Panel Review

The Grant Officer will select potential grantees utilizing all information available to him/her. A review panel will rate each proposal using the specific criteria cited above. Panel results are advisory in nature and are not binding on the Grant Officer. The Grant Officer will give appropriate consideration to an entity in any service area for which the entity has been designated as a WIA section 167 MSFW program grantee (20 CFR 669.630). Further, the Grant Officer will make selections that promote a geographic distribution of funds where merited (20 CFR 669.650). The Grant Officer may, at his/her discretion, request an applicant to submit additional or clarifying information if deemed necessary to make a selection. However, selections may be made without further contact with the applicants.

Responsibility Review

Prior to awarding a grant to any applicant, the Department will conduct a responsibility review. The responsibility review is an analysis of available information and records to determine if an applicant has established a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the competitive process. Applicants failing to meet the requirements of this section may be disqualified for designation as a grantee without respect to their standing in the competitive process. An applicant that is not selected as a result of the Grant Officer's responsibility review will be advised of its appeal rights. The responsibility tests that will be considered are required by the WIA regulations at 20 CFR 667.170.

Notification of Non Selection

Any applicant that is not selected as a potential grantee, or that has its grant application denied in whole or in part by the Department for receipt of funds, will be notified in writing by the Grant Officer and will be advised of all appeal rights.

Notification of Selection

Applicants that are selected will be notified in writing by the Grant Officer. Formal designation as a grantee will be contingent on the successful negotiation of a grant agreement for the first year of operation.

Signed at Washington, DC, this 3rd day of January 2002.

Lorraine H. Saunders,

Grant Officer, Office of Grants and Contract, Management, Division of Federal Assistance.

Attachments

1. Appendix A—''Application for Federal Assistance'' (Standard Form 424)
2. Appendix B—Budget Information Form

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):
_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

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☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
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9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

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4. ***Equipment****: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies****: Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual****: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other****: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs****: Add lines 1 through 7.*

9. ***Indirect Costs****: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested****: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 02–494 Filed 1–8–02; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10762, et al.]

Prohibited Transaction Exemption 2002–01; Grant of Individual Exemptions; Key Trust Company of Ohio, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition, the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Key Trust Company of Ohio (Key Trust), Located in Cleveland, OH

[Prohibited Transaction Exemption 2002–01; Exemption Application No. D–10762]

Exemption

I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply to the making of interest-free loans to a defined contribution plan (the Plan) by its respective sponsor (the Plan Sponsor) pursuant to the terms of a credit facility arrangement (the Credit Facility Arrangement), established by Key Trust and its affiliates (collectively, KeyBank), which enables daily transactions, such as participant investment transfers, distributions or participant loans, in connection with the Plan's unitized employer stock fund (the Unitized Employer Stock Fund or Fund) within KeyBank; and (2) the repayment, by the Plan to the Plan Sponsor, of any interest-free loan within 90 days with cash proceeds received from the sale of employer stock (Employer Stock) held in the Unitized Employer Stock Fund.

II. General Conditions

(a) Each loan made under the Credit Facility Arrangement provides short-term funds to the Plan for a period of no longer than 90 days for the purpose of facilitating Plan participant transfers, distributions, loans and other participant transactions involving the Plan's Unitized Employer Stock Fund.

(b) The maximum amount of short-term funds available to a Plan under the Credit Facility Arrangement, in the aggregate, does not exceed 25 percent of the fair market value of the Plan's Unitized Employer Stock Fund.

(c) Each loan made under the Credit Facility Arrangement is repaid with proceeds from the sale of Employer Stock held in the Unitized Employer Stock Fund.

(d) For purposes of repaying a loan under the Credit Facility Arrangement, the sales price for the Employer Stock is based upon its fair market value as determined on the New York Stock Exchange (the NYSE) or other applicable securities exchange where such Employer Stock is primarily traded on the date of the transaction, as calculated by an independent pricing service.

(e) Each loan made under the Credit Facility Arrangement is unsecured and no commitment fees, interest or commissions are paid by the Plan.

(f) In the event of a loan default or delinquency, the Plan Sponsor has no recourse against the Plan.

(g) Each loan is initiated, accounted for and administered by KeyBank, the independent fiduciary, which will monitor the terms and conditions of the exemption on behalf of the Plan, at all times.

(h) KeyBank maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (i) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of KeyBank, such records are lost or destroyed prior to the end of such six year period; and

(2) No party in interest, other than KeyBank, shall be subject to the civil penalty that may be assessed under section 502(i), or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (h).

(i)(1) Except as provided in paragraph (h)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (h) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of a Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraph (i)(1)(B) or (C) shall be authorized to examine the trade secrets of KeyBank or commercial or financial information which is privileged or confidential.

[1] Unless otherwise noted, references to specific sections of the act refer also to the corresponding provisions of the Code.

III. Definitions

For purposes of this exemption,

(a) The term ''KeyBank'' refers to Key Trust Company of Ohio and its affiliates.

(b) An ''affiliate'' of KeyBank includes—

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with KeyBank;

(2) Any officer, director, employee, relative or partner in KeyBank; and

(3) Any corporation or partnership of which KeyBank is an officer, director, partner or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''closing price'' means the final price at which Employer Stock has traded on the NYSE (or such other exchange on which Employer Stock is primarily traded) on the date of the transaction as may be reported to KeyBank using an independent pricing service for the reporting of final prices.

(e) The term ''Employer Stock'' refers to common stock issued by a Plan Sponsor, an affiliate of the Plan Sponsor, a former Plan Sponsor, or an affiliate of the former Plan Sponsor.[2]

(f) The term ''Plan Sponsor'' refers to an employer (or an affiliate of the employer) sponsoring a defined contribution plan which has entered into a Unitized Employer Stock Fund Investment Policy Agreement with KeyBank in order to structure the investment by the Plan's Unitized Employer Stock Fund in Employer Stock.

(g) The term ''Unitized Employer Stock Fund'' refers to an investment fund established by KeyBank whose assets will consist primarily of shares of Employer Stock.

(h) The ''trading day'' refers to any day on which KeyBank and the NYSE are open for business and are able to transact trades involving Employer Stock as a Plan investment. The close of trading day will be the time of the close on the NYSE. In the event that either KeyBank or the NYSE (or any other exchange on which the Employer Stock is primarily traded) is incapable of processing trades involving Employer Stock, or in the event trading in Employer Stock is suspended, the close of the trading day will be the last time by which transactions involving Employer Stock are processed on any such day.

(i) The term ''drift allowance'' refers to the range of percentages, comprised of a maximum and minimum percentage, which is determined and established by the Plan Sponsor as being the proper percentages within which the liquidity component of the Unitized Employer Stock Fund should represent of the entire market value of such Fund on any given day.

(j) The term ''liquidity component'' means the short-term investment vehicle which is selected by the Plan Sponsor and used to invest any uninvested cash in the Plan's Unitized Employer Stock Fund.

(k) The term ''target percentage'' means the number, expressed as a percentage, which is determined and established by the Plan Sponsor, as being the proper percentage that the liquidity component of the Unitized Employer Stock Fund will represent of the entire market value of such Fund (including the liquidity component and the Employer Stock). The target percentage will take into consideration factors such as the daily market volume for trading in the Employer Stock and the average daily trading activity of such stock in the Unitized Employer Stock Fund.

(l) The term ''transaction valuation date'' refers to any day on which KeyBank and the NYSE (or any other national securities exchange on which Employer Stock is primarily traded) are open for business and are able to transact trades.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 7, 2001 at 66 FR 46830.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

[2] The Department notes that the term ''Employer Stock,'' as defined in this final exemption, may not satisfy the definition of ''employer security'' contained in section 407(d)(1) of the Act.

The Golden Retirement Savings Program (the Savings Program); and The Golden Comprehensive Security Program (the Security Program), (collectively, the Plans) Located in New York, New York

[Prohibited Transaction Exemption No. 2002–02; Exemption Application Nos. D–10913; D–10914]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 27, 2000, to the past acquisition and holding by the Savings Program of 1,896.294 publicly traded warrants and by the Security Program of 2,073.554 publicly traded warrants (the Warrants) of Golden Books Family Entertainment, Inc. (the Employer), a party in interest with respect to the Plans, provided that the following conditions were or will be met:

(a) The acquisition and holding of the Warrants by the Plans occurred in connection with the Employer's bankruptcy proceeding pursuant to which all holders of the old common stock of the Employer were treated in the same manner;

(b) The Plans had little, if any, ability to affect the negotiation of the Employer's plan of reorganization with respect to the bankruptcy proceeding;

(c) The Warrants were acquired automatically and without any action on the part of the Plans; and

(d) The Plans did not pay any fees or commissions in connection with the receipt of the Warrants, nor did the Plans pay any fees or commissions in connection with the holding of the Warrants.

EFFECTIVE DATE: This exemption is effective as of January 27, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption (the Notice) published on September 7, 2001 at 66 FR 46839.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Metropolitan Life Insurance Company (MetLife Insurance Company) and Its Affiliates (collectively, MetLife) Located in New York, NY

[Prohibited Transaction Exemption 2002–03; Exemption Application No. D–10954]

Exemption

Section I. Retroactive Exemption for the Acquisition, Holding and Disposition of Metlife, Inc. Common Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code,[3] shall not apply, as of December 7, 2000 until (insert the date the final exemption is published in the **Federal Register**), to

[3] For purposes of this exemption, references to provisions of the Act refer also to corresponding provisions of the Code.

the acquisition, holding and disposition of the common stock of MetLife, Inc. (the MetLife, Inc. Stock), by Index and Model-Driven Funds (collectively, the Funds) that are managed by MetLife, in which client plans of MetLife invest, provided that the following conditions and the General Conditions of Section III are met:

(a) The acquisition or disposition of MetLife, Inc. Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring MetLife, Inc. Stock which is intended to benefit MetLife or any party in which MetLife may have an interest.

(b) All aggregate daily purchases of MetLife, Inc. Stock by the Funds do not exceed on any particular day the greater of—

(1) 15 percent of the average daily trading volume for the MetLife, Inc. Stock, occurring on the applicable exchange and automated trading system (as described in Section I(c) below) for the previous 5 business days, or

(2) 15 percent of the trading volume for MetLife, Inc. Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date.

(c) All purchases and sales of MetLife, Inc. Stock occur (i) either on a recognized U.S. securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis; (ii) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is registered under the Securities Exchange Act of 1934 (the 1934 Act) and thereby subject to regulation by the Securities and Exchange Commission (SEC), or an automated trading system operated by a recognized U.S. securities exchange, which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arm's length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC.

(d) No transactions by a Fund involve purchases from, or sales to, MetLife (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(e) No more than 5 percent of the total amount of MetLife, Inc. Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by MetLife.

(f) MetLife, Inc. Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(g) A fiduciary of a plan, which is independent of MetLife, authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife, Inc. Stock, pursuant to the procedures described herein.

(h) A fiduciary independent of the MetLife directs the voting of MetLife, Inc. Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife, Inc. Stock are required or permitted to vote.

Section II. Prospective Exemption for the Acquisition, Holding and Disposition of Metlife, Inc. Stock and/or the Common Stock of a Metlife Affiliate

The restrictions of sections 406(a)(1)(D), 406(b)(1) and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of MetLife, Inc. Stock and/or common stock issued by a MetLife affiliate (together, the MetLife Stock), by Index and Model-Driven Funds that are managed by MetLife, in which client plans of MetLife invest, provided that the following conditions and the General Conditions of Section III are met:

(a) The acquisition or disposition of MetLife Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring MetLife Stock which is intended to benefit MetLife or any party in which MetLife may have an interest.

(b) Whenever MetLife Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of MetLife Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of MetLife Stock occur either (i) on a recognized U.S. securities exchange (as defined in Section IV(j) below), (ii) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is registered under the 1934 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(i) below) that is operated by a recognized U.S. securities exchange (as defined in Section IV(j) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of MetLife Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require MetLife Stock, MetLife appoints a fiduciary which is independent of MetLife to design acquisition procedures and monitor compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of MetLife Stock to its specified weighting in the index or model pursuant to the restrictions described in Section II(b) above, all aggregate daily purchases of MetLife Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for MetLife Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous 5 business days, or

(2) 15 percent of the trading volume for MetLife Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in MetLife Stock not otherwise described above in Section II(b) are either—(i) entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section IV(j) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, MetLife (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than 5 percent of the total amount of MetLife Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by MetLife.

(g) MetLife Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A fiduciary of a plan which is independent of MetLife authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife Stock, pursuant to the procedures described herein.

(i) A fiduciary independent of the MetLife directs the voting of MetLife Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife Stock are required or permitted to vote.

Section III. General Conditions

(a) MetLife maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MetLife, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than MetLife shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) of this Section III and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section III are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the SEC,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this Section III(b)(1) shall be authorized to examine trade secrets of MetLife or commercial or financial information which is considered confidential.

Section IV. Definitions

(a) The term ''Index Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by MetLife, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which MetLife does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit MetLife or any party in which MetLife may have an interest.

(b) The term ''Model-Driven Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by MetLife, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of MetLife, to transform an independently maintained Index, as described in Section IV(c) below;

(2) Which contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit MetLife or any party in which MetLife may have an interest.

(c) The term ''Index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information,

evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of MetLife; and,

(3) The index is a generally-accepted standardized index of securities which is not specifically tailored for the use of MetLife.

(d) The term ''opening date'' means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term ''Buy-up'' means an acquisition of MetLife Stock by an Index or Model-Driven Fund in connection with the initial addition of such stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such stock.

(f) The term ''MetLife'' refers to Metropolitan Life Insurance Company, its parent, MetLife, Inc. and their current or future affiliates, as defined below in paragraph (g).

(g) An ''affiliate'' of MetLife includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(h) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(i) The term ''automated trading system'' means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS [17 CFR Part 242.300], as such definition may be amended from time to time, or an ''automated quotation system'' as described in Section 3(a)(51)(A)(ii) of the 1934 Act [15 U.S.C. 8c(a)(51)(A) (ii)].

(j) The term ''recognized U.S. securities exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under Section 6 of the 1934 Act (15 U.S.C. 78f), as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (*e.g.,* 17 CFR part 240.3b–16).

EFFECTIVE DATE: This exemption is effective from December 7, 2000 until *(insert the date the final exemption is published in the* **Federal Register**) with respect to the transactions described in Section I above, and is effective as of *(insert the date the final exemption is published in the* **Federal Register**) for the transactions described in Section II above.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 27, 2001 at 66 FR 49400.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Kimball International, Inc. Retirement Plan (the Plan), Located in Jasper, Indiana

[Prohibited Transaction Exemption No. 2002–04; Exemption Application No. D–10949]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of stock (the Shares) of SVB&T Corporation (Springs Valley) to Springs Valley, the Trustee of the Plan and a party in interest with respect to the Plan, provided that the following conditions are met:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) The fair market value of the Shares is determined by a qualified, independent appraiser;

(d) The Plan does not pay any commissions, costs or other expenses in connection with the Sale; and

(e) The Plan receives as consideration an amount that is no less than the greater of: (1) the fair market value of the Shares as of the date of the Sale or (2) $40 per Share.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on October 23, 2001 at 66 FR 53635.

Written Comments

One written comment was received by the Department, which was submitted by the applicant, Kimball. The comment requested a change to the Notice as described below.

On page 53635 of the Notice, with respect to the operative language describing the transaction, the reference to Springs Valley Bank & Trust should be deleted and, in lieu thereof, SVB&T Corporation (Springs Valley) should be inserted.

The Department concurs in this change submitted by the applicant. Accordingly, after giving full consideration to the entire record, including the comments by the applicant, the Department has determined to grant the exemption as modified. In this regard, the comment submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue. NW, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Alaska United Food and Commercial Workers Health and Security Trust Fund (the Plan) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 2002–05; Exemption Application No. L–10896]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the purchase by Plan participants and beneficiaries of prescription drugs from Safeway, Inc. (Safeway), a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of Safeway and its wholly owned subsidiary, SMCrx; (c) at least 50% of the preferred providers participating in the Preferred Provider Network (PPN) involving Safeway are unrelated to Safeway or any other party

in interest with respect to the Plan; (d) Safeway will be treated no differently than any other pharmacy participating in the PPN; and (e) the transaction is not part of an agreement, arrangement or understanding designed to benefit Safeway or any other party in interest with respect to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 23, 2001 at 66 FR 53637.

EFFECTIVE DATE: This exemption is effective as of August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 3rd day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–549 Filed 1–8–02; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Solicitation for Expressions of Interest in Participation in Design of a State Justice Community Evaluation Instrument

AGENCY: Legal Services Corporation.

ACTION: Solicitation of expressions of interest in participation in design of a State Justice Community Evaluation Instrument

DATE: Submit expressions of interest must be received by January 15, 2002.

SUMMARY: LSC is establishing a Design Team to advise its consultant group on the development and testing of a tool that will effectively evaluate state justice community efforts and outcomes. LSC hereby solicits expressions of interest in appointment to the Design Team from individuals with experience in the provision of civil legal services to low income people and in outcome evaluation protocols.

FOR FURTHER INFORMATION CONTACT: Patricia M. Hanrahan, Special Assistant to the Vice President for Programs, Legal Services Corporation, 750 First St., NE., Tenth Floor, Washington, DC 20002–4250; (202) 336–8848; *phanrahan@lsc.gov.*

SUPPLEMENTARY INFORMATION: LSC has retained Greacen Associates to develop a state justice community evaluation instrument that allows LSC to make reasonable and comparative judgments about the effectiveness, efficiency and adequacy of state justice communities established through state planning. To assist with this process and ensure the effectiveness of the product, LSC is establishing a Design Team composed of twelve members; up to six will be solicited through the LSC Web site and **Federal Register**. LSC is seeking external members representing national legal services advocacy organizations; individual recipients (preferable reflecting large/small and/or urban/rural diversity); clients; national and local organized bar associations; and other interested stakeholders. While there are no specific ''criteria'' for membership, it is expected that applicants will have the support of their organizations in participating in the effort and be knowledgeable about the issues. Interested parties should have experience in evaluating outcomes, particularly in civil legal services organizations. Understanding the goals and purposes of state planning and related issues is also critical.

There will be three meetings: March 13 to 15, 2002 in Washington, DC; April 16 and 17 in Cleveland; May 16 and 17, 2002. Participation in conference calls and other communications such as e-mail is also expected. The project will take nine months.

LSC hereby solicits expressions of interest in appointment to the Design Team from the civil legal services community, clients, advocates, the organized bar and other interested parties. Expressions of interest must be submitted no later than 15 days from the date of publication of this notice. Expressions of interest must be submitted in writing (by regular mail, fax or e-mail) to LSC's Patricia M. Hanrahan at the addresses listed in this notice.

Once LSC has received expressions of interest, the President working in consultation with the Vice President for Programs, will make appointments of individuals and organizations to the Design Team. Groups or organizations asked to participate in the Design Team will be responsible for selecting and designating their own representatives.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 02–520 Filed 1–8–02; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681–MLA–11; ASLBP No. 02–795–02–MLA]

International Uranium (USA) Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding:

International Uranium (USA) Corporation
White Mesa Uranium Mill

(Source Material License Amendment)

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a December 15, 2001 hearing request submitted by William E. Love. The request was filed in response to an NRC staff proposal, following a staff environmental assessment and finding of no significant impact, to authorize an amendment to the International Uranium (USA) Corporation (IUSA) source material license for its Blanding, Utah White Mesa Uranium Mill that would permit IUSA to receive and process alternate feed materials from the Molycorp site located in Mountain Pass, California. The notice of final finding of no significant impact and opportunity for a hearing was published in the **Federal Register** on December 11, 2001 (66 FR 64,064).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Rosenthal and Cole in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Alan S. Rosenthal, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 3rd day of January 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–496 Filed 1–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Portland General Electric Company; Trojan Independent Spent Fuel Storage Installation Notice of Docketing of Materials License SNM–2509 Amendment Application

By letter dated October 26, 2001, Portland General Electric Company (PGE) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR part 72, requesting the amendment of the Trojan independent spent fuel storage installation (ISFSI) license (SNM–2509) and the technical specifications for the ISFSI located in Columbia County, Oregon. PGE is seeking Commission approval to amend the materials license and the ISFSI technical specifications to reflect a change in supplier to Holtec International for portions of the Trojan ISFSI.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–17 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of December, 2001.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–497 Filed 1–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–338]

Virginia Electric and Power Company; North Anna Power Station, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License (FOL) No. NPF–4, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Unit 1, located in Louisa County, Virginia. As required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the FOL and Technical Specifications (TS) to remove expired license conditions, make editorial changes, relocate license conditions, remove redundant license conditions that are covered elsewhere in the license, and remove license conditions and TS associated with completed modifications.

The proposed action is in accordance with the licensee's application dated January 9, 2001.

The Need for the Proposed Action

The proposed action is needed because some requirements in the North Anna, Unit 1, FOL have become obsolete. In addition, the need for editorial changes has been identified.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed license amendment and associated changes to the TS are administrative in nature and have no effect on plant equipment or plant operation.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no

significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the North Anna Power Station, Unit 1, dated April 1973.

Agencies and Persons Consulted

On December 20, 2001, the staff consulted with the Virginia State official, Mr. Les Foldesi of the Virginia Department of Health, Bureau of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 9, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 3rd day of January, 2002.

For the Nuclear Regulatory Commission.

Stephen R. Monarque,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–498 Filed 1–8–02; 8:45 am]

BILLING CODE 7590–01–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: U.S. Commission on Ocean Policy.

ACTION: Notice; change of meeting time.

SUMMARY: The U.S. Commission on Ocean Policy will hold its first regional meeting, the Commission's third public meeting, to hear and discuss issues of concern to the Southeastern Region of the United States, covering the coastal area from Delaware to Georgia. Notice of this meeting was originally published on December 20, 2001. The purpose of this second notice is to provide new meeting times.

DATES: Meetings will now be held Tuesday, January 15, 2002 from 8:30 a.m. to 6:20 p.m. and Wednesday, January 16, 2002 from 8:45 a.m. to 5:00 p.m.

ADDRESSES: The meeting location is the Physicians Memorial Auditorium, College of Charleston, 66 George Street, Charleston, SC, 29424.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW, Washington, DC 20036, 202–418–3442, *tschaff@nsf.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Public Law 106–256, Section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by January 10, 2002 to the meeting Point of Contact. Additional meeting information, including a draft agenda, will be posted as available on the Commission's web site at *http://www.oceancommission.gov.*

Dated: January 3, 2002.

Admiral James D. Watkins,

USN (ret.), Chairman, U.S. Commission on Ocean Policy.

[FR Doc. 02–484 Filed 1–8–02; 8:45 am]

BILLING CODE 6820–WM–P

SECURITIES AND EXCHANGE COMMISSION

Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extensions:

Rule 701—OMB Control No. 3235–0522, SEC File No. 270–306

Regulations 14D and 14E—OMB Control No. 3235–0102, SEC File No. 270–114

Schedule 14D–9

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Securities Act rule 701 requires when offerings in excess of $5 million are made under the employee benefit plan exemptive rule, the issuers must provide the employees with risk and financial statement disclosures among other things. The purpose of rule 701 is to ensure that the basic level of information is available to employees and others when substantial amounts of securities are issued in compensatory arrangements. Approximately 300 companies annually rely on rule 701 exemption and it takes an estimated .5 hours to prepare and review. It is estimated that 25% of the 600 total annual burden hours (150 hours) is prepared by the company.

Regulations 14D and 14E and Schedule 14D–9 require information important to security holders in deciding how to respond to tender offers. Approximately 310 companies annually file Schedule 14D–9 and it takes 64.43 hours to prepare and review. It is estimated that 25% of the 79,803 total burden hours (19,973 burden hours) is prepared by the company.

Written comments are invited on: (a) Whether these collections of information are 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 of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: December 28, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–527 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extensions:

Rule 425—OMB Control No. 3235–0521, SEC File No. 270–462

Schedule TO—OMB Control No. 3235–0515, SEC File No. 270–456

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 425 requires the filing of certain prospectuses and communications under rule 135 in connection with business combinations. The purpose of the rule was to relax existing restrictions on oral and written communications with shareholders about tender offers, mergers and other business combination transactions by permitting the dissemination of more information on a timely basis as long as the written communications are filed on the date of first use. Approximately 5,739 issuers file communications under rule 425 for a total of 1,435 annual burden hours.

Schedule TO must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under section 12 of the Exchange Act (which offer, if consummated, would cause that person to own over 5 percent of that class of the securities) must file Schedule TO. The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. Approximately 3,038 issuers annually file Schedule TO and it takes 43.5 hours to prepare for a total of 132,153 annual burden hours. It is estimated that 50% of the 132,153 total burden hours (66,077 burden hours) is prepared by the company.

An agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 2, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–526 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549

Extension:

Form S–6—OMB Control No. 3235–0184, SEC File No. 270–181

Form N–8F—OMB Control No. 3235–0157, SEC File No. 270–136

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget (OMB) a request for extension of the previously approved collections of information discussed below.

Form N–8F is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that the registration of that investment company cease to be in effect. The form requests, from investment companies seeking a deregistration order, information about (i) the investment company's identity, (ii) the investment company's distributions, (iii) the investment company's assets and liabilities, (iv) the events leading to the request to deregister, and (v) the conclusion of business. The information is needed by the Commission to determine whether an order of deregistration is appropriate.

Form N–8F takes approximately 3 hours on average to complete. It is estimated that approximately 200 investment companies file Form N–8F annually, so that the total annual burden for the form is estimated to be 600 hours. The collection of information on Form N–8F is not mandatory. The information provided on N–8F is not kept confidential.

Form S–6 is used for registration, under the Securities Act of 1933 (1933 Act), the securities of any unit investment trust registered under the Investment Company Act of 1940 (1940 Act) on Form N–8B–2.[1] A separate registration statement under the 1933 Act must be filed for each series of units issued by the trust. Form S–6 consists of two parts. Part I contains the prospectus, and Part II consists of a list of exhibits and financial information and contains other information required in the registration statement but not required to appear in the prospectus.

Section 10(a)(3) of the 1933 Act (15 U.S.C. 77j(a)(3)) provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use. Unit investment trusts file post-effective amendments to their registration statements on Form S–6 in order to update their prospectuses. As a result, most unit investment trusts update their registration statements on Form S–6 on

[1] Form N–8B–2 is the form used for registration statements filed by unit investment trusts under the 1940 Act. The form requires that certain material information about the trust, its sponsor, its trustees, and its operation be disclosed. The registration on Form N–8B–2 is a one-time filing that applies to the first series of the unit investment trust as well as any subsequent series that is issued by the sponsor.

an annual basis in order that their sponsors may continue to maintain a secondary market in the units.

The purpose of the registration statement on Form S–6 is to provide disclosure of financial and other information that investors may use to make informed decisions regarding the merits of the securities offered for sale. To that end, unit investment trusts must furnish to investors a prospectus containing pertinent information set forth in the registration statement. Without the registration requirement, this material information would not necessarily be available to investors. The Commission reviews registration statements filed on Form S–6 to ensure adequate disclosure is made to investors.

Each year investment companies file approximately 3,639 Forms S–6. It is estimated that preparing Form S–6 requires a unit investment trust to spend approximately 35 hours so that the total burden of preparing Form S–6 for all affected investment companies is 127,365 hours. The collection of information on Form S–6 is mandatory. The information provided on Form S–6 is not kept confidential.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The Commission 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.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 3, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–528 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2008; 803–142]

Longview Management Group LLC; Notice of Application

January 3, 2002.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

Applicant: Longview Management Group LLC (''Longview'').

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(F) from section 202(a)(11) of the Advisers Act.

SUMMARY OF APPLICATION: Applicant requests an order declaring it to be a person not within the intent of section 202(a)(11), which defines the term ''investment adviser.''

FILING DATES: The application was filed on August 6, 1999 and amended on November 5, 2001 and December 19, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 30, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicant, Longview Management Group LLC, 222 North LaSalle Street, Suite 2000, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Don L. Evans, Staff Attorney, at (202) 942–0529 or Jennifer L. Sawin, Assistant Director, at (202) 942–0719 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102, (202) 942–8090.

Applicant's Representations

1. Applicant was organized in 1998 and is an investment adviser registered under the Advisers Act. Applicant is a ''family office'' for the members of the extended Crown family and was created to conduct the investment affairs and manage the assets of the Crown family. Applicant's sole equity holder is the Edward Memorial Trust, the ultimate beneficiaries of which solely are members of the Crown family.

2. Applicant represents that, although it employs a small number of non-Crown family members to assist in its day-to-day operations, most of its officers, employees and portfolio managers are Crown family members. Crown family members are solely responsible for key decisions, such as asset allocation and security selection, over Longview accounts.

3. Applicant performs advisory and portfolio management services for Crown family members and for individual accounts, trusts, corporations, partnerships and other entities that are beneficially owned by or for the benefit of the various members of the Crown Family and which are operated by members of the family (''Crown Family Investment Entities'').

4. Applicant also provides portfolio management services to three types of charitable entities: (1) charitable entities created solely by the Crown family and administered under the sole discretion of the Crown family, (2) a charitable entity created by the Crown family but under the control of an independent board of directors, which includes members of the Crown family, and (3) a charitable entity which was formed and funded by friends of Henry Crown after his death and which is managed by Applicant.

5. Applicant also provides advisory and portfolio management services for the assets of a small number of individuals who are not members of the Crown family. Applicant provides advisory and portfolio management services to the families of two longtime Crown family employees. The two employees are now deceased and the assets were placed under Longview's management prior to their deaths. Applicant also manages the assets of two individuals that the Crown family has allowed to invest, along with family members, in a Crown Family Investment Entity that holds a diversified basket of marketable securities. These two individuals are a long-time former employee of Henry Crown & Company with over 40 years of service to the Crown family, and a long-time Crown family attorney with over 50 years of

service to the family. Applicant states that the number of investments by these individuals has declined over time and is no longer permitted. In addition, Applicant manages certain investment vehicles (e.g., limited liability companies or limited partnerships) (each such entity an ''Investment Vehicle'') that the Crown family uses to purchase an asset such as an operating entity. On occasion, the Crown family has permitted a non-Crown family member to participate in the Investment Vehicle. The total amount of non-Crown family member assets to which Applicant provides services is less than 1.34% of the total assets managed by Applicant.

6. Applicant does not hold itself out to the public as an investment adviser and states that it is not listed in the phone book or any other directory as an investment adviser. Applicant does not engage in any advertising, attend investment management-related conferences as a vendor, or conduct any marketing activities.

7. Applicant states that it does provide, as a part of the comprehensive services it provides to Crown family members, a limited amount of certain administrative services to its clients, through a contract with Henry Crown & Company LLC (''HC&Co.'').

8. Applicant represents that the fees charged for its investment advisory services are far below market prices for such services because they are intended to cover Applicant's costs for providing such services and not to serve as a profit center for the Crown family. Applicant states that it uses the fees it receives to pay for the administrative services HC&Co. provides through its contract with Applicant.

9. Applicant has no public clients in the sense of retail or institutional investors and has no plans, now or in the future, to solicit or accept clients from the retail public.

Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines ''investment adviser'' to mean ''any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. . . .''

2. Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of ''investment adviser'' persons that are not within the intent of section 202(a)(11).

3. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement. Applicant asserts that it has determined it does not qualify for any of the exemptions provided by section 203(b). Applicant states that it is not prohibited from registering with the SEC under section 203A(a) of the Advisers Act.

4. Applicant asserts that there is no public interest in requiring it to be registered under the Advisers Act. Applicant states that it is a private organization that was formed to be the ''family office'' for the Crown family. Applicant represents that all of its clients have a close relationship with the Crown family in that they are all either immediate members of the Crown family, a Crown Family Investment Entity or a limited number of close, long-time family associates and their descendants, as well as the senior executives of Longview and certain operating companies. Applicant states that it was organized to provide a ''family office'' for the Crown family, and that is, and will be, the sole purpose for its existence.

5. Applicant requests exemptive relief from section 203(a) of the Advisers Act and requests that the SEC issue an order under section 202(a)(11)(F) declaring it to be a person not within the intent of section 202(a)(11).

Applicant's Conditions

1. Non-Crown family members to whom Longview provides investment advice, including through investments in Crown Family Investment Entities, are limited to their current investments.

2. No new non-Crown family member may make an investment in a Crown Family Investment Entity or in an Investment Vehicle to which Longview provides investment advice.

3. Longview will not enter into any new advisory relationships with a non-Crown family member.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–525 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25354; 812–12728]

American Balanced Fund, Inc., *et al.*

January 3, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for relief from section 2(a)(19) of the Act.

SUMMARY OF APPLICATION: Applicants request an order under section 6(c) of the Act declaring that a director on the boards of certain registered investment companies, who also is an outside director for the parent company of a registered broker-dealer, will not be deemed an ''interested person'' of the registered investment companies.

Applicants: American Balanced Fund, Inc. (''AMBAL''), Fundamental Investors, Inc. (''FI''), The New Economy Fund (''NEF''), SMALLCAP World Fund, Inc. (''SCWF''), The Growth Fund of America, Inc. (''GFA''), and The Income Fund of America, Inc. (''IFA'') (collectively, the ''Funds''); Capital Research and Management Company (''Capital Research''); and American Funds Distributors, Inc. (''AFD'').

FILING DATES: The application was filed on December 20, 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 28, 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 5th Street, NW., Washington, DC 20549–0609. Applicants: 333 South Hope Street, Los Angeles, CA 90071–1447.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. NEF is a Massachusetts business trust. AMBAL, FI, GFA, SCWF and IFA are Maryland corporations.

2. Capital Research, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser to the Funds and certain other registered investment companies. The Funds and these investment companies, together with any future registered investment company advised by Capital Research, are referred to as the ''American Funds.'' AFD, a wholly-owned subsidiary of Capital Research, is the principal underwriter of the Funds.

3. Each Fund has a board of directors (''Board''), a majority of whom are not ''interested persons'' within the meaning of section 2(a)(19) of the Act. ICA and NPF also have advisory boards, as defined in section 2(a)(1) of the Act, whose members consult with Capital Research and the Funds' Boards.

4. Patricia K. Woolf serves as a director of the Funds. The Funds, together with such other American Funds that in the future elect Ms. Woolf as a director or advisory board member who is not an ''interested person'' of the American Fund within the meaning of section 2(a)(19) of the Act, are referred to as the ''Applicant Funds.'' Ms. Woolf's principal occupation is as a lecturer at Princeton University. Ms. Woolf also is a non-employee director of National Life Holding Company (''NLHC'').[1] NLHC is a mutual insurance holding company that is primarily engaged in the life insurance business. One of NLHC's indirect wholly-owned subsidiaries is Equity Services, Inc. (''ESI''), a broker-dealer registered under the Securities Exchange Act of 1934. Approximately 3.2% of NLHC's consolidated revenues comes from ESI.[2]

5. ESI is a relatively small retail-oriented firm. It does not execute any portfolio transactions for the American Funds. ESI provides *de minimis* distribution services to the American Funds. The gross sales by ESI of shares of the American Funds during the period January 1, 1998 through December 31, 2000 was approximately $61.83 million, or 0.05% of the total gross sales of American Funds shares by all broker-dealers for the same period. The fees received by ESI from the sale of shares of the American Funds during 2000 represented approximately 0.07% of NLHC's total consolidated revenues. The American Funds have adopted plans pursuant to rule 12b–1 under the Act and make payments to their distributors, including ESI, pursuant to those plans.

Applicants' Legal Analysis

1. Section 2(a)(19)(A)(v) of the Act defines an ''interested person'' of an investment company to include any person or any affiliated person of a person that, at any time during the last six months, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for (a) the investment company; (b) any other investment company having the same investment adviser or holding itself out to investors as a related company for purposes of investment or investor services; or (c) any account over which the investment company's investment adviser has brokerage placement discretion. Applicants state that Ms. Woolf may be deemed an affiliated person of ESI by virtue of her position as a director of NLHC, an entity that controls ESI within the meaning of section 2(a)(9) of the Act. Because Ms. Woolf may be deemed an affiliated person of ESI, Ms. Woolf currently is considered an interested person of the Funds.

2. Applicants believe that, because Ms. Woolf's affiliation with ESI is solely the result of her position as a non-employee director of NLHC, and because ESI provides only *de minimis* distribution services to the American Funds, it would be more appropriate to treat Ms. Woolf as an independent director. Applicants thus request an order under section 6(c) of the Act declaring that Ms. Woolf will not be deemed an interested person under section 2(a)(19) of the Act.[3]

4. Section 6(c) of the Act provides, in part, that the Commission may exempt any person from any provision of the Act or any rule under the Act if and to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants contend that their request for relief from interested person status for Ms. Woolf meets this standard because Ms. Woolf's relationship with ESI is attenuated and poses no real or potential conflict of interest and because ESI's only business relationship with the Funds involves a *de minimis* amount of distribution services for the Funds.

5. Applicants state that, in her position as a non-employee director of NLHC, Ms. Woolf has no authority or responsibility for the operations of ESI and does not control or influence the day-to-day management of ESI. Applicants also represent that Ms. Woolf has no material business or professional relationship with NLHC, ESI, the American Funds, Capital Research, AFD or any affiliated person of these entities.

6. Applicants state that, as one of the conditions to the proposed relief, certain requirements will apply if the Commission has declared by order (''Status Order'') the non-interested status of more than one director serving on the Board of a particular Applicant Fund, and the director is an affiliated person of, or an affiliated person of an affiliated person of, a broker or dealer doing a limited amount of business with one or more American Funds (a ''B–D Director'').[4] In such a case, the Applicant Fund would not rely on Status Orders relating to more than one B–D Director in complying with all applicable board composition requirements under the Act (including regulations under the Act) (''Board Composition Requirements''). In addition, for purposes of actions requiring the separate vote of a majority of the Applicant Fund's non-interested directors (''Special Voting Requirements''), only one of the B–D Directors would be counted as a non-interested director.

[1] In 2000, Ms. Woolf's aggregate compensation from NLHC (consisting of annual retainer and meeting fees, and term insurance) was $43,080. Ms. Woolf, as a policyowner of National Life Insurance Company, a subsidiary of NLHC, is entitled to one vote at meetings of the members of NLHC. During 2000 and 2001, Ms. Woolf received advice from an employee of ESI regarding certain estate planning issues. In addition, in the future Ms. Woolf may establish a brokerage or similar account with ESI (or an affiliate thereof). In each case, the transaction or relationship was, or would be, a routine, retail transaction or relationship under which Ms. Woolf was not, or will not be, accorded special treatment.

[2] This figure is based on NLHC's consolidated revenues in 2000.

[3] Applicants are not requesting relief from the provisions of rule 12b–1(b)(2) that require a rule 12b–1 plan to be approved by the directors of an investment company ''who * * * have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan.'' Applicants state that they intend to treat Ms. Woolf as a director who meets these requirements, based on Ms. Woolf's lack of a material business or professional relationship with NLHC or ESI. Applicants represent that, should Ms. Woolf develop a direct or indirect financial interest in the operation of the American Funds' rule 12b–1 plans, she will no longer be treated as meeting the above requirements of rule 12b–1.

[4] In 1998, the Commission granted an order to Capital Research, AFD, and certain American Funds, permitting the applicants to treat William H. Kling as a non-interested director. EuroPacific Growth Fund, Investment Company Act Release Nos. 23307 (July 9, 1998) (notice) and 23374 (Aug. 4, 1998) (order).

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The American Funds will comply with all of the requirements of section 2(a)(19) of the Act (and any rules thereunder) except for the clauses concerning the distribution of investment company shares in subparagraphs (A)(v) and (B)(v) of section 2(a)(19), as those clauses relate to distribution of shares of the American Funds by ESI.

2. The amount of distribution business engaged in by ESI on behalf of any one Applicant Fund (other than a money market fund) may not exceed five percent of gross share sales (prior to payment of dealer and underwriter commissions) for such Applicant Fund.

3. The amount of distribution business engaged in by ESI on behalf of all American Funds in the aggregate may not exceed five percent of gross share sales (prior to payment of dealer and underwriter commissions and exclusive of money market fund share sales) for American Funds in the aggregate.

4. No more than one percent of NLHC's consolidated gross revenues may come from sales by ESI of shares on behalf of any one Applicant Fund.

5. No more than five percent of NLHC's consolidated gross revenues may come from sales by ESI of shares on behalf of all American Funds in the aggregate.

6. ESI may not serve as a regular broker or dealer, as defined in rule 10b–1 under the Act, for any American Fund.

7. To the extent Board Composition Requirements or Special Voting Requirements are applicable, each Applicant Fund will comply with such requirements without taking into account more than one B–D Director subject to a Status Order. For all other purposes under the Act, each Applicant Fund may treat as ''non-interested'' all B–D Directors subject to one or more Status Orders.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–524 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45232; File No. SR–DTC–2001–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Deadline in Connection With the Direct Registration System Facility

January 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 3, 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In File No. SR–DTC–2001–07, DTC established a deadline of November 1, 2001, by which (i) All securities issues eligible for DTC's Direct Registration System (''DRS'') which do not participate in the Profile Modification System (''Profile''), which is part of DRS, were to move to Profile and (ii) a request by a broker for a withdrawal by transfer (W.T.) for a DRS-eligible security which W.T. does not specifically request a certificate was to automatically default to a DRS book-entry position (an ''S'' position) on the books of the issuer or its transfer agent.[2] The proposed rule change extends the November 1, 2001, deadline to December 14, 2001.

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 these statements.[3]

(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 allow issuers and their transfer agents adequate time to move all DRS-eligible securities issues to Profile.[4] Due to the events of September 11, 2001, and ensuing communications problems, some issuers and their transfer agents found it difficult to meet the November 1, 2001 deadline.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because it will encourage more issuers to allow their securities to be included in Profile which is an integral part of DRS. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the operation of DRS, as modified by the proposed rule change, will be similar to the current operation of DRS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse 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

Written comments from DTC Participants or others have not been solicited or received on the proposed rule change. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii)[5] of the Act and Rule 19b–4(f)(4)[6] promulgated thereunder because the proposal effects a change in an existing service of DTC that (A) does not adversely affect the safeguarding of securities or funds in the custody or

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44696 (August 14, 2001), 66 FR 43939.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] For previous orders relating to Profile, refer to Securities Exchange Act Release Nos. 41862 (September 10, 1999), 64 FR 51162; 42366 (January 28, 2000), 65 FR 5714; 42704 (April 19, 2000), 65 FR 24242; 43586 (November 17, 2000), 65 FR 70745; 44696 (August 14, 2001), 66 FR 43939.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

control of DTC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of DTC or persons using the service because the proposed rule change consists of an interpretation of a prior DTC filing on Form 19b–4. 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 chnage 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 section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2001–18 and should be submitted by January 30, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–522 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45229; File No. SR–NASD–2001–91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Establishing Effective Date of Rules Requiring Debt Securities Reporting and Dissemination (TRACE Rules)

January 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 13, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), 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 NASD Regulation. NASD Regulation has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act.[3] 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

NASD Regulation is filing a proposed rule change to establish July 1, 2002 as the effective date for the new Rule 6200 Series (''TRACE Rules''). The TRACE Rules, when effective, will require NASD members to report secondary market transactions in eligible debt securities to the NASD and will subject certain transaction information to dissemination. The NASD also is proposing to replace the term, ''Trade Reporting and Comparison Entry Service'' with ''Trade Reporting and Compliance Engine.'' This change preserves the ''TRACE'' acronym, by which the system is commonly known, while more accurately describing the functions of the TRACE system.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(1).

[4] The SEC approved the Rule 6200 Series on January 23, 2001. *See* Securities Exchange Act Release No. 43873 (January 23, 2001); 66 FR 8131 (January 29, 2001) (SR–NASD–99–65) (''TRACE Approval Order'').

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are [bracketed].

* * * * *

6200. *Trade Reporting and Compliance Engine (Trace)* [Trade Reporting and Comparison Entry Service (Trace)]

6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in the Association's By-Laws and Rules unless otherwise specified.

(a) No change.

(b) The term *''Trade Reporting and Compliance Engine''* [''Trade Reporting And Comparison Entry Service''] or ''TRACE'' shall mean the automated system owned and operated by the NASD that, among other things, accommodates reporting and dissemination of transaction reports where applicable in TRACE-eligible securities and which may submit ''locked-in'' trades to National Securities Clearing Corporation for clearance and settlement and provide participants with monitoring and risk management capabilities to facilitate a ''locked-in'' trading environment.

(c) through (i). No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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 NASD is filing the proposed rule change to establish July 1, 2002 as the effective date of the TRACE Rules and to substitute the term, ''Trade Reporting and Compliance Engine,'' within the rules for the term, ''Trade Reporting and Comparison Entry Service,'' as discussed in greater detail below.

a. *Effective Date.* The NASD is filing the proposed rule change to establish July 1, 2002 as the effective date of the

TRACE Rules. The TRACE Rules, when effective, will require NASD members to report secondary market transactions in eligible debt securities to the NASD and will subject certain transaction information to dissemination.

In the TRACE Approval Order, the Commission stated that the effective date of the TRACE Rules should be 180 days after the date that the NASD provided technical specifications concerning TRACE to members to allow members to make the system changes necessary to comply with TRACE.[5] On June 1, 2001, the NASD published technical specifications.[6] Subsequently, the NASD targeted the first day of reporting under the TRACE system as February 4, 2002,[7] which was the time the NASD estimated was needed to complete development of the system, provide members and vendors time to implement the specifications published on June 1, 2001, and avoid the implementation of an industry-wide regulatory program during a major holiday.

The NASD represents that, since the September 11, 2001 terrorist attacks, it has worked with its members to help the securities industry recover from the attacks. As part of this process, the NASD is delaying the TRACE implementation date to allow its members the time they need to re-establish, to the extent possible, normal business operations. The NASD determined that the original February 2002 implementation date would have been a hardship on the industry in its efforts to recover from September 11. Accordingly, the NASD is proposing to implement the TRACE system, including the TRACE Rules, on July 1, 2002.

b. *Renaming the Initiative.* At the same time, the NASD proposes to substitute a new term, ''Trade Reporting and Compliance Engine,'' for the term used for the TRACE system and related rules approved by the SEC on January 23, 2001. The current term, ''Trading Reporting and Comparison Entry Service,'' was developed when the NASD proposed to provide comparison services as part of the TRACE initiative. In the TRACE Approval Order, the Commission noted that the NASD intended to rename the system and the related rules.[8] By substituting the new term, ''Trade Reporting and Compliance Engine,'' the NASD is able to eliminate the reference to the comparison function, which will no longer be part of TRACE, while preserving the acronym, ''TRACE,'' which is currently in widespread use.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD's proposed rule change, if approved, will implement existing rules for the reporting and dissemination of information on eligible debt securities transactions. NASD believes that the proposed rule change will provide the NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with heightened capabilities to regulate the debt securities markets to prevent fraudulent and manipulative acts and practices; and that the proposed rule change, by requiring reporting and dissemination of such transaction information, will protect investors and the public interest by, among other things, increasing transparency in the debt securities markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Association as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under Rule 19b–4(f)(1) under the Act.[9] It has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 purpose 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. 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 NASD. All submissions should refer to File No. SR–NASD–2001–91 and should be submitted by January 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–523 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* Amendment No. 4 to SR–NASD–99–65, dated January 5, 2001, p. 4.

[6] *See* NASD Regulation web site at *http://www.nasdr.com/trace.htm.*

[7] The NASD clarified the timing of its targeting of the February 4, 2002 date in a telephone conversation between Sharon K. Zackula, Assistant General Counsel, NASD Regulation and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission (January 3, 2002).

[8] TRACE Approval Order, 66 FR 8131, 8132, n. 11.

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30-(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45225; File No. SR–NASD–2001–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Service of Process for Arbitration

January 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') 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 NASD Dispute Resolution. NASD Dispute Resolution submitted Amendment No. 1 to the proposed rule change on December 7, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to add a new rule to the NASD Code of Arbitration Procedure to give claimants who are represented by counsel the option of serving initial arbitration claims on respondents directly, rather than having NASD Dispute Resolution staff serve those respondents. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

103xx.[4] Optional Direct Service by Claimant

(a) General

A Claimant who is represented by counsel may serve a Respondent directly instead of initiating the Claim in the manner provided by Rule 10314(a). Claimant shall serve the following documents upon any Respondent that Claimant chooses to serve directly: a Statement of Claim specifying the relevant facts and the remedies sought, together with the documents in support of the Claim, the Uniform Submission Agreement, and a copy of NASD Form XYZ.[5]

(b) Manner of Service

Service may be made under this Rule in the manner provided for service of demands for arbitration under the law of the jurisdiction in which the Respondent is being served.

(c) Additional Mailing

(1) No later than one business day following service on the first Respondent to be served under this Rule, Claimant shall mail a copy of the Statement of Claim to all Respondents together with information stating which Respondents were served in accordance with this Rule.

(2) If any Respondent is a member, the mailing shall be addressed ''Attention Legal and Compliance Department'' and sent to the main office of the member. The outside of the envelope shall state: ''Important Legal Documents Enclosed.''

(d) Filing with the Association

Within twenty (20) days of service on the last Respondent whom Claimant serves under this Rule, Claimant must file with the Director of Arbitration;

(1) An affidavit of service on each Respondent served;

(2) The names of any additional Respondents whom Claimant wants the Association to serve;

(3) An affidavit of mailing in accordance with paragraph (c);

(4) An executed Submission Agreement;

(5) A Statement of Claim of the controversy in dispute, together with the documents in support of the Claim, in the form in which it was served on Respondent(s);

(6) The required deposit; and

(7) Sufficient additional copies of the Submission Agreement, the Statement of Claim and supporting documents for each party that has not been served directly and for each arbitrator.

(e) Time to Answer

When filing under paragraph (d) is complete and any deficiencies have been resolved, the Association shall acknowledge that fact in writing to all parties. All time periods that are measured from receipt of the Statement of Claim or service of a Claim under Rule 10314(b) shall commence upon receipt of such written notification from the Association.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution 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. NASD Dispute Resolution 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

NASD Dispute Resolution proposes an optional procedure to allow arbitration claimants who are represented by counsel the choice of serving respondents directly. The proposed rule could be used to serve some respondents and not other respondents in a given case, as claimant chooses. NASD Dispute Resolution staff would serve any remaining respondents as usual. The National Arbitration and Mediation Committee of NASD Dispute Resolution recommended adoption of the proposed rule in response to suggestions from some frequent users of the NASD Dispute Resolution arbitration forum who normally represent claimants and requested an optional direct service process.

As background, the current procedure is for all initial claims to be served by NASD Dispute Resolution.[6] After resolving any deficiencies, such as missing or unsigned documents or improper fees, NASD Dispute Resolution serves all respondents at the same time. Respondents then have 45 calendar days from receipt of the claim in which to answer.

NASD Dispute Resolution believes that the proposed rule contains several safeguards to ensure that the direct service option would result in proper service. For the protection of claimants whose awards might later be challenged because of improper service, use of the proposed rule is limited to parties that are represented by counsel, who would be familiar with applicable law concerning service of demands for arbitration. To avoid any detriment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Jean I. Feeney, Chief Counsel, NASD Dispute Resolution, to Florence Harmon, Assistant Director, Division of Market Regulation, Commission, dated December 7, 2001 (''Amendment No. 1''). Amendment No. 1 makes certain technical changes to the proposed rule language. Amendment No. 1 also clarifies that the phrase ''the law of the jurisdiction in which the Respondent is being served'' in paragraph (b) of the proposed Rule 103xx refers to state rather than federal law, and could encompass the laws of the District of Columbia. Finally, Amendment No. 1 states that NASD Dispute Resolution will provide NASD Form XYZ to the Commission prior to the Commission's approval of the proposed rule change.

[4] A rule number will be assigned prior to implementation of the proposed rule change.

[5] This form will explain the direct service process. It will be drafted and assigned an official number prior to implementation of the proposed rule change.

[6] NASD 10314(a) sets forth the process for initiating a proceeding. Under NASD Rules 10314(b) and (c), and 10328(a), the parties already serve directly any counterclaims, cross-claims, third-party claims, or amended pleadings.

where there is a delay in serving all respondents, the proposed rule requires a notice to all respondents immediately after the first respondent has been served directly. To forestall the possibility that a member firm may not be aware of service on a remote branch office, the proposed rule requires the claimant, no later than one business day following service on the first respondent to be served under the proposed rule, to provide all respondents with the Statement of Claim and information indicating which respondents were served in accordance with this rule. Such information is to be sent to the main office of a member firm, addressed to the Legal and Compliance Department, in an envelope marked on the outside to indicate its importance. Finally, to avoid having different or uncertain due dates for answers, the time to answer would not begin to run until NASD Dispute Resolution notified all parties of the due date, as described below.

Following direct service on all respondents to be served directly, claimants must file the claim and submission agreement, affidavits of service and mailing, other related documents, and the proper fees with NASD Dispute Resolution. If claimants wish NASD Dispute Resolution to serve any remaining respondents, they must provide that information as well. The NASD Dispute Resolution staff would review such submissions for any deficiencies, as at present. Once any deficiencies have been resolved, NASD Dispute Resolution would notify the parties and the time to answer would begin to run. Details of the proposed rule are set forth below.

Highlights of Proposed Rule

Proposed paragraph (a) states that claimants who are represented by counsel may elect to serve any respondent directly. Claimants are not required to use this rule, nor are they required to use the rule for all respondents in a particular case. For example, claimants may be willing to serve an active member firm respondent directly, but may be unsure of how to find and serve a particular associated person respondent. In such a case, NASD Dispute Resolution would serve the associated person as it does now.

Along with the Statement of Claim specifying the relevant facts and the remedies sought, claimants must serve any documents in support of the claim, the Uniform Submission Agreement, and a copy of a standard cover letter explaining the process in simple terms (temporarily referred to as ''NASD Form XYZ'' in the proposed rule). That cover letter would indicate to the respondent being directly that: (i) the respondent need to file an answer to the claim at this time, and (ii) the arbitration claim is not reportable to the Central Registration Depository (CRD) by respondents who are associated persons until NASD Dispute Resolution notifies the respondent in writing as provided in paragraph (e) of the proposed rule. The proposed cover letter would be made available to claimants and would be posted on the NASD Dispute Resolution Web site.

Proposed paragraph (b) provides that claimants exercising the option of directly serving respondents must serve the claim in the manner provided for service of demands for arbitration under the law of the state or other jurisdiction in which the respondent is being served. NASD Dispute Resolution would not be providing advice to claimants on such legal requirements; as noted above, this procedure is only available to parties who are represented by counsel.

Proposed paragraph (c)(1) requires the claimant to mail a copy of the Statement of Claim to all respondents together with information stating which respondents were served in accordance with the proposed rule, and to do this no later than one business day following service on the first respondent to be served under the rule.

Paragraph (c)(2) requires that mailings addressed to respondents who are members must be addressed to the Legal and Compliance Department of the firm, sent to the main office, and state on the envelope: ''Important Legal Documents Enclosed.'' This would alert the member firm immediately, and will reduce the chance that service would be made on the wrong office.

Proposed paragraph (d) provides that claimant must file the enumerated documents, including affidavits of service, with the Director of Arbitration within 20 days of service on the last respondent whom claimant serves under the proposed rule. Proposed paragraph (e) provides that time periods measured from receipt of the Statement of Claim or service of a claim under Rule 10314(b) would commence upon receipt of written notification from the Association. The claim would not be considered officially filed until deficiencies have been resolved, as in the current procedure. When the filing is complete, the staff would acknowledge that fact in writing, and the time to answer would begin for all respondents. This prevents the confusion that would occur if the time to answer began to run when each respondent was served.

b. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that the proposed rule change will protect investors and the public interest by giving claimants the option of serving claims directly and by providing specific procedures to ensure that service is accomplished properly.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not solicited or received.

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 NASD Dispute Resolution 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 proposal, as amended, 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

[7] 15 U.S.C. 78*o*–3(b)(6).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2001–55 and should be submitted by January 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–530 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45227; File No. SR–SCCP–2001–11]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Extending Approval of Restructured and Limited Clearing Services

January 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 17, 2001, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by SCCP. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP proposes to extend, for a one year period ending December 31, 2002, the ability to provide limited clearance and settlement services. Specifically, SCCP seeks to continue to provide trade confirmation and recording services for members of the Philadelphia Stock Exchange, Inc. (''Phlx'') effecting transactions through Regional Interface Operations (''RIO'') and ex-clearing accounts. SCCP will also continue to provide margin accounts to certain participants cleared through an account established by SCCP at the National Securities Clearing Corporation (''NSCC'').[2]

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.[3]

(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 continue SCCP's restructured and limited clearance and settlement business for an additional one year period ending December 31, 2002. In an agreement dated as of June 18, 1997, (''Agreement'') by and among the Phlx, SCCP, Philadelphia Depository Trust Company (''Philadep''), NSCC and The Depository Trust Company (''DTC''), Philadep and SCCP agreed to certain provisions, including that: (i) Philadep would cease providing securities depository services; (ii) SCCP would make available to its participants access to the facilities of one or more other organizations providing depository services; (iii) SCCP would make available to SCCP participants access to the facilities of one or more other organizations providing securities clearing services; and (iv) SCCP would transfer to the books of such other organizations the CNSS system open positions of SCCP participants on the books of SCCP.

In December, 1997, the Commission approved a proposed rule change which gave effect to this Agreement and which reflected Philadep's withdrawal from the depository business and SCCP's restructured and limited clearance and settlement business.[4] In that approving order, the Commission stated, ''because a part of SCCP's proposed rule change concerns the restructuring of SCCP's operations to enable SCCP to offer limited clearing and settlement services to certain Phlx members, the Commission finds that it is approprirate to grant only temporary approval to the portion of SCCP's proposed rule change that amends SCCP's By-Laws, Rules or Procedures. This will allow the Commission and SCCP to see how well SCCP's restructured operations are functioning under actual working conditions and to determine whether any adjustments are necessary. Thus, the Commission is approving the portion of SCCP's proposal that amends its By-Laws, Rules and Procedures through December 31, 1998.'' In December 1998, December 1999, and December 2000, one-year extensions of such approval were granted by the Commission to continue SCCP's restructured and limited clearance and settlement services.[5]

SCCP is hereby requesting an additional one year extension of such approval noting that such extension is appropriate in order that SCCP may continue to provide services to its participants. SCCP believes that its restructured operations have functioned consistent with the original proposed rule change, and SCCP will continue to evaluate whether any adjustments are necessary.

In the original proposed rule change and order approving SCCP's restructured business, many SCCP rules were amended and discussed at length. No new rule changes are proposed at this time. Thus, the purpose of the proposed rule change is to extend the effectiveness of SCCP's restructured business.

SCCP believes that the extension of the Commission's temporary approval to permit SCCP's continued operation of its restructured and limited clearance and settlement services is consistent with the requirements of the Act and the rules and regulations thereunder applicable to SCCP and in particular with Section 17A(b)(3)(F) which requires that a clearing agency be organized and its rules be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions. SCCP believes that the extension of SCCP's restructured business should promote the prompt and accurate

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* SCCP Rule 1.

[3] The Commission has modified the text of the summaries prepared by SCCP.

[4] Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703 (December 19, 1997) (SR–SCCP–97–04).

[5] Securities Exchange Act Release Nos. 40872 (December 31, 1998), 64 1264 (January 8, 1999) (SR–SCCP–98–05); 42320 (January 6, 2000), 65 FR 2218 (January 13, 2000) (SR–SCCP–99–04); and 43781 (December 28, 2000), 66 FR 1167 (January 5, 2001) (SR–SCCP–00–05).

clearance and settlement of securities transactions by integrating and consolidating clearing services available to the industry.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that this extension should impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Based on the information the Commission has to date, the Commission believes that SCCP's restructured operations have functioned satisfactorily to provide prompt and accurate clearance and settlement. During the upcoming temporary approval period, the Commission expects to review with SCCP in detail the functioning of SCCP's restructured operations.

SCCP has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will allow SCCP to continue to offer its restructured clearing operations for another year without interruption.

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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–2001–11 and should be submitted by January 30, 2002.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–SCCP–2001–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–529 Filed 7–8–02; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–11237]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0596 and 2115–0597

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Claims Under the Oil Pollution Act of 1990, and (2) State Access to The Oil Spill Liability Trust Fund For Removal Costs Under the Oil Pollution Act of 1990. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before March 11, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2001–11237] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. 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) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

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

The Docket Management Facility maintains the public docket for this 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 docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2001–11237], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* Claims Under the Oil Pollution Act of 1990.

OMB Control Number: 2115–0596.

Summary: The Coast Guard will use the information collected to determine whether claims submitted to the Oil Spill Liability Trust Fund are compensable and, if they are, to ensure that the Fund reimburses them in the correct amounts.

Need: Coast Guard will ensure the making of fair and reasonable payments to claimants and will protect the interest of the Federal Government. Claims that are submitted must be fully substantiated, and the procedures for advertising and presentation of claims must be followed, as required by OPA 90 [33 U.S.C. 2708, 2713 and 2714].

Respondents: Claimants and responsible parties of oil spills.

Frequency: On occasion.

Burden Estimate: The estimated burden is 13,722 hours a year.

2. *Title:* State Access to the Oil Spill Liability Trust Fund for Removal Costs Under the Oil Pollution Act of 1990.

OMB Control Number: 2115–0597.

Summary: The Coast Guard will use information provided by the State to the Coast Guard National Pollution Funds Center to determine whether expenditures submitted by the state to the Fund are compensable and, if they are, to ensure payment of the correct amount of funding from the Oil Spill Liability Trust Fund.

Need: Under the authority of 33 U.S.C. 2712, Coast Guard has promulgated regulations detailing the manner in which to obligate the Fund. To ensure fair and reasonable payments to States and to protect the interests of the Federal Government, States must fully substantiate all expenditures that they submit and must follow the procedures for presentation of those expenditures to the Fund.

Respondents: State Governments.

Frequency: On occasion.

Burden Estimate: The estimated burden is 3 hours a year.

Dated: December 31, 2001.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 02–547 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10998]

National Coast Guard Museum; Environmental Assessment

AGENCY: Coast Guard, DOT.

ACTION: Notice; extension of comment period.

SUMMARY: On November 21, 2001, the Coast Guard published a notice requesting comments on a draft Environmental Assessment (EA) regarding the National Coast Guard Museum in New London, Connecticut. During the review period, the potential threat from anthrax-contaminated mail caused considerable delay in the delivery of mail, the EA was not immediately available in the docket, and a comment was received regarding more time needed to review references in the EA. Because of these factors, the Coast Guard is extending the comment period through February 8, 2002.

DATES: Comments on the draft Environmental Assessment must reach the Docket Management Facility on or before February 8, 2002.

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

(1) By mail to the Docket Management Facility, (USCG–2001–10998), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

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

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

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

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public thus far as well as the draft Environmental Assessment (EA) are part of this docket, these and future comments received 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 docket, including the draft EA, on the Internet at *http://dms.dot.gov.* (Once you enter the web site, click on ''Search,'' enter the last five digits of the docket number (''10998'') in the search box, and press the Enter key.)

FOR FURTHER INFORMATION CONTACT: If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number (USCG–2000–7514), indicate the specific proposed change to which each comment applies, and give the reason for each comment. You may submit your comments and materials by mail or hand delivery, submit them in an unbound format, no larger than 8½ x 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received on or before February 8, 2002.

SUPPLEMENTARY INFORMATION: On November 21, 2001, the Coast Guard published a notice in the **Federal Register** (66 FR 58547) requesting comments on a draft Environmental Assessment (EA). The EA reviewed the proposal to accept a gift of land for purposes of relocating the Coast Guard Museum to a site near the U.S. Coast Guard Academy in New London, Connecticut. During the initial comment period, the EA was not immediately available in the docket, a comment was received regarding more time needed to review references in the EA, and the potential threat from anthrax-contaminated mail caused considerable delay in the delivery of mail. Because of these factors, the Coast Guard is extending the comment period through February 8, 2002.

Dated: January 2, 2002.

K. J. Eldridge, RADM,

Assistant Commandant for Governmental and Public Affairs.

[FR Doc. 02–548 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–11236]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The License Implementation Working Group of the Towing Safety Advisory Committee (TSAC) will meet to discuss and develop the performance criteria to be used with the Towing Officer Assessment Record (TOAR)

required in Title 46, Code of Federal Regulations 10.304(h). The meetings are open to the public.

DATES: The Working Group will meet on Tuesday, February 12, 2002, from 1 p.m. to 5 p.m., and on Wednesday, February 13, 2002, from 8:30 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before February 5, 2002.

ADDRESSES: The Working Group will meet in the 7th Floor, All-Hands Conference Room at Coast Guard's National Pollution Fund Center, 4200 Wilson Blvd., Arlington, VA. Send written materials and requests to make oral presentations to Mr. Gerald P. Miante; Commandant (G–MSO–1), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov. Security notice:* All non-military/government participants MUST first go to the 10th floor of the Pollution Fund Center's offices with a photo ID (driver's license) and sign in. You will then receive a 2-day pass for the meetings.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, TSAC, telephone 202–267–0229, fax 202–267–4570, or e-mail at: gmiante@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. The performance criteria to be discussed at this working group meeting, when developed, will be announced by a notice in the **Federal Register** and made available for review and comment. Sample Towing Officer Assessment Records (TOARs) were published on May 21, 2001, as part of the Navigation and Vessel Inspection Circular 4–01 (NVIC 4–01) entitled ''Licensing and Manning for Officers of Towing Vessels.'' This NVIC provides guidance on the implementation of a recent interim rule, also titled Licensing and Manning for Officers of Towing Vessels (Docket Number USCG 1999–6224), published in the **Federal Register** on April 26, 2001 (66 FR 20931). The NVIC is available on the Internet at *http://www.uscg.mil/hq/g-m/nvic/4_01/n4_01.pdf.* The rulemaking history is also available on the Internet at *http://dms.dot.gov* under the same docket number (USCG 1999–6224).

Agenda of Meeting

The agenda includes the Working Group's review of the TOARs and the drafting of performance criteria proposals that will be presented to the full Committee for approval at a later date.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director on or before February 1, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: December 26, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–544 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Boca Raton, Airport Boca Raton, Florida

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Boca Raton Airport Authority for Boca Raton Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Boca Raton Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before June 30, 2002.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 31, 2001. The public comment period ends March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Boca Raton Airport are in compliance with applicable requirements of part 150, effective December 31, 2001. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 30, 2002. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Boca Raton Airport Authority submitted to the FAA on December 11, 2001, noise exposures maps, descriptions and other documentation which were produced during the Boca Raton Airport part 150 Noise Compatibility Study Update conducted between March 1999 and December 2001. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise

compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Boca Raton Airport Authority. The specific maps under consideration are ''2001 Noise Exposure Map with Existing Noise Compatibility Program'' and ''2006 Noise Exposure Map with Recommended Noise Compatibility Program'' in the submission. The FAA has determined that these maps for Boca Raton Airport are in compliance with applicable requirements. This determination is effective on December 31, 2001. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposures contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Boca Raton Airport, also effective on December 31, 2001. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 30, 2002.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, December 31, 2001.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 02–491 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on January 23–25, 2002, starting at 9:00 am.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- January 23:
- Opening Plenary Session (Welcome and Introductory Remarks, Review Minutes of Previous Meeting)
- Review and Act on Comments received during the Final Review and Comment Period for the Document *Next Generation Air/Ground Communications (NEXCOM) Principles of Operations VHF Digital Link (VDL) Mode 3*
- Closing Plenary Session (Date and Place of Next Meeting)
- January 24–25:
- Working Group 3 Editorial and Final Changes to the VDL–3 Principles of Operation Document
- Working Group 4, NEXCOM Plan, US National Airspace System (NAS) Plan for Transition to Air/Ground ICAO VDL–3 based Integrated Voice and Data
- Working Group 5, NEXCOM Safety and Performance Requirements (SPR) Document

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 18, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–486 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held January 29–February 1, 2002 starting at 9 a.m. each day.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, SW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- January 29:
- Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting)
- Form Working Group 2: Review and Schedule Minimum Aviation System Performance Standard (MASPS) work
- Form Working Group 3: VHF Data Link 2 Minimum Operational Performance Standard (MOPS) work
- January 30:
- Working Group 3: VHF Data Link 2 MOPS work continues
- January 31:
- Plenary Reconvenes (Report and Review Status of Working Groups 2 and 3)
- Review Relevant International Activities (ICAO Aeronautical Mobile Communications Panel WG status, EUROCAE WG 47 status and issues)
- Report on Digital Activities (NEXCOM, AEEC status)
- Closing Plenary Session (Other Business, Date and Place of Next Meeting)
- February 1:
- Working Group 3 (or 2): Continues as required

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–487 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 181/EUROCAE Working Group 13: Standards of Navigation Performance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 181/EUROCAE Working Group 13 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 181/EUROCAE Working Group 13: Standards of Navigation Performance.

DATES: The meeting will be held January 22–25, 2002 starting at 9:00 am.

ADDRESSES: The meeting will be held at the Quality Suites Hotel Melbourne/Oceanfront, 1665 North State Route A1A, Indialantic, FL, 32903, telephone (321) 723–4222.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org;* (2) Roger Burns, Rockwell Collins, Inc., telephone (319) 295–4563, E-mail *rdburns2@rockwellcollins.com.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 181/EUROCAE Working Group 13 meeting. **Note:** *Working Group 1 will meet separately January 22–24.* The plenary agenda will include:

- January 25:
- Opening Plenary Session (Chairman Remarks, Review/Approval of Previous Meeting Minutes)
- Working Group Reports
- Review of Required Navigation Performance (RNP) Minimum Operational Performance Standard (MOPS) and Minimum Aviation System Performance Standards (MASPS) Status
- Closing Plenary Session (New Business, Future Meeting Schedule, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–488 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–18–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 199: Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 199 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 199: Airport Security Access Control Systems.

DATES: The meeting will be held on January 24, 2002 starting at 9:00 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 199 meeting. The agenda will include:

- January 24:
- Opening Session (Welcome, Introductory and Administrative Remarks, Agenda Overview, Review Minutes of Previous Meeting, Action Items from Last Meeting, Review of Previous Meeting's Industry Presentations)
- Workgroups and Discussions on New Standard Text and Comments From Members (sections 1–4)
- Biometric Access Control Standards
- New Access Control Systems Requirements and Standards Consequent on the Recent Legislation
- Closing Session (Any Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability.

With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–489 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement for Transit Improvements in the Southeast-Universities-Hobby Corridor Extending from Downtown Houston, Harris County to the Vicinity of Hobby Airport in Southeast Harris County, Texas

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Metropolitan Transit Authority of Harris County (METRO), intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), to evaluate transportation improvements in the Houston metropolitan area (Harris County).

The EIS will evaluate the following transit alternatives: a No Build Alternative, consisting of already planned improvements to the corridor, and a Build Alternative, consisting of a wide range of transit improvements. The type, location, and need for ancillary facilities, such as maintenance facilities, will also be considered for each alternative. Scoping will be accomplished with a series of public meetings, and through correspondence with interested persons, organizations, and Federal, State and local agencies.

Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, a Locally Preferred Investment Strategy (LPIS) will be selected and evaluated in the EIS. The EIS will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No Build Alternative.

The sequence of events for the planning and development for this project include the following major milestones:

- *Scoping Process*—early opportunity for public input to the study scope and project alternatives. Scoping will be accomplished with a series of public meetings, and through correspondence with interested persons, organizations, and Federal, State and local agencies.
- *Planning Studies*—evaluation of proposed improvement alternatives, early consideration of environmental factors, concluding with the selection of a LPIS.
- *Conceptual Engineering and Draft Environmental Impact Statement (EIS)*—conceptual definition of the alternatives to be evaluated including their physical features and potential impacts, consideration of mitigation measures, preparation and circulation of the Draft EIS, and public hearing(s).
- *Preliminary Engineering and Final EIS*—detailed definition of the proposed alternative's physical features, assessment of potential impacts, development of selected mitigation measures, responses to comments offered during the Draft EIS comment period, and preparation of the Final EIS.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts considered should be sent to the Metropolitan Transit Authority of Harris County by March 15, 2002. See **ADDRESSES** below.

Scoping Meetings: Public Scoping meetings for the Southeast-Universities-Hobby Corridor will be held on February 19th, February 21st and February 27th, 2002. See **ADDRESSES** below for meeting times and locations.

All of the scoping meetings will be held in wheelchair-accessible locations. Any person who requires language interpretation or special communication accommodations is encouraged to contact the project's public participation coordinator at 713–739–6049 at least 72 hours prior to the meeting. Every reasonable effort will be made to meet your needs. Scoping information material will be available at the meetings and may also be obtained in advance of the meetings by contacting the public participation coordination or by contacting METRO at the address or e-mail identified in **ADDRESSES** below. Oral and written comments may be given at the scoping meetings. A court reporter will record all comments.

ADDRESSES: Written comments should be sent to METRO Mobility 2025, Room 21034, PO Box 61429, Houston, Texas 77208–1429. E-mail: southeast-universities-hobby@ridemetro.org.

Scoping meetings will be held at the following locations:

1. February 19, 2002, Jesse H. Jones Senior High School, 7414 St. Lo, Houston, Texas 77033, 5:00–8:00 p.m. Open House, 6:30 p.m. Presentation.
2. February 21, 2002, Texas Southern University, School of Technology Atrium, 3100 Cleburne Avenue, Houston, Texas 77004, 5:00–8:00 p.m. Open House, 6:30 p.m. Presentation.
3. February 27, 2002, Houston-Galveston Area Council, 3555 Timmons Lane—2nd Floor, Houston, Texas 77027, 3:00–5:00 p.m. Agency Scoping Meeting, Conference Room A, 5:00–7:00 p.m. Open House, Conference Room B.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Balleza, Community Planner, FTA, Region VI, 819 Taylor Street, Fort Worth, Texas 76102, Telephone (817) 978–0550.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and METRO invite all interested individuals and organizations, and Federal, State, regional, and local agencies to participate in defining the alternatives to be evaluated and identifying social, economic, or environmental issues related to the alternatives. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated, and suggesting alternatives that may be less costly or have less adverse environmental impacts, but achieve similar objectives. Comments during scoping should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated through the planning process or during the comment period for the Alternatives Analysis Report.

Prior to initiating the EIS, planning studies will identify a LPIS that includes transit improvements. Interested individuals, organizations, and Federal, State, and local agencies are invited to participate in refining the purpose, alternatives, schedule, and analysis approach, as well as participate in the active public involvement program throughout the planning process and project implementation. The public is invited to comment on corridor needs and alternatives to be addressed; modes and technologies to be evaluated; alignments and station-capital facility locations; the environmental, social, and economic

impacts to be analyzed; and the evaluation approach to be used to select a LPIS. The scoping process will provide input to the process to be used for the evaluation of alternatives during the planning process and the early identification of environmental issues to be considered during the planning studies and in the EIS.

Scoping activities are being initiated at the outset of the planning studies, in advance of the EIS, to maximize the opportunity for public involvement in the consideration of alternatives and reaching decisions about the transportation investments that will be advanced into the EIS phase of project development.

II. Description of the Project Area and Need

Planning studies for the Southeast-Universities-Hobby Corridor will be initiated in a broadly defined area in Harris County, Texas. The planning area is defined to include part of downtown Houston, extending eastward and then to the southeast, generally bounded by IH 45 on the east, and SH 288 and Almeda Road on the west. The Southeast-Universities-Hobby Corridor includes the Third Ward, the convention center, Enron Field (home of the Houston Astros), the Texas Southern University (TSU) and University of Houston (UH) campuses, communities to the south, and Hobby Airport. The southern boundary is inside Beltway 8.

The corridor is significantly more densely developed than the City of Houston as a whole. Southeast Houston has a large transit dependent population, with lower average household income and car ownership and higher percentages of elderly and disabled persons than citywide. Transit (bus) ridership in the corridor is strong, but there are no high capacity transit facilities in the corridor. ''Super-stops'' have been proposed at the University of Houston and Texas Southern University.

New development and redevelopment is occurring along this corridor and is expected to generate further increases in demand for transit services. The universities are growing in enrollment. Hobby Airport is a significant employment center, as are TSU and UH. Outside this corridor, Downtown and the Texas Medical Center are the nearest major activity centers. There is a recognized demand linkage between the corridor and Houston's Midtown area and the Uptown-West Loop area to the west.

III. Alternatives

In accordance with NEPA, a public scoping process will be initiated to identify corridor needs and alternatives. The scoping process will provide the basis for the evaluation of alternatives as part of the planning studies, and the selection of a LPIS and implementation program. The planning studies will consider a variety of transit options in the corridor based on input received during the scoping process. It is expected that the LPIS will be a combination of one or more alternative options identified. Subsequent to the selection of the LPIS, the selected alternatives will be refined and documented in the EIS. At a minimum, the alternatives to be considered in the planning studies include:

- No Build Alternative;
- Light Rail Transit (LRT);
- Bus Rapid Transit;
- Commuter Rail along existing railroad facilities in the corridor; and
- HOV system improvements.

Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects and Potential Impacts for Analysis

FTA and METRO will evaluate all social, economic and environmental impacts of the alternatives analyzed in the EIS. Impacts may include: land use, zoning, and economic development; secondary development; cumulative impacts; land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy; construction impacts; safety and security; utilities; finance; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be identified.

V. FTA Procedures

In accordance with FTA policy, all federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the Department of Transportation Act, will be addressed to the maximum extent practicable during the NEPA process.

Issued on: January 2, 2002.

Robert C. Patrick,

Regional Administrator, Federal Transit Administration, Region VI, Fort Worth, Texas.

[FR Doc. 02–558 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement on Transit Improvements in the Uptown-West Loop Corridor Located in Uptown and Along the West Loop (IH–610 West) in Houston, Harris County, Texas

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Metropolitan Transit Authority of Harris County (METRO), intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), to evaluate transportation improvements in the Houston metropolitan area (Harris County).

The EIS will evaluate the following transit alternatives: a No Build Alternative, consisting of already planned improvements to the corridor, and a Build Alternative, consisting of a wide range of transit improvements. The type, location, and need for ancillary facilities, such as maintenance facilities, will also be considered for each alternative. Scoping will be accomplished with a series of public meetings, and through correspondence with interested persons, organizations, and Federal, State and local agencies.

Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, a Locally Preferred Investment Strategy (LPIS) will be selected and evaluated in the EIS. The EIS will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No Build Alternative.

The sequence of events for the planning and development for this

project include the following major milestones:

• *Scoping Process*—early opportunity for public input to the study scope and project alternatives. Scoping will be accomplished with a series of public meetings and through correspondence with interested persons, organizations, and Federal, State and local agencies.

• *Planning Studies*—evaluation of proposed improvement alternatives, early consideration of environmental factors, concluding with the selection of a LPIS.

• *Conceptual Engineering and Draft Environmental Impact Statement (EIS)*—conceptual definition of the alternatives including their physical features and potential impacts, consideration of mitigation measures, preparation and circulation of the Draft EIS, and public hearing(s).

• *Preliminary Engineering and Final EIS*—detailed definition of the proposed alternative's physical features, assessment of potential impacts, development of selected mitigation measures, responses to comments offered during the Draft EIS comment period, and preparation of the Final EIS.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts considered should be sent to the Metropolitan Transit Authority of Harris County by March 15, 2002. See **ADDRESSES** below.

Scoping Meetings: Public Scoping meetings for the Uptown-West Loop Corridor will be held on February 12, 2002 and February 27, 2002. See **ADDRESSES** below for meeting times and locations.

All scoping meetings will be held in wheelchair-accessible locations. Any person who requires language interpretation or special communication accommodations is encouraged to contact the project's public participation coordinator at 713–739–6049 at least 72 hours prior to the meeting. Every reasonable effort will be made to meet your needs. Scoping information material will be available at the meetings and may also be obtained in advance of the meetings by contacting the public participation coordination or by contacting METRO at the address or e-mail identified in **ADDRESSES** below. Oral and written comments may be given at the scoping meetings. A court reporter will record all comments.

ADDRESSES: Written comments should be sent to METRO Mobility 2025, Room 21034, P.O. Box 61429, Houston, Texas 77208–1429. E-mail: uptown-*westloop@ridemetro.org.* Scoping meetings will be held at the following locations:

1. February 12, 2001, J.W. Marriott Hotel, Exhibition Room, 5150 Westheimer, Houston, Texas 77077, 11:30 a.m.–2:30 p.m. Open House, 6–8:30 p.m. Open House.
2. February 27, 2002, Houston-Galveston Area Council, 3555 Timmons Lane—2nd Floor, Houston, Texas 77027, 3–5 p.m. Agency Scoping Meeting, Conference Room A, 5–7 p.m. Open House, Conference Room B.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Balleza, Community Planner, FTA, Region VI, 819 Taylor Street, Fort Worth, Texas 76102, Telephone (817) 978–0550.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and METRO invite all interested individuals and organizations, and Federal, State, regional, and local agencies to participate in defining the alternatives to be evaluated and identifying social, economic, or environmental issues related to the alternatives. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated, and suggesting alternatives that may be less costly or have less environmental impacts, but achieve similar objectives. Comments during scoping should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated through the planning process and during the comment period for the Alternatives Analysis Report.

Prior to initiating the EIS, planning studies will identify a LPIS that includes transit improvements. Interested individuals, organizations, and Federal, State, and local agencies are invited to participate in refining the purpose, alternatives, schedule, and analysis approach, as well as participate in the active public involvement program for throughout the planning process and project implementation. The public is invited to comment on corridor needs and alternatives to be addressed; modes and technologies to be evaluated; alignments and station locations; the environmental, social, and economic impacts to be analyzed; and the evaluation approach to be used to select a LPIS. The scoping process will provide input to the process to be used for the evaluation of alternatives during the planning process and the early identification of environmental issues to be considered during the planning studies and in the EIS.

Scoping activities are being initiated at the outset of the planning studies, in advance of the EIS, to maximize the opportunity for public involvement in the consideration of alternatives and reaching decisions about the transportation investments that will be advanced into the EIS phase of project development.

II. Description of the Project Area and Need

The study area for the Uptown-West Loop Corridor is located on the near west side of the City of Houston. The study area extends approximately four miles on either side of the West Loop from the Katy Freeway (IH–10) on the north to the Southwest Freeway (U.S. 59) on the south. The West Loop is the primary north-south transportation facility in the corridor providing access to the Uptown/Galleria area, major employment, residential, retail and activity centers, and to the City of Bellaire. The freeway facility, with an average right-of-way width of 350 feet, connects with other portions of the IH–610 loop, such as the North Loop and the South Loop, that circle Houston. In addition, the West Loop provides a strategic connection to other regional freeway corridors including the Northwest Freeway (U.S. 290), the Katy Freeway, and the Southwest Freeway. The study area also includes METRO transit center facilities on the north and south ends of the corridor. There are a variety of travel markets in the study that include home-to-work trips, and non-home base trips such as business and visitor trips, and recreational-entertainment trips.

Substantial new development and redevelopment is occurring throughout the corridor. However, future development and potential redevelopment could be restricted due to limits on roadway and transit system capacity and parking facilities. Improved transit service, connectivity, access, and capacity are seen as essential to support and enhance economic development activity and help provide a framework for creating a livable and sustainable community.

In general, the following needs and problems have been identified as detrimental to the continued success of the Uptown-West Loop Corridor:

(1) Exclusive transit corridor to improve reliability and travel time;

(2) Pervasive congestion at key intersections;

(3) Service to distinct travel markets

a. Line-haul services on the Katy Freeway, West Loop, Westpark Toll Road, and Southwest Freeway

b. Collection and distribution services for Uptown Houston;

(4) Poor pedestrian environment and linkages;

(5) Conservation of Memorial Park and other sensitive land uses;

(6) Air and noise pollution;

(7) Visual impacts of potential transportation improvements.

The growth in population and employment in the corridor is significantly large in both relative and absolute numbers. Previous study projections indicate that patronage to retail/entertainment venues in the corridor will increase as well. The projected consequence of this growth is higher traffic volumes throughout local streets and the West Loop throughout the study area. Traffic congestion in the study area will increase in both severity and duration as the peak period ''spreads'' to encompass earlier and later hours. Travel on parallel arterials will increase proportionately as congestion on the West Loop causes a higher fraction of travel to use alternative routes. Restricted ingress and egress to the Uptown-West Loop area and servicing arterials has contributed to the unreliability of transit services and will deteriorate if not effectively addressed.

III. Alternatives

In accordance with NEPA, a public scoping process will be initiated to identify corridor needs and alternatives. The scoping process will provide the basis for the evaluation of alternatives as part of the planning studies, and the selection of a LPIS and implementation program. The planning studies will consider a variety of transit options in the corridor based on input received during the scoping process. It is expected that the LPIS will be a combination of one or more alternative options identified. Subsequent to the selection of the LPIS, the selected alternatives will be refined and documented in the EIS. At a minimum, the alternatives to be considered in the planning studies include:

- No Build Alternative;
- Bus Rapid Transit;
- HOV system improvements; and
- Light Rail Transit (LRT).

Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects and Potential Impacts for Analysis

FTA and METRO will evaluate all social, economic and environmental impacts of the alternatives analyzed in the EIS. Impacts may include: Land use, zoning, and economic development; secondary development; cumulative impacts; land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy; construction impacts; safety and security; utilities; finance; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be identified.

V. FTA Procedures

In accordance with FTA policy, all federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the Department of Transportation Act, will be addressed to the maximum extent practicable during the NEPA process.

Issued on: January 2, 2002.

Robert C. Patrick,

Regional Administrator, Federal Transit Administration, Region VI, Fort Worth, Texas.

[FR Doc. 02–557 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement(s) on Highway and Transit Improvements in the North-Hardy Corridor Extending Along and Between Interstate 45 (IH 45) and Hardy Toll Road From SH 242 in Southern Montgomery County, Texas to Spur 527 (Louisiana Street Exit From US 59 South), Harris County

AGENCY: Federal Transit Administration and Federal Highway Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement(s).

SUMMARY: The Federal Transit Administration (FTA) and Federal Highway Administration (FHWA), in cooperation with the Metropolitan Transit Authority of Harris County (METRO), the Texas Department of Transportation (TxDOT), and the Houston-Galveston Area Council (H–GAC), intend to prepare one or more Environmental Policy Act (NEPA) to evaluate highway and transit improvements in the North-Hardy Corridor of the Houston metropolitan area.

The EIS(s) will be prepared following completion of studies of potential transportation improvements in the North-Hardy Corridor of the Houston metropolitan area. The planning studies will conclude with the selection of a Locally preferred Investment Strategy (LPIS) that may identify both transit and highway improvements to be implemented in the corridor. Transit and highway improvements selected for implementation will be evaluated in the EIS. If the selected investments are in proximity to each other (i.e. within the same right-of-way) it is likely that a single EIS will be prepared. If the selected investments are in different locations, two EIS will be prepared. If the selected investments are in different locations, two EIS documents may be prepared. The decision about the number of EIS documents to be prepared will be determined at the conclusion of the planning studies. The EIS(s) will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No Build Alternative.

The sequence of events for the planning and development for this project include the following major milestones:

- Scoping Process—early opportunity for public input to the study scope and project alternatives. Scoping will be accomplished with a series of public meetings and through correspondence with interested persons, organizations, and Federal, State and local agencies.
- Planning Studies—evaluation of proposed improvement alternatives, early consideration of environmental factors, concluding with the selection of a LPIS. A decision on the number of EIS documents to be prepared will occur at the conclusion of the planning studies.
- Conceptual Engineering and Draft Environmental Impact Statement (EIS)—conceptual definition of the alternatives to be evaluated including their physical features and potential impacts, consideration of mitigation measures, preparation and circulation of the Draft EIS(s) comment period, and preparation of the Final EIS(s).
- Preliminary Engineering and Final EIS—detailed definition of the proposed alternative's physical features, assessment of potential impacts,

development of selected mitigation measures, responses to comments offered during the Draft EIS(s) comment period, and preparation of the Final EIS(s).

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts considered should be sent to the Metropolitan Transit Authority of Harris County by March 15, 2002. See **ADDRESSES** Below.

Scoping Meetings: Public Scoping meetings for the North-Hardy Corridor will be held on February 5th, February 6th, February 13th, February 20th and February 27th, 2002. See **ADDRESSES** below for meeting times and locations.

All scoping meetings will be held in wheelchair-accessible locations. Any person who requires language interpretation or special communication accommodations is encouraged to contact the project's public participation coordinator at 713–739–6049 at least 72 hours prior to the meeting. Every reasonable effort will be made to meet your needs. Scoping information material will be available at the meetings and may also be obtained in advance of the meetings by contacting the public participation coordination or by contacting METRO at the address or e-mail identified in **ADDRESSES** below. Oral and written comments may be given at the scoping meetings. A court reporter will record all comments.

ADDRESSES: Written comments should be sent to METRO Mobility 2025, Rm 21034, PO Box 61429, Houston, Texas 77208–1429. E-mail: *north-hardy@ridemetro.org.* Scoping meetings will be held at the following locations:

1. February 5, 2002, Wesley Community Center—Social Hall, 1410 Lee Road, Houston, Texas 77009, 4:30–7:30 p.m.
2. February 6, 2002, Northline Mall—Community Room (316), Interstate–45 at Crosstimbers, Houston, Texas 77022, 4:30–7:30 p.m.
3. February 13, 2002, North-Harris Montgomery Community College, Student Center—South Dining Room, 2700 W. W. Thorne Blvd., 4:30–7:30 p.m.
4. February 20, 2002, Houston Community College System, Administration Auditorium, 3100 Main Street at Elgin, 4:30–7:30 p.m.
5. February 27, 2002, Houston-Galveston Area Council, 3555 Timmons Lane—2nd Floor, 3:00–5:00 p.m. Agency Scoping Meeting, Conference Room A, 5:00–7:00 p.m. Open House, Conference Room B.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Balleza, Community Planner, FTA, Region VI 819 Taylor Street, Fort Worth, Texas 76102, Telephone (817) 978–0550 or Mr. John Mack, District Engineer, FHWA, 300 East 8th Street, Suite 826, Austin, TX 78701, Telephone: 512–536–5960.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA, FHWA, METRO, TxDOT, and the Houston-Galveston Area Council (H–GAC) invite all interested individuals and organizations, and Federal, State, regional, and local agencies to participate in defining the alternatives to be evaluated and identifying social, economic, or environmental issues related to the alternatives. During scoping, comments should focus on identifying specific, social, economic, or environmental impacts to be evaluated, and suggesting alternatives that may be less costly or have less environmental impacts, but achieve similar objectives. Comments during scoping should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated through the planning process and during the comment period for the Alternatives Analysis Report.

Prior to initiating the EIS(s), planning studies will identify a LPIS that is anticipated to include transit and highway components. Interested individuals, organizations, and Federal, State, and local agencies are invited to participate in refining the purpose, alternatives, schedule, and analysis approach, as well as participate in the active public involvement program throughout the planning process and project implementation. The public is invited to comment on corridor needs and alternatives to be addressed; modes and technologies to be evaluated; alignments and station locations; the environmental, social, and economic impact to be analyzed; and the evaluation approach to be used to select a LPIS. The scoping process will provide input to the process to be used for the evaluation of alternatives during the planning process and the early identification of environmental issues to be considered during the planning studies and in the EIS(s).

Scoping activities are being initiated at the outset of the planning studies, in advance of the EIS(s), to maximize the opportunity for public involvement in the consideration of alternatives and reaching decisions about the transportation investments that will be advanced into the EIS phase of project development.

II. Description of the Project Area and Needed

Planning studies for the North-Hardy Corridor will be initiated in a broadly defined study area in Harris and Montgomery counties, Texas, extending along and between IH 45 and the Hardy Toll Road from SH 242 on the north to Spur 527 (Louisiana Street exit from US 59 South). The North Hardy Corridor includes adjacent communities as well as the George Bush Intercontinental Airport and connects the rapidly growing northern suburbs and the re-developing northside neighborhoods to downtown and other significant activity centers in Houston.

Some areas of IH 45 do not meet accepted modern highway design criteria and congestion is a persistent problem throughout the corridor. A multi-modal approach to expanding transit and highway capacity within the corridor is to be considered.

III. Alternatives

In accordance with NEPA, a public scoping process will be initiated to identify corridor needs and alternatives. The scoping process will provide the basis for the evaluation of alternatives as part of the planning studies, and the selection of LPIS and implementation program. The planning studies will consider a variety of multi-modal highway and transit options in the corridor based on input received during the scoping process. It is expected that the LPIS will be a combination of one or more alternative options identified. Subsequent to the selection of the LPIS, the selected alternatives will be refined and documented in the EIS(s). It may be necessary to prepare more than one EIS for the North Hardy Corridor based on the outcome of the planning studies. At a minimum, the alternatives to be considered in the planning studies include:

- No Build Alternative;
- Extension of the Light Rail Transit line currently under construction in Downtown Houston;
- Commuter Rail along existing railroad facilities in the corridor;
- Highway upgrades or expansion; and
- HOV system improvements.

Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects and Potential Impacts for Analysis

FTA, FHWA, METRO, TxDOT, and H–GAC will evaluate all social, economic and environmental impacts of

the alternatives analyzed in the EIS(s). Impacts may include: Land use, zoning, and economic development; secondary development; cumulative impacts; land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems (threatened and endangered species); water resources; energy; construction impacts; safety and security; utilities; finance; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be identified.

V. FTA/FHWA Procedures

In accordance with FTA/FHWA policy, all federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the Department of Transportation Act, will be addressed to the maximum extend practicable during the NEPA process.

Issued on: January 2, 2002.

Robert C. Patrick,

Regional Administrator, Federal Transit Administration, Region VI, Fort Worth, Texas.

[FR Doc. 02–556 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–11041; Notice 1]

Toyota Motor Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

Toyota Motor Corporation (TMC) has determined that certain 2000–2001 Model Year (MY) Celicas are equipped with daytime running lamps (DRLs) which fail to meet the spacing requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices and Associated Equipment.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), TMC has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The DRLs on the Celica are provided by the upper beam headlamps operating at a lower intensity, with each lamp having a maximum luminous intensity of roughly 5,880 candelas at test point H–V (as described in FMVSS No. 108 test procedures). S5.5.11(a)(4) of FMVSS No. 108 requires that ''* * * if not optically combined with a turn signal lamp, (the DRL) (shall be) located so that the distance from its lighted edge to the optical center of the nearest turn signal lamp is not less than 100 mm, unless * * * the luminous intensity of the DRL is not more than 2,600 candela any location in the beam. * * *'' However, for the noncompliant Celicas the distance from the DRL's lighted edge to the optical center of the nearest turn signal lamp is only 45.6 mm and therefore, the DRLs exceed the maximum luminous intensity specified in section 5.5.11(a)(4)(i) of FMVSS 108.

Toyota believes that this noncompliance is inconsequential to motor vehicle safety, and therefore creates no unreasonable risk to highway safety for the following reasons:

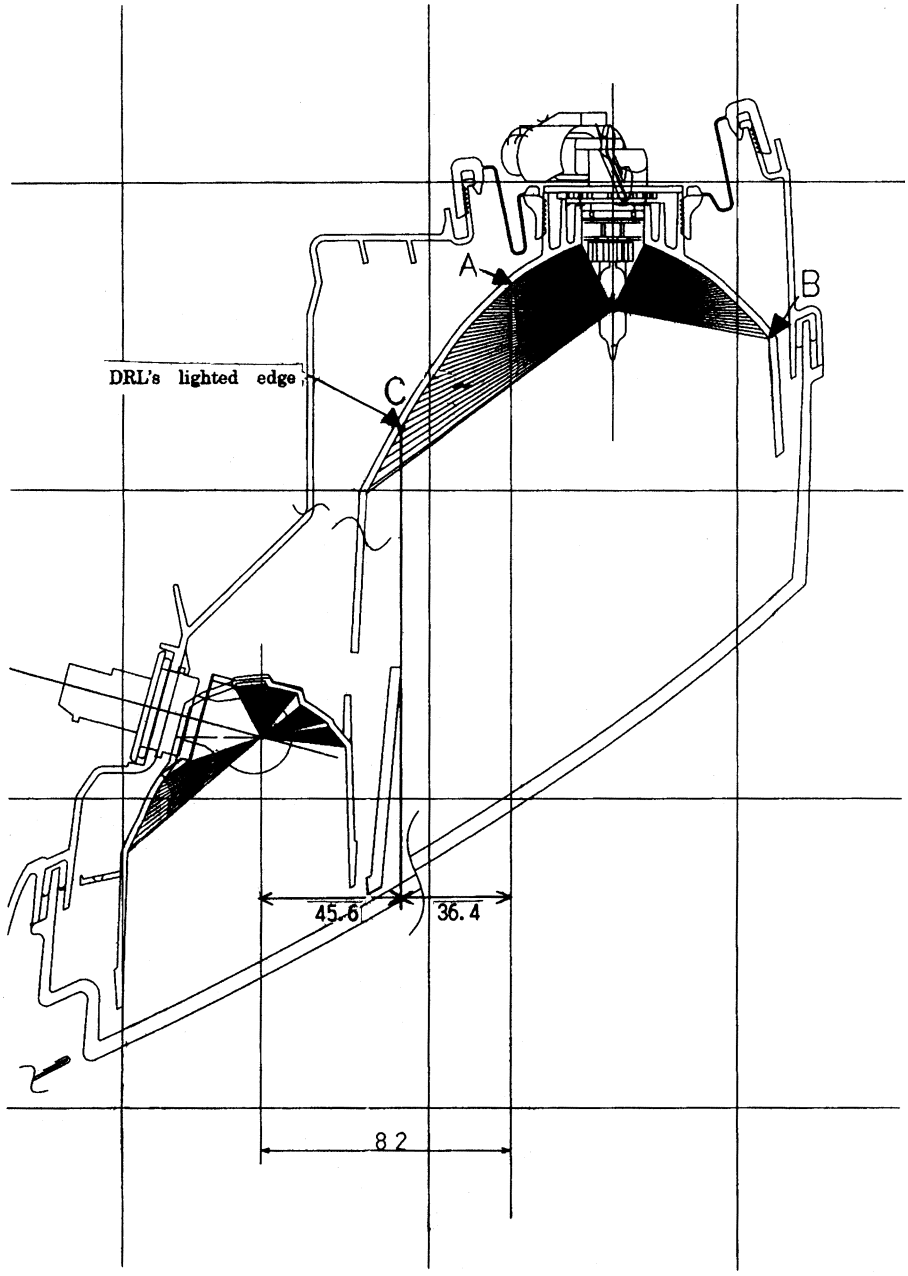
S.5.5.11(a) permits an upper beam headlamp intended to operate as a DRL to have a maximum intensity of 7000 cd, and in conjunction, a turn signal lamp with a minimum intensity of 200 cd, as long as the spacing is 100 mm or greater. Toyota conducted subjective evaluations of turn signal visibility using 20 contractors for the subject vehicles under various conditions, and confirmed that visibility for the subject vehicles is substantially better than vehicles that were modified to meet the minimum turn signal/maximum DRL luminous intensity permitted by the standard. According to Toyota's evaluation, the flashing of the subject turn signals can be readily discerned by a driver in an oncoming vehicle at a distance of 300 feet, and much more so than vehicles with modified signals/DRLs. The assessment distance of 300 feet is the same used in NHTSA's own evaluation of turn signal masking, as described in the final rule published in the Monday, January 11, 1992 **Federal Register** (58 FR 3500).

In addition to the subjective measures, we also provide the following technical factors which contribute to good visibility of the turn signal lamps:

The turn signal lighted area is 45.1cm^2, two times larger than the 22cm^2 required by FMVSS 108;

The luminous intensity of the subject vehicle's turn signal lamps are 568 cd, or 2.8 times the minimum value of 200 cd;

The substantial distance from the turn signal optical center (bulb filament axes) to the DRL's lighted edge is 82 mm, exceeding 80% of the requirements. In this case, the ''substantial'' distance refers to the distance from the turn signal's optical center to the actual lighted edge ''A'' (as given by the Figure below), although the theoretical lighted edge is point ''C'' (45.6mm). In the Figure, the lighted range from A to C of the reflector emits only light which is parallel to the axis of the DRL, which can only be seen by drivers in oncoming vehicles that are looking along the optical axis of the DRL. However, as one moves off center, this light is no longer visible. Therefore, the perceptible DRL's lighted area, except for the unique case where the eye-point is on the optical axis of the DRL, is actually from A to B (as given in the Figure).



The subject vehicles meet all the requirements of CMVSS 108 and the identical DRL requirements which are found in FMVSS 108 prior to October 1, 1995;

Finally, although Toyota has sold approximately 100,000 of the subject vehicles since the summer of 1999 in USA and Canada, it has not received any customer complaints nor accident reports that alleged problems with turn signal visibility or masking.

Toyota believes that the noncompliance in the subject vehicles is inconsequential to motor vehicle safety for the reasons outlined above, and therefore should be exempted from the notification and remedy requirements of the Safety Act for this specific noncompliance.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket and notice number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: February 8, 2002.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 3, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–555 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34150]

The Belt Railway Company of Chicago—Trackage Rights Exemption—Indiana Harbor Belt Railroad Company

Indiana Harbor Belt Railroad Company (IHB), a Class III rail carrier, has agreed to grant non-exclusive bridge trackage rights to The Belt Railway Company of Chicago (BRC), between the connection of BRC and IHB at Argo, IL, milepost 26.5 and the connection of IHB and Canadian National Railroad Company (CN) at Argo, milepost 27.5, a total distance of approximately 1 mile.

The transaction was scheduled to be consummated on or after December 27, 2001, the effective date of the exemption.

The purpose of the trackage rights is to provide BRC with a new direct connection with CN at Argo to facilitate a new interchange movement.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34150, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas J. Healy, Troutman Sanders LLP, 401 Ninth Street, NW., Suite 1000, Washington, DC 20004.

Board decisions and notices are available on our web site at *''WWW.STB.DOT.GOV.''*

Decided: January 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–413 Filed 1–8–02; 8:45 am]

BILLING CODE 4915–00–P

Notices

Federal Register

Vol. 67, No. 6

Wednesday, January 9, 2002

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

Office of the Secretary

Notice of Appointment of Members to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Appointment of Members.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, *as amended*, the United States Department of Agriculture announces the appointment of 11 individuals to fill vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board. Appointments are for a three-year term, effective October 1, 2001, until September 30, 2004, with the exception of one two-year appointment resulting from a member resignation after serving one year. Advisory Board terms beyond September 30, 2002, are contingent upon the reauthorization of the Board in accordance to Sec. 802 of Pub. L. 104–127.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office; Room 344A, Jamie L. Whitten Building; U.S. Department of Agriculture; STOP 2255; 1400 Independence Avenue, SW., Washington, DC 20250–2255; telephone: (202) 720–3684; fax: (202) 720–6199; or e-mail: smorgan@reeusda.gov.

SUPPLEMENTARY INFORMATION: Section 802 of Pub. L. 104–127, the Federal Agricultural Improvement and Reform Act of 1996, authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed in September 1996, and one-third of the 30 members were appointed for a one, two, and three-year terms, respectively.

As a result of the staggered appointments, the terms for 10 of the 30 members expired September 30, 2001. In addition, one vacancy exists due to the resignation of the Category P appointee. The Secretary of Agriculture has designated appointees to fill all 11 vacancies. Appointees, by category, are as follows: Category E—National Animal Commodity Organizations, Paul C. Genho, Vice President, King Ranch, Inc., Kingsville, Texas, and Former Chair, National Cattleman's Beef Association; Category H—National Food Animal Science Societies, Jeffrey D. Armstrong, Dean, College of Agriculture and Natural Resources, Michigan State University, and President, American Society of Animal Science; Category I—National Crop, Soil, Agronomy, Horticulture or Weed Science Societies, Martin A. Massengale, President Emeritus, Foundation Distinguished Professor, and Director, Center for Grassland Studies, University of Nebraska-Lincoln (reappointed); Category N—1890 Land-Grant Colleges and Universities, including Tuskegee University, McArthur Floyd, Research Director, School of Agricultural and Environmental Sciences, Associate Director, Alabama Agricultural Experiment Station, and Professor of Soil Microbiology, Alabama A&M University; Category O—1994 Equity in Education Land-Grant Institutions, Judith Davis, Dean, Academic Affairs, Dull Knife Memorial College, Lame Deer Montana; Category P—Hispanic-Serving Institutions (2-year term), Castell Vaughn Bryant, President, Miami-Dade Community College North Campus, Miami, Florida; Category T—Food Retailing and Marketing, George H. Hoffman, President and CEO, Restaurant Services, Inc., Coral Gables, Florida; Category V—Rural Economic Development, Walter J. Armbruster, President, Farm Foundation, Oak Brook, Illinois; Category W—National Consumer Interest Groups, Barbara Stowe, Dean Emeritus, College of Human Ecology, Kansas State University, former Senior Advisor, AESOP Enterprises, Ltd., Washington, DC (reappointed); Category X—National Forestry Groups, George Samuel Foster, Jr., Dean, College of Forest Resources, Director, Forest and Wildlife Research Center, Mississippi State University; and Category Y—National Conservation or Natural Resource Groups, Peter H. Raven, Director, Missouri Botanical Garden, and National Medal of Science recipient.

Appointees' terms began on October 1, 2001, and end September 30, 2004, with the exception of the Category P term which ends on September 30, 2003.

Done at Washington, DC this 20th day of December 2001.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–452 Filed 1–8–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 011214300–1300–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Retail Trade Survey. The Census Bureau has determined that it needs to collect data covering annual sales, e-commerce sales, percent of e-commerce sales to customers located outside the United States, year-end inventories, purchases, accounts receivables, and, for select industries, merchandise line sales and percent of sales by class of customer.

FOR FURTHER INFORMATION CONTACT: Scott Scheleur, Service Sector Statistics Division, on (301) 457–2713.

SUPPLEMENTARY INFORMATION: The Annual Retail Trade Survey is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). It provides on a comparable classification basis, annual sales, e-commerce sales, and purchases

for 2001 and year-end inventories for 2000 and 2001. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 2001 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, sections 182, 224, and 225. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census. These data will provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 United States Code, chapter 35, the OMB approved the Annual Retail Trade Survey under OMB Control Number 0607–0013. We will furnish report forms to organizations included in the survey. Additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: December 18, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 02–507 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 020103003–2003–01]

Annual Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Trade Survey. The Census Bureau has determined that it needs to collect data covering annual sales, e-commerce sales, year-end inventories, and purchases.

FOR FURTHER INFORMATION CONTACT: Scott Scheleur, Service Sector Statistics Division, on (301) 457–2713.

SUPPLEMENTARY INFORMATION: The Annual Trade Survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides, on a comparable classification basis, annual sales, e-commerce sales (including Electronic Data Interchange-EDI) and purchases for 2001 and year-end inventories for 2000 and 2001. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 2001 Annual Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, sections 182, 224, and 225. This survey will provide continuing and timely national statistical data on wholesale trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census. These data will provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 United States Code, chapter 35, the OMB approved the Annual Trade Survey under OMB Control Number 0607–0195. We will furnish report forms to organizations included in the survey. Additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: December 18, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 02–506 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Closed Meeting

The Materials Technical Advisory Committee will meet on January 24, 2002, at 10:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions which affect the level of export controls applicable to materials and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 7, 2000, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020. U.S. Department of Commerce, Washington, DC. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: January 3, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–519 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990810211–1294–02]

RIN 0648–ZA69

Sea Grant Fellowships: National Marine Fisheries Service—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics; and Sea Grant—Industry Fellowship Program: Request for Applications for FY 2002

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for applications.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is seeking applications for two fellowship programs to fulfill its broad educational responsibilities, to strengthen the collaboration between Sea Grant and the National Marine Fisheries Service (NMFS), and to strengthen ties between academia and industry:

(1) The NMFS—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics (Fisheries Fellowship Program), which is available to U.S. citizens who are graduate students enrolled in PhD degree programs in academic institutions in the United States and its territories, with required institutional matching funds, expects to support six new Fisheries Fellows in Population Dynamics and Marine Resource Economics in FY 2002. Fisheries Fellows will work on thesis problems of public interest and relevance to NMFS and have summer internships at participating NMFS Science Centers or Laboratories under the guidance of NMFS mentors.

(2) The Sea Grant—Industry Fellowship Program (Industry Fellowship Program), which is available to graduate students enrolled in either MS or PhD degree programs in academic institutions in the United States and its territories, with required matching funds from private industrial sponsors, expects to support five new Industry Fellows in FY 2002. Industry Fellows will work on research and development projects on topics of interest to a particular industry/company. In a true partnership, the student, the faculty advisor, the Sea Grant College or institute, and the industry representative will work together, sharing research facilities and the cost of the activity.

DATES: Applications must be received by 5 pm (local time) on February 15, 2002 by a state Sea Grant Program (or by the NSGO in the case of an academic institution in a non-Sea Grant state). Note that applications arriving after these deadlines will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery (see ''Addresses'' below) prior to the specified closing date and time; in any event, applications received by the NSGO or the State Sea Grant Programs later than two business days following the closing date will not be accepted. Facsimile transmissions and electronic mail submission of applications will not be accepted. It is anticipated that successful applicants will be able to initiate Fisheries Fellowships on approximately June 1, 2002 or Industry Fellowships on approximately September 1, 2002.

ADDRESSES: Applications originating from academic institutions in Sea Grant states must be submitted to the state Sea Grant Program. Applications originating elsewhere may be submitted either to the nearest state Sea Grant Program or directly to the NSGO. Sea Grant's web site lists the addresses of the state Sea Grant College Program directors (*http://www.nsgo.seagrant.org/SGDirectors.html*) and the participating NMFS Facilities (*http://www.nsgo.seagrant.org/research/rfp/NMFS_Labs.html*), or those addresses may also be obtained by contacting the NSGO. Applications submitted to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Proposal Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301–713–2445).

FOR FURTHER INFORMATION CONTACT: Information about the Fisheries Fellowship Program may be obtained from Dr. Emory D. Anderson, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2435 ext. 144; e-mail: *emory.anderson@noaa.gov;* from any state Sea Grant Program (see **ADDRESSES**); or from any participating NMFS facility (see **ADDRESSES**). Information about the Industry Fellowship Program may be obtained from Dr. Vijay G. Panchang, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2435 ext. 142; e-mail: *vijay.panchang@noaa.gov.*

SUPPLEMENTARY INFORMATION:

National Marine Fisheries Service—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics and Sea Grant—Industry Fellowship Program

I. Program Authority

Authority: 33 U.S.C. 1127. Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.

II. Description of Programs

A. Fisheries Fellowship Program

The National Sea Grant Office (NSGO) and the National Marine Fisheries Service (NMFS) established a new Graduate Fellowship Program in Population Dynamics and Marine Resource Economics (Fisheries Fellowship Program) in 1999. The intent of the Fisheries Fellowship Program is to award fellowships to four students each year who are intereted in careers related to (1) the population dynamics of living marine resources and the development and implementation of quantitative methods for assessing their status, and (2) the economics of the conservation and management of living marine resources. Two new fellowships were to be awarded each year in each of the above two disciplines resulting in an anticipated six students per discipline to be supported annually when the Fisheries Fellowship Program reached its maximum level three years following its inception.

For the FY 2002 competition now being announced, funds are available to award six new fellowships in the two disciplines combined, with a potential maximum of four in one of the two disciplines.

The goals of the Fisheries Fellowship Program are to (1) encourage qualified applicants to pursue careers in (a) population dynamics and stock assessment methodology or (b) marine

resource economics; (2) increase available expertise related to (a) the population dynamics and assessment of the status of the stocks of living marine resources or (b) economic analysis of living marine resource conservation and management decisions; (3) foster closer relationships between academic scientists and NMFS; and (4) provide real-world experience to graduate students and accelerate their career development.

The fellowships will provide support for up to three years for highly qualified graduate students working towards a PhD in population dynamics or related fields of study and for up to two years for highly qualified graduate students working towards a PhD in marine resource economics, natural resource economics, or environmental economics. Continued support after the first year will be contigent upon the availability of Federal funds and satisfactory performance by the Fellow. In addition to his/her faculty adviser, each Fellow will be required to work closely with an expert (mentor) from NMFS who will provide data for the Fellow's thesis, serve on the Fellow's committee, and host an annual summer internship at the participating NMFS facility.

Mentors will be from participating NMFS Science Centers or Laboratories. Each Fellow will be required to work as a summer intern at the participating NMFS facility either on his/her thesis or on appropriate related problems. Remuneration for the summer internship will be part of the annual award. Population Dynamics Fellows will also be expected to spend 10–20 days at sea per year learning about sampling techniques and problems, commercial fishing, fishery biology, and local and regional issues of importance to fisheries management. Fellows may also work, as necessary, at the participating NMFS facility during some or all of the academic year at the mutual discretion of mentor, faculty adviser, and Fellow.

Newly-selected Fellows must submit a one-page description of their thesis research or assignment based on discussions involving mentor, faculty adviser, and Fellow to the Fisheries Fellowship Program Manager by April 30, 2002. The thesis research or assignment description must reflect a clear mutual understanding of the substantive dimensions of the project and its expected results.

Fellows must, for each year of their fellowship, provide a written summary of their accomplishments and activities during the preceding year to the Fisheries Fellowship Program Manager. This summary must accompany the request for each additional year's funding. Fellows will be expected to present a review of their research during the annual Fellows Meeting held in the spring in Silver Spring, MD.

The award for each Fisheries Fellowship, contingent upon the availability of Federal funds, will be in the form of a grant or cooperative agreement of up to $38,000 per year, 50 percent (up to $19,000) of which will be contributed by NMFS, 33⅓ percent (up to $12,667) by the NSGO, and 16⅔ percent (up to $6,333) by the acadamic institution as the required 50 percent match of NSGO funds. The portion of the award provided to each Fellow for salary (stipend), living expenses (per diem), tuition (unless waived), health insurance and other institution fees, and travel necessary to carry out the proposed thesis research and to attend the annual Fellows Meeting in the spring in Silver Spring, MD will be determined and distributed by the institution in accordance with its guidelines.

B. Industry Fellowship Program

Today's global economy is putting unprecendented demands on the U.S. industrial community for innovation and new technology. This situation presents challenges to industry and academic institutions to develop new paradigms leading to more efficient utilization of available human, fiscal, and technical resources. This can be accomplished through the recruitment of graduates trained in technologies relevant to an industry's future and the creation of opportunities for collaboration between industrial and academic scientists and engineers. Academically well-trained students with exposure to advanced industrial issues constitute a critical component of success in that endeavor. To respond to the need for strengthened ties between academia and industry, Sea Grant developed the Sea Grant—Industry Fellowship Program (Industry Fellowship Program) in 1995.

For the FY 2002 competition new being announced, funds are available to award five new Industry Fellowships. Each fellow will be a graduate student selected through national competition, and will be known as a (Company Name)/Sea Grant Industry Fellow.

The goals of the Industry Fellowship Program are to (1) enhance the education and training provided to top graduate students in academic institutions in the United States and its territories; (2) provide real-world experience of industrial issues to graduate students and to accelerate their career development; (3) increase interactions between the nation's top scientists and engineers and their industrial counterparts; (4) accelerate the exchange of information and technologies between academic institutions and industry; (5) provide a mechanism for industry to influence Sea Grant research priorities and solve problems of importance to industry; and (6) forge long-term relationships between Sea Grant Colleges and industrial firms.

The Industry Fellowship Program, in cooperation with specific companies, provides support for highly-qualified graduate students who are pursuing research and development projects on topics of interest to a particular industry/company. The projects may be up to two years duration. In a true partnership, the student, the faculty advisor, the Sea Grant College or institute, and the industry representative work together on a project from beginning to end. Research facilities and the cost of the activity are shared. Academic institution faculty are the major source for identifying potential industrial collaborators and suitable research topics. However, other sources can be used to identify potential industrial partners including the Sea Grant Marine Advisory Services, university industrial relations offices, and the National Sea Grant Review Panel. Sea Grant directors are encouraged to use a variety of sources in building successful partnerships with industry.

Fellows must, for each year of their fellowship, provide a written summary of their accomplishments and activities during the preceding year to the Industry Fellowship Program Manager. This summary must accompany the request for each additional year's funding.

The award for each Industry Fellowship, contingent upon the availability of Federal funds, will be in the form of a grant of up to $30,000 per year from the NSGO; matching funds equal to at least 50 percent of the Federal request must also be provided by the industrial partner to support the budget for the proposed project.

III. Eligibility

A. Fisheries Fellowship Program

Any student may apply who is a United States citizen. At the time of application, prospective Population Dynamics Fellows must be admitted to a PhD degree program in population dynamics or a related field such as applied mathematics, statistics, or quantitative ecology at an academic

institution in the United States or its territories, or submit a signed letter from the institution indicating provisional acceptance to a PhD degree program conditional on obtaining financial support such as this fellowship. At the time of application, prospective Marine Resource Economics Fellows must be in the process of completing at least two years of course work in a PhD degree program in natural resource economics or a related field at an academic institution in the United States or its territories.

B. Industry Fellowship Program

Applications must be prepared by individuals affiliated with academic institutions in the United States or its territories. A prospective Fellow must be enrolled or accepted in either an MS or PhD degree program in the institution which submits the application.

IV. Selection Criteria

A. Fisheries Fellowship Program

Selection criteria will include: (1) Relevant academic ability and achievement, particularly quantitative skills (35 percent); (2) demonstrated research ability in the discipline and appropriateness/importance of proposed thesis topic (30 percent); (3) expertise of major professor (20 percent); and (4) additional relevant experience (15 percent).

B. Industry Fellowship Program

Selection criteria will include: (1) The caliber of the prospective Fellow, including special skills, past experiences, or training that render him/her especially qualified for the proposed project; participation by the Fellow in proposal preparation will be viewed favorably (25 percent); (2) the benefit accruing to the student from his or her participation as a Sea Grant—Industry Fellow, including exposure to industrial methods and mentoring by the industrial partner (25 percent); (3) the level of commitment of the industrial partner to the project, as demonstrated by financial support, mentoring on technical and other issues such as industry trends, problems, and opportunities, offering exposure to an industrial setting, facilities/equipment, etc. (25 percent); and (4) the importantance of the problem and the benefits expected to the industrial partner and the nation due to the advancement of technology (25 percent).

V. Selection Procedures

Applications will be ranked in accordance with the above criteria and their assigned weights by independent review panels consisting of government, academic, and industry experts. The panel members will provide individual evaluations of each applicant, but there will be no consensus advice. Their recommendations and evaluations will be considered by the NSGO in the final selection. Only those applications receiving a minimum score of 50 percent by the panel will be eligible for funding. For those applications, the NSGO will: (1) Ascertain which best meet the objectives of the particular program (as stated in Section II. Descriptions of Programs); (2) give priority, in the case of Fisheries Fellowship applications to NMFS Fisheries Science Centers which do not currently have Fellows; and (3) select the applications to be funded. Accordingly, awards may not necessarily be made to the highest-scoring applications in each program or discipline therein. Applicants may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. A summary statement of the review of the application by the review panel will be provided to each applicant.

VI. Timetable

February 15, 2002, 5 pm (local time)—Applications due at state Sea Grant Program (or at NSGO, only if application is from an academic institution in a non-Sea Grant state).

February 20, 2002, 5 pm EST—Applications due at NSGO from state Sea Grant Programs.

June 1, 2002 (approximate)—Funds awarded for the Fisheries Fellowships.

September 1, 2002 (approximate)—Funds awarded for the Industry Fellowships.

Note that applications arriving after the above deadlines will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery (see ''Addresses'' above) prior to the specified closing date and time; in any event, applications received by the NSGO or the state Sea Grant Programs later than two business days following the closing date will not be accepted. Facsimile transmissions and electronic mail submission of applications will not be accepted.

VII. Application Instructions

A. General Requirements

All printed pages in the application must be on metric A4 (210 mm × 297 mm) or 8.5″ × 11″ paper with at least a 10-point font. Applications must include the items listed below.

1. *Signed Title Page:* The title page must identify the prospective Fellow, be signed by the Faculty Advisor and the institutional representative, and provide complete contact information. The program area being addressed should be clearly identified by starting the project title with either ''NMFS—Sea Grant Fisheries Fellowship'' or ''Sea Grant—Industry Fellowship''. The total amount of Federal and matching funds being requested for each project year must be listed.

2. *Project Summary:* The project summary should concisely describe the activity being proposed and the impact that would result from its successful completion, in a form suitable for publication. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the Sea Grant form. The project summary should include: (a.) *Title:* Use the exact title as it appears in the rest of the application. (b.) *Investigators:* List the names and affiliations of each investigator who will significantly contribute to the project, starting with the Principal Investigator. For Sea Grant Fellowships, the faculty advisor or the state Sea Grant Director may be used. (c.) Funding request for each year of the Fellowship, including matching funds if appropriate. (d.) *Project Period:* Start and completion dates. Applications for a Fisheries Fellowship should request a start date of July 1, 2002, and applications for an Industry Fellowship should request a start date of September 1, 2002. (e.) *Project Abstract:* This should include the rationale for the proposed activity, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of the work to be completed.

3. *Budget and Budget Justification:* There should be a separate budget for each year as well as a cumulative annual budget for the entire period of the proposed fellowship. The Sea Grant Budget Form 90–4 should preferably be used, but the institution may use its own form as long as it provides the same information as the Sea Grant form. Sub-contractors should have a separate budget page. Indirect costs are not allowable for either the fellowship or for any costs associated with fellowship (15 CFR 917.11(e), ''Guidelines for Sea Grant Fellowships'').

For Fisheries Fellows: Matching funds equivalent to 50 percent of the NSGO funds must be provided by the Fellow's institution. Allocation of matching funds must be specified in the budget and may consist of up to one/half month's salary for the faculty adviser,

waived tuition, equipment and supplies, and any other costs typically used as matching funds. In addition to stipend and tuition for the applicant, the budget should include funds for equipment, supplies, and travel (see ''Description of Programs'' above).

For Industry Fellows: Matching funds equivalent to 50 percent of the NSGO funds must be provided by the industrial partner. Allocation of matching funds must be specified in the budget. The budget should include adequate travel funds for the Fellow, the industrial mentor, and the faculty advisor to meet at least twice per year during the fellowship period, preferably at the site of the industrial partner. The budget may also include up to one month of salary or stipend support for the faculty advisor or one other project participant, in addition to the Fellow, who is affiliated with the academic institution.

4. Curriculum vitae of the student, the faculty advisor, and NMFS or company-appointed research mentor (2-page maximum per investigator).

5. Signed letter of commitment from the prospective NMFS mentor or industrial partner.

6. Official copies of all undergraduate and graduate student transcripts.

7. Additional Material for Fisheries Fellowship Program only:

a. Education and career goal statement (not to exceed two pages) from the student indicating the number of years for which fellowship support is being sought and the student's interest in (a) marine population dynamics or the development and implementation of quantitative methods for assessing stock status of living marine resources, or (b) in marine resource economic (a summary of the proposed thesis or the general intended area of study should be included, if available).

b. Three signed letters of recommendation, including one from the student's faculty adviser.

c. Proof of application, acceptance, provisional acceptance, and enrollment (only for Population Dynamics applicants) in the case of students entering graduate school (i.e., who have not yet completed one semester of graduate work) if they are selected for a fellowship.

8. Additional Material for Industry Fellowship Program only:

a. *Project Description (10-page limit):* Brevity will assist reviewers and program staff in dealing effectively with applications. Therefore, the Project Description may not exceed 10 pages. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations, are included in the 10-page limitation; literature citations are not included in the 10-page limitation. Conformance to the 10-page limitation will be strictly enforced. All information needed for review of the application should be included in the main text; no appendices are permitted.

Introduction/Background/Justification: What is the problem being addressed and what is its scientific and economic importance to the advancement of technology, to the cooperating industrial partner, and to the region or nation?

Research or Technical Plan: What are the goals, objectives, and anticipated approach of the proposed project? While a detailed work plan is not expected, the application should present evidence that there has been thoughtful consideration of the approach to the problem under study. What capabilities does the industrial partner possess that will benefit the Fellow?

Output/Anticipated Economic Benefits: Upon successful completion of the project, what are the anticipated benefits to the student, the industrial partner, the academic institution and its faculty, the sponsoring Sea Grant Program, and the nation?

References and Literature Citations: Should be included, but will not be counted in the 10-page project description limit.

b. A brief (1-page) description of the collaborating industrial firm.

VIII. How To Submit

Ten (10) copies of applications must be submitted to the state Sea Grant Programs or to the NSGO according to the schedule outlined above (See ''Addresses'' and ''Timetable''). The addresses of the state Sea Grant College Programs may be found at the following Internet web site: (*http://www.nsgo.seagrant.org/SGDirectors.html*), or may be obtained by contacting Mr. Joseph Brown at the NSGO (tel: 301–713–2438 × 135). Applications sent to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Applications Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 10910 (telephone number for express mail applications is 301–713–2445). Facsimile transmissions and electronic mail submission of applications will not be accepted.

IX. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the Federal Register notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation. The Federal Register notice also lists the forms required to complete the standard Department of Commerce grant application package, but those forms will be required only for those applicants who have been recommended for funding. Unsuccessful applications will be held in the National Sea Grant Office for a period of five (5) years and then destroyed. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at the following Internet web site: *http://www.ed.gov/offices/OCR/minorityinst.html.*

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of NOAA Forms 90–2 and 90–4, or equivalents, has been approved by OMB under the control number 0648–0362. Public reporting burden for these collections of information is estimated to average 20 minutes for a NOAA Form 90–2 and 15 minutes for a NOAA Form 90–4. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the National Sea Grant Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the

Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

X. Classification

It has been determined that this notice is not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as the term is defined in EO 13132.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S. C. 553(a)), a Regulatory Flexibility Analysis is not required and had not been prepared for this notice, 5 U.S.C. 601 *et seq.*

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

John E. Herring,

Acting Director, Officer of Science and Technology, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 02–514 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 991027290–1295–02]

RIN 0648–ZA74

Sea Grant National Strategic Investments in Technology, Marine Environmental Biotechnology, and Fisheries Habitat: Request for Proposals for FY 2002

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is entertaining preliminary proposals and subsequently full proposals for National Strategic Investments in the following three programs:

(1) The Technology Program, which involves the development and transfer of technologies pertaining to engineering and the physical sciences; this program is intended to fulfill Sea Grant's broad responsibilities in fostering economic competitiveness through the transfer of technology pertaining to the development and utilization of ocean, coastal, and Great Lakes resources. The maximum Federal award for each project will be $150,000 per year for up to two years.

(2) The Marine Environmental Biotechnology Program, which seeks to fund innovative research, education, and outreach projects to (i) develop and utilize molecular and cellular biology for assessing the effects of contaminants and pathogens on the health of the coastal ecosystem; and (ii) educate and inform the public about marine biotechnology. The maximum Federal award for each project will be $150,000 per year for up to two years.

(3) The Fisheries Habitat Program, which deals with innovative research, education, and outreach projects that address critical and high priority problems related to fisheries habitat in U.S. coastal and Great Lakes waters. The maximum Federal award for each project will be $300,000 per year for up to two years.

To support projects in the above three programs, Sea Grant expects to provide a total of about $1,750,000, $2,750,000, and $2,000,000, respectively, over a two-year period (FY2002 and FY2003). Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects, which will have a maximum duration of two years, will be selected through national competitions.

DATES: Preliminary proposals must be received by 5 pm (local time) on February 15, 2002 by a state Sea Grant College Program. Preliminary proposals from non-Sea Grant states, if submitted directly to the National Sea Grant Office (NSGO), must be received by 5 pm EST on February 15, 2002. After evaluation at the NSGO, some proposers will be encouraged to prepare full proposals, which must be received by 5 pm (local time) on April 18, 2002 by a state Sea Grant College Program or the NSGO. (See **ADDRESSES** for where to submit preliminary and full proposals.) Note that applications arriving after these deadlines will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery to the address listed below (see **ADDRESSES**) prior to the specified closing date and time; in any event, applications received by the NSGO or the state Sea Grant programs later than two business days following the closing date will not be accepted. Facsimile transmissions and electronic mail submission of proposals will not be accepted. It is anticipated that funding decisions will be made by June 20, 2002, and that successful applicants will be able to initiate projects approximately December 1, 2002.

ADDRESSES: Preliminary proposals and full proposals originating in Sea Grant states must be submitted to the state Sea Grant Program. Preliminary proposals and full proposals originating elsewhere may be submitted either to the nearest Sea Grant Program or directly to the NSGO. The addresses of the Sea Grant College Program directors may be found on Sea Grant's home page (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting the NSGO. Preproposals and proposals submitted to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Proposal Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301–713–2445).

FOR FURTHER INFORMATION CONTACT: Dr. Vijay G. Panchang (Program Director for Technology Transfer), Dr. Linda Kupfer (Program Director for Biotechnology), or Dr. Emory Anderson (Program Director for Fisheries) at the National Sea Grant Office, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–2435, e-mail: *Vijay.Panchang@noaa.gov*; *Linda.Kupfer@noaa.gov*; *Emory.Anderson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 1121–1131.

Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.

II. Description of Programs

A. Technology Program

Background

The ocean environment has traditionally provided an abundance of economic opportunities over a wide spectrum of activities. As a result of growing population pressures, the demands to maintain a sustainable and healthy environment, and ongoing scientific advancements, the economic potential afforded by the marine environment may be expected to increase. On the other hand, globalization has put unprecedented demands on U.S. industry for innovation and the development of new technologies. Economic competitiveness can be fostered by creating opportunities for collaboration between industrial and academic scientists and engineers, as well as by supporting post-fundamental work to accelerate the

conversion of academic research into products with commercial value.

The ''National Sea Grant College Program Reauthorization Act of 1997'' (33 U.S.C. 1121–1131) calls upon the National Sea Grant College Program (Sea Grant) to foster economic competitiveness, invest in technology transfer, and create partnerships between the Federal Government and universities, private industry, and other agencies in the development and utilization of marine resources. To meet these objectives, Sea Grant's Technology program is meant to serve as a catalyst for scientific entrepreneurship and technology transfer and thereby enhance commerce. In particular, the goals are: To conduct focused projects that can lead to the development of marine and Great Lakes related technological innovations and their acceptance in the marketplace (both in the U.S. and abroad); to increase interactions between the nation's academic scientists and engineers and their industrial counterparts; to stimulate Sea Grant's research and development activities in the physical sciences and engineering; to accelerate the transfer of research-based marine science from universities to new technologies in industry; to provide a mechanism for industry to influence Sea Grant research priorities and solve problems of importance to industry; and to forge long-term relationships between Sea Grant colleges and industrial firms.

Funding Priorities and Availability

The Sea Grant Technology program provides support for applied research and development projects that ultimately facilitate the transfer of new products and processes that pertain to the development of marine technologies, including cost reductions for processes and product safety. In a true partnership that benefits national or regional economies, industrial cooperation in academic research and development efforts could be expected and such cooperation should be sought. University faculty are the major source for identifying potential industrial collaborators and suitable research topics. However, other sources can be used to identify potential industrial partners or user groups, such as the Sea Grant Marine Extension Program, university industrial relations offices, and the Sea Grant Review Panel. Sea Grant directors are encouraged to use a variety of sources in building successful partnerships with industry or other user groups.

Several types of projects will be considered under this announcement. These include, for example, the following:

1. Additional developmental work that can accelerate the transition of academic research to marketplace acceptance or practice. For example, pilot-scale testing of technologies developed in academia may be necessary to establish economic feasibility. A private sector partner may or may not be identified. (If the work has imminent commercial implications and an industrial partner is involved, the partner is encouraged to provide matching funds.)

2. A project which does not lead to a commercializable product per se, but is of mutual benefit to industry and academia. For example, if an industry sector anticipates future trends either due to market forces or government regulations, it may wish to prepare for them by developing technologies with help from academia. If there is actual transfer of technologies to industry, then participation by an industrial partner may be appropriate.

3. Technology transfer or demonstration projects and workshops/forums given by academic researchers and mainly targeted to industry, involving registration or other fees paid by industry which can constitute industrial match.

4. Technology transfer to user groups in government or other agencies that enhances cost-effectiveness of operations.

Proposals that will be considered under this announcement are not limited to the above types of projects, which are given by way of example only.

This announcement is intended to stimulate Sea Grant developments in the physical sciences and engineering. (See the Long Range Plan on Sea Grant's home page or that of the nearest Sea Grant College Program). Examples of possible project areas include:

1. Improved ocean observation technology and data management systems pertaining to a ''digital ocean'', including predictive models of coastal/shoreline/basin ocean/lake circulation and sensors for currents/tides, marine contamination and water quality, storms/winds/waves, and other natural chemical/physical properties.

2. Marine weather prediction techniques for users in coastal regions.

3. Determining the extent and implications of shoreline erosion and developing new solutions (including social science approaches).

4. Sea level issues such as rise/fall, hazard analysis, etc.

5. Harbor/channel problems such as management for commercial, public, and private/recreational uses as well as engineering design and operations (e.g. improved techniques for dredging and spoil analysis/distribution, ''intelligent'' waterways and enhanced navigability, etc).

6. Improved wastewater treatment technologies to reduce coastal contamination.

7. Vessel design.

8. Life raft/lifesaving/rescue communications devices.

9. Material science in relation to the marine environment for structures, vessels, antifouling products, etc.

10. Programmable online robotic submersibles for marine observations.

11. Improvements in land use practice, watershed management, smart growth, risk analysis, etc.

The above list is not intended to be restrictive and projects covering other topics in the physical sciences and engineering are welcome.

To support projects in the Technology program, Sea Grant expects to provide a total of about $1,750,000 over a two-year period (FY2002 and FY2003). The maximum Federal award for each project will be $150,000 per year. Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects will have maximum duration of two years; however, the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress.

B. Marine Environmental Biotechnology Program

Background

Preservation of coastal ecosystems is critically important to the American public. There are growing concerns with the status and health of vital marine resources. Increasing development of coastal areas and pollution from variety of sources now exert relentless pressure upon these environments. Recognition that widespread threats to coastal ecosystems impact human health as well as traditional and emerging economic interests resonates throughout the scientific and management communities. The National Research Council's Ocean Studies Board reported in ''Challenges on the Horizon'' that improving the health of the coastal oceans and sustaining ocean ecology in the fact of mounting anthropogenic impacts represent key challenges for ocean research. Realization of the close link between the oceans and human health has sparked interest and involvement from scientists, health care professionals and other stakeholders as cited in the Ocean Studies Board's report ''From Monsoons to Microbes.''

There are numerous chemical and biological threats to the health of the marine environment, which can affect its potential to sustain essential biodiversiry, its ability to fuel valuable economic interests, and its effect on human health. These range from severe impacts of point-source contamination and diseases to far more subtle stress imposed by sublethal and non-point source contamination exposure over long time frames. Development of coastal areas and the associated changes in land use patterns apply additional impacts to the coastal ecosystem. The response of the biota to the cumulative stress is now evident in a variety of compelling ways.

While these problems have continued to mount, our understanding of the concurrent biological and ecological ramifications have not followed in step. Consequently, we are poorly equipped to evaluate these problems and to adequately suggest and implement remedies. Historically, a number of factors have prevented this. We are using for the most part the tools of early twentieth century biology when better ones are available. Techniques with sufficient resolution to discern the mechanisms underlying these problems have rarely been applied within the context of the health of the marine environment. In addition, owing to their highly interdisciplinary nature, some of these problems have been difficult to address through traditional funding paths. The early promise of molecular biology and genetics continues to be realized as evidenced by the publishing of the human genome in February of this year. New methodologies are being developed and applied to the field such as the microarray or ''gene chip''. Yet, while many scientists utilize the tools of biotechnology to answer pertinent questions regarding human health, the state of the environment and food production and safety, the extension, education and communication of information about biotechnology has largely been neglected.

There is a significant lack of understanding in the public domain regarding biotechnology and its applications in the marine environment. An accelerated program of biotechnology education, communication and outreach is critical to public acceptance and trust in the use of marine biotechnology tools.

Overcoming these barriers is the present emphasis of this program, which is meant to support the application of innovative and state-of-the-art molecular and cellular biotechnology research designed specifically to address tractable problems pertaining to the health of the marine ecosystem as well as education and outreach projects designed to inform the public about marine biotechnology.

The same innovative technology that has yielded such profound changes in the way that biomedical research is conducted and has become commonplace in virtually all modern biology laboratories will be applied in the critical area of environmental research. Techniques utilized in a typical molecular and cellular biology laboratory can now be viewed as an accessible biological toolbox that enables researchers to answer insightful questions relating to stress detection and monitoring methodologies. Marine biotechnology has become a mature and powerful driving force that is poised to lead to new developments in our understanding of how marine organisms and the coastal ecosystems respond to pollution, disease and environmental stress.

This announcement builds upon the successes of previous marine biotechnology initiatives funded by Sea Grant. These initiatives were instrumental in focusing university molecular and cellular biology research on marine issues. The benefits of previously funded research in marine biotechnology include new natural products and pharmaceuticals, new tools for fisheries management as well as development of new research systems for fundamental research and new insights into ocean dynamics. With this request for proposals, Sea Grant will focus the considerable power of molecular and cellular biology on the aquatic ecosystem.

Funding Priorities and Availability

Sea Grant will fund a nationwide research, education, and outreach program that is designed to foster innovative approaches to the study of health of the marine environment. It is designed to encourage collaboration among academics and key resource decision makers to ensure that the research is pertinent to the end users and that the results are distributed in an appropriate fashion among a variety of key user groups ranging from the research and management communities to the general public.

1. The focus of the research conducted under this initiative addresses a topic of pressing national importance: To better understand the marine ecosystem and the impact of contaminants and pathogens on this system.

The overarching goal is to add new focus and direction to Sea Grant funded research and to enhance its impact through innovative research studies, interdisiplinary studies, educational programs and outreach efforts. Research proposals should focus on tractable problems and specific, identifiable outcomes which impact the problem. Project areas may include the application of cellular and molecular biological techniques for the detection and characterization of pollutants and disease on the coastal ecosytem, including (a) the development of novel biosensors (including in situ biosensors) for major groups of pollutants and contaminants (toxics; heavy metals such as cadmium, copper and mercury; organics such as PCBs, PAHs, and pesticides; and endocrine disrupters); (b) the detection and characterization of sublethal effects of pollutants, contaminants, and pathogens (excluding effects of harmful algal blooms) in ecologically and economically important stocks in the natural environment (excluding aquacultured animals); and (c) the identification and use of biomarkers for the purpose of health and environmental quality assessment.

2. Outreach projects conducted under this initiative will focus on the fact that while the science of biotechnology has literally sprinted forward, public understanding of this technology has merely limped along, creating an uninformed and at times bewildered public. This situation is addressed in a January 2000 report by the National Association of State Universities and Land-Grant Colleges entitled ''Agricultural Biotechnology: Critical Issues and Recommended Responses from the Land-Grant Universities.'' With this request for proposals, Sea Grant will begin the process of bringing the public up to speed on marine biotechnology, its promise as well as the issues surrounding its use. Proposals should address the communication, education, and extension of marine biotechnology to the public. Examples in the field of communication include the development of a Sea Grant marine biotechnology web site which is a one-stop shop, critical for users learning about the many facets of marine biotechnology and for tying together all the work in marine biotechnology currently going on in the Sea Grant network. In addition, synthesis documents describing the results of Sea Grant sponsored research in marine biotechnology to both the scientist and the layperson are essential to tell the story of Sea Grant successes in marine biotechnology. An integrated project in this area could also include fact sheets

on a variety of areas applicable to marine biotechnology suitable for diverse audiences. Examples of extension would be symposia geared to educate laypersons, industry, government regulators and policy makers on marine biotechnology. Similarly, workshops designed to assemble researchers who have been funded by national strategic investments in marine biotechnology to present their results and discuss the state of the science are encouraged. Publication of workshop proceedings would document a body of work and suggest future investments, similar to the NRC publication ''Opportunities for Environmental Applications of Marine Biotechnology'' upon which this request for proposals is based. Other themes for workshops might include policy issues surrounding marine biotechnology such as Federal and state regulations, risk assessment issues, legal policies such as patents and licensing, and regional marine biotechnology issues. Examples of proposals in the area of education include those focused on teaching marine biotechnology to high school students and teachers of high school students, aquarium exhibits focused on teaching marine biotechnology, traveling exhibits and museum exhibits, a course or series of courses in marine biotechnology for extension agents, specialists, or specific user groups such as policy makers or management.

To support projects in the Marine Environmental Biotechnology program, Sea Grant expects to provide a total of about $2,750,000 over a two-year period (FY2002 and FY2003). The maximum Federal award for each project will be $150,000 per year. For the Marine Environmental Biotechnology Program, about one quarter of the available funds will be devoted to support outreach projects. Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects will have a maximum duration of two years; however, the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress.

C. Fisheries Habitat Program

Background

Human and non-anthropogenic activities threaten the environments of our marine and Great Lakes waters. Habitats important to stocks of finfish and shellfish species exist in riverine, estuarine, coastal, and offshore continental shelf waters within the U.S. Exclusive Economic Zone as well as in waters of the Great Lakes. A long-term threat to the viability of commercial and recreational fisheries is the continuing adverse impacts of various human activities and natural hazards on our marine and Great Lakes aquatic habitats.

The U.S. Congress, in re-authorizing the Magnuson-Stevens Fishery Conservation and Management Act through the Sustainable Fisheries Act (SFA) (16 U.S.C. 1801 *et seq.*) in October 1996, mandated the identification of habitats essential to Federally managed marine finfish and shellfish species and the identification of measures to conserve and enhance these habitats. The SFA defined essential fish habitat (EFH) as ''those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.'' This has been further interpreted by NOAA to include aquatic areas and their associated physical, chemical, and biological properties needed to support sustainable fisheries and healthy ecosystems involving managed species.

Since Congressional intent in the SFA was to prevent further loss of marine, estuarine, and other aquatic habitats, the eight regional Fishery Management Councils (Councils) have had to amend their fishery management plans (FMPs) to describe and identify EFH for all life stages of managed species, provide information on fishing and non-fishing activities that may adversely impact EFH, recommend measures to conserve and enhance EFH, and minimize, to the extent practicable, adverse impacts on EFH caused by fishing activities. The SFA also requires consultations between the National Marine Fisheries Service (NMFS) and any Federal agency whose actions may adversely affect EFH.

Although the EFH mandate in the SFA was directed towards the conservation and management of habitat for Federally managed fisheries, it has served to heighten awareness and stimulate similar efforts by state resource agencies and interstate Marine Fisheries Commissions responsible for near-shore and estuarine waters and by state, Federal, and international bodies responsible for Great Lakes waters.

Huge gaps in knowledge exist regarding habitat preferences and requirements of the life stages of many finfish and shellfish species, the role played by various habitats in the fishery production process, and the impacts of various anthropogenic and natural activities on habitat structure and function. In order for Fishery Management Councils, NMFS, interstate Marine Fisheries Commissions, and other Federal and state regulatory bodies and agencies responsible for either marine or Great Lakes waters to adequately manage habitats, these gaps in knowledge must be filled through expanded research and extension efforts.

The importance of addressing the requirement for and present deficiency in knowledge regarding fisheries habitat, and the need to consider habitat to a greater extent in fisheries management, has recently received considerable national attention in scientific symposia and conferences and popular and peer-reviewed publications. This research initiative is helping to address that lack of knowledge.

Funding Priorities and Availability

The Sea Grant Fisheries Habitat Program encourages proposals that address the topical fisheries habitat issues listed below. Proposals that are particularly encouraged are those that: (1) Involve collaboration with multiple investigators and various Federal agencies (e.g., National Marine Fisheries Service, National Undersea Research Program, Environmental Research Laboratories, National Ocean Service, U.S. Geological Survey, Environmental Protection Agency) in which the cooperating agencies provide additional funding, personnel, specialized equipment, research vessel time, and the like; (2) address regional or national issues with broad application; (3) demonstrate local and regional resource manager and stakeholder involvement in the planning and development process; (4) provide results in digital, metadata, GIS-capable format; and (5) incorporate applied areas of education, outreach, socioeconomic, and management components and applications of direct benefit to stakeholders. Proposals with narrow focus from single investigators are not encouraged and will have a minimal likelihood of being funded.

Proposals are requested that address the following issues:

1. Documentation of the functional role of habitats for particular species and life stages.

a. Documentation of the associations between managed fish and shellfish species and their habitats and characterization of the ecological processes that control species distribution.

b. Identification of the specific types of habitat that contribute most to the growth, reproduction, and survival of managed fish and shellfish species.

c. Development of survey strategies for seabed mapping, combining large-scale mapping technology with finer-scale survey techniques such as underwater video and sediment sampling.

2. Determination of the short- and long-term (cumulative) effects of commercial and recreational fishing gear and activities on fish and shellfish habitats.

a. Documentation of the effects of fishing activities on the physical and chemical structure of habitats, community composition of associated species, and growth, reproduction, and survival of managed fish and shellfish species.

b. Evaluation of the recovery rates for benthic habitats and associated fish and shellfish species disturbed by fishing gear and activities with respect to the frequency and magnitude of disturbance.

To support projects in the Fisheries Habitat program, Sea Grant expects to provide a total of about $2,000,000 over a two-year period (FY2002 and FY2003). The maximum Federal award for each project will be $300,000 per year. Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects will have a maximum duration of two years; however, the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress.

III. Eligibility

Applications may be submitted by individuals, public or private corporations, partnerships, or other associations or entities (including institutions of higher education, institutes, or non-Federal laboratories), or any State, political subdivision of a State, or agency or officer thereof. Directors of the state Sea Grant Programs are not eligible to compete for funds under this announcement, although for administrative purposes, they will be considered to be the Principal Investigator for all awards made to their state programs.

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under these three programs are:

A. *Impact of Proposed Project* (50%): Significance of the problem addressed; impacts/benefits expected to the nation as a consequence of the project; degree to which the activity will advance the state of the science or discipline; potential for technology transfer to user groups such as industry and/or for enhanced economic/scientific/educational/management value.

B. *Project Design* (50%): Appropriateness of methodologies to be used; advanced synthesis of existing information; use or extension of state-of-the-art methods; qualifications of the investigators (education, training, and/or experience and record of achievement with previous funding); the degree to which multiple investigators, other Federal agencies, and potential users of the results of the proposed activity have been involved in planning the activity and/or will be involved in the execution of the activity, as appropriate; proposed project schedule (timeline).

V. Selection Procedures

Preliminary proposals will be reviewed at the NSGO by panels composed of government, industry, and academic experts. The panels will be asked to assess each preliminary proposal according to the evaluation criteria. The panels will make individual recommendations to the NSGO regarding which preliminary proposals may be suitable for further consideration. On the basis of the panels' recommendations, the Director of the NSGO will advise proposers whether or not the submission of full proposals is encouraged. Invitation to submit a full proposal does not constitute an indication that the proposal will be funded. Interested parties who are not invited to submit full proposals will not be precluded from submitting full proposals if they have submitted a preliminary proposal in accordance with the described procedures.

Individual state Sea Grant Programs receiving full proposals will conduct the mail peer review of the proposed projects in accordance with the Evaluation Criteria listed above. Complete proposals (12 copies) and copies of the mail reviews will then be sent by the state Sea Grant programs to the National Sea Grant Office. The NSGO will conduct mail reviews for proposals submitted directly to it by applicants not in Sea Grant states.

The proposals will be ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer review panel consisting of government, academic, and industry experts. These panel members will provide individual evaluations on each proposal; thus there will be no consensus advice. Their recommendations and evaluations will be considered by the NSGO in the final selection. Only those proposals awarded a score of 50% or greater by the panel will be eligible for funding. For those proposals, the NSGO will: (a) Ascertain which proposals best meet the program priorities (stated in Section II), and do not substantially duplicate other projects that are currently funded or are approved for funding by NOAA and other Federal agencies, hence, awards may not necessarily be made to the highest-scored proposals; (b) select the proposals to be funded; (c) determine which components of the selected projects will be funded; (d) determine the total duration of funding for each proposal; and (e) determine the amount of funds available for each proposal. Investigators may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. Note that only one award will normally be made for each project; if multiple institutions are involved, they should be handled through subcontracts. A summary statement of the scientific review by the peer panel will be provided to each applicant.

VI. Instructions for Application

A. General Requirements

The ideal project attacks a well-defined problem that will be or is a significant societal, research, or technology development and transfer issue. The organization or people whose task it will be to make related decisions or who will be able to make specific use of project results will have been identified and contacted by the Principal Investigator(s). The proposal demonstrates an understanding of what constitutes necessary and sufficient information for responsible decision-making or for applied use, and shows how that information will be provided by the proposed activity or in concert with other planned activities.

Proposals are expected to have: a rigorous, hypothesis-based scientific work plan, or a well-defined, logical approach to address an engineering problem or outreach opportunity; a strong rationale for the proposed work; and a clear relationship with the ultimate users of the information. Projects undertaken jointly with industry, business, multiple investigators, or other agencies with interest in the problem are encouraged. Their contribution to the project may be in the form of collaboration, in-kind services, or dollar support. Projects that are solely monitoring efforts are not appropriate for funding. Proposals that incorporate educational, outreach, socioeconomic, and management components and applications will be viewed favorably.

To prevent the expenditure of effort that may not be successful, proposers must first submit preliminary proposals; based on advice provided by the NSGO, proposers may subsequently submit full

proposals. Full proposals submitted by applicants who do not first submit a preliminary proposal will be returned without review. Applications may be made for Federal funds to support up to two-thirds of the total budget. Allocation of matching funds, equal to at least one-third of the total budget (in other words, at least 50% of the Federal request), must be specified. No more than $150,000 (for the Technology and the Marine Environmental Biotechnology Programs) or $300,000 (for the Fisheries Habitat Program) of Federal funds per year will be awarded to a project. The maximum duration for funded projects will be two years. Awards may be made either as grants or, if there is substantial involvement by one or more Federal agencies, as cooperative agreements. Investigators are encouraged to review the budgeting and grant-making policies of their state's Sea Grant Program, if any, before finalizing their proposal submissions.

B. How To Submit

Interested parties must submit applications (preliminary and full proposals) as follows. Applications originating in one of the Sea Grant states must be submitted to the state's Sea Grant College Program, which will submit the final grant application to the NSGO. Applications originating in a state with no Sea Grant College Program may be submitted to the nearest state Sea Grant College Program which will then submit the final grant application to the NSGO, or the application may be submitted directly to the National Sea Grant Office. Twenty (20) copies of preliminary proposals and proposals must be submitted to the state Sea Grant Programs or to the NSGO according to the schedule outlined below (See ''Timetable''). The addresses of the Sea Grant College Program directors may be found on Sea Grant's World Wide Web home page (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting Mr. Joseph Brown at the NSGO (phone: 301–713–2438 x135 or e-mail: joe.brown@noaa.gov). Preproposals and proposals sent to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Ms. Geri Taylor, Proposals Processing, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2435 for express mail applications). Facsimile transmissions and electronic mail submission of applications will not be accepted.

C. Timetable

February 15, 2002, 5 p.m. (local time)—Preliminary proposals (20 copies) due at state Sea Grant Program, or at NSGO if application is being submitted by an institution in a non-Sea Grant state.

February 20, 2002, 5 pm EST—Preliminary proposals received at state Sea Grant Programs due at NSGO (18 copies).

April 18, 2002, 5 pm (local time)—Full proposals (20 copies) due at state Sea Grant Program, or at NSGO if application is being submitted by an institution in a non-Sea Grant state.

April 24, 2002, 5 pm EST—Full proposals (12 copies) received at state Sea Grant Programs due at NSGO.

June 4, 2002, 5 pm EDT—Reviews received at state Sea Grant Programs due at NSGO.

December 1, 2002 (approximate)—Funds awarded to selected recipients; projects begin.

Note that applications arriving after the closing dates given above will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery to the appropriate address (see **ADDRESSES**) prior to the specified closing date and time; in any event, applications received by the NSGO or the state Sea Grant programs later than two business days following the closing date will not be accepted.

D. What To Submit

Preliminary Proposal Requirements

Preliminary proposals must be printed on metric A4 (210 mm x 297 mm) or 8½″ x 11″ paper with at least a 10-point font. The following information should be included:

1. Signed Title Page: The title page must be signed by the Principal Investigator and should clearly identify the program to which the proposal is submitted by starting the project title with ''Sea Grant Technology Program'' or ''Sea Grant Marine Environmental Biotechnology Program'' or ''Sea Grant Fisheries Habitat Program'' (as appropriate). Principal Investigators and collaborators should be identified by affiliation and contact information. The total project costs (Federal funds being requested and matching funds) should be listed as well as the source of the matching funds. Preliminary proposals must include matching funds equivalent to at least 50% of the Federal funds requested.

2. A concise (2-page limit) description of the project, its experimental design, its expected output or products, the anticipated users of the products, and its anticipated impact. Proposers should consult the Evaluation Criteria for additional guidance in preparing the preliminary proposals.

3. Resumes (1-page limit) of the Principal Investigators.

4. Proposers are encouraged (but not required) to include a separate page suggesting reviewers that the proposers believe are especially well-qualified to review the proposal. Proposers may also designate persons they would prefer not review the proposal, indicating why. These suggestions will be considered during the review process.

No institutional signatures or Federal government forms are needed while submitting preliminary proposals.

Full Proposal Requirements

All pages must be printed on metric A4 (210 mm × 297 mm) or 8½″ x 11″ paper with at least a 10-point font. Each full proposal should include the items listed below. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations and letters of support are not included in the 15-page limitation. No appendices are permitted. Applicants may obtain all required application forms through the World Wide Web at *http://www.nsgo.seagrant.org/research/index.html* and *http://www.ofa.noaa.gov/~grants/pdf/*, from the state Sea Grant Programs, or from Mr. Joseph Brown at the National Sea Grant Office (phone: 301–713–2438 ×135 or e-mail: *joe.brown@noaa.gov)*.

1. *Signed Title Page*: The title page must be signed by the Principal Investigator and the institutional representative and provide complete contact information. The program area being addressed should be clearly identified by starting the project title with ''Sea Grant Technology Program'' or ''Sea Grant Marine Environmental Biotechnology Program'' or ''Sea Grant Essential Fisheries Habitat Program'' (as appropriate). The total amount of Federal and matching funds being requested for each project year must be listed.

2. *Project Summary*: The project summary should concisely describe the activity being proposed and the impact that would result from its successful completion, in a form suitable for publication. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the Sea Grant form. The project summary should include: A. Title: Use the exact title as it appears in the rest of the application. B.

Investigators: List the names and affiliations of each investigator who will significantly contribute to the project, starting with the Principal Investigator. For graduate fellowships, the faculty advisor or the state Sea Grant Director may be used. C. Funding request for each year of the project, including matching funds if appropriate. D. Project Period: Start and completion dates. Proposals should request a start date of December 1, 2002. E. Project Abstract: This should include the rationale for the proposed activity, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of the work to be completed.

3. *Project Description (15-page limit)*:

a. *Introduction/Background/Justification*: Subjects that the investigator(s) may wish to include in this section are: (i) Previous fundamental research, including relevant work funded by Sea Grant, and a description of what additional work is needed to enhance the value of that work; and (ii) impacts of the study to the particular discipline or subject area.

b. *Research or Technical Plan*: (i) Objectives to be achieved, hypotheses to be tested; (ii) Experimental design and statistical analysis to be used; (iii) Plan of work, detailed methodology, collaboration with industry or other user groups (if appropriate), and a timetable for project activities; and (iv) Role of project personnel.

c. *Output/Anticipated Economic Benefits*: These may be measured in many ways (for instance the benefits of using biotechnological tools as opposed to other methods, the value of better understanding and managing the ecosystem or fisheries habitats, etc). To the extent possible, proposers are urged to devise appropriate metrics to quantify the benefits. Examples of metrics may include patents or licenses; commercializable new products (e.g. products used in or obtained from marine engineering operations, computer models for simulation of marine processes, etc.); process improvements (e.g. harbor design or dredging procedures, biochemical engineering, etc.); corporate investments in academic research efforts; private sector job opportunities for students involved in the project; number of end users or persons affected by the projects long-term goals, etc.

d. *Coordination with other Program Elements*: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

e. *References and Literature Citations*: Should be included but will not be counted in the 15-page project description limit.

4. *Budget and Budget Justification:* There should be a separate budget for each year and one cumulative budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may also use their own form as long as it provides the same information as the Sea Grant form. Subcontracts should have a separate budget page. Matching funds must be indicated. The budget should include a separate budget justification page that itemizes all budget items in sufficient detail to enable reviewers to evaluate the appropriateness of the funding requested, and indicates the source for all matching funds. Please pay special attention to any travel, supply or equipment budgets and provide details. Note that only one award will normally be made for each project; if multiple institutions are involved, they should be handled through subcontractors with all necessary indirect costs included in the original budget submission.

Investigators are strongly advised to consult with and follow any budgeting guidelines available through their state's Sea Grant Program. Local institutional policies may affect how a project budget should be submitted, and what may be included (i.e., application of indirect costs, availability of fellowships, and other restrictions or cost-saving opportunities). Proposals generated from Sea Grant states must follow local guidelines, if any. In no case will proposals be funded at a level which exceeds the funding limitations as set in this announcement.

5. *Current and Pending Support:* Applicants must provide information on all current and pending Federal support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. The relationship between the proposed project and these other projects should be described, and the number of person-months per year to be devoted to the projects must be stated.

6. Vitae (2 pages maximum per investigator).

7. Letters of commitment and letter of support from any industry or other partner, if appropriate.

VII. Other Requirements for Successful Applicants

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. The **Federal Register** notice also lists the forms required to complete the standard Department of Commerce grant application package, but those forms will be required only for those applicants who have been recommended for funding. For projects selected in Sea Grant states, the Sea Grant Program will prepare and submit these forms on behalf of all projects selected from that state. Unsuccessful applications will be held in the National Sea Grant Office for a period of five (5) years and then destroyed. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Pursuant to Execute Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at the following Internet website: *http://www.ed.gov/offices/OCR/minorityinst.html.*

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. THe use of NOAA Forms 90–2 and 90–4, or equivalents, has been approved by OMB under the control number 0648–0362. Public reporting burden for these collections of information is estimated to average 20 minutes for a NOAA Form 90–2 and 15 minutes for a NOAA Form 90–4. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the National Sea Grant Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a

collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

VIII. Classification

It has been determined that this notice is not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–515 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010302G]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee and Groundfish Oversight Committee in January, 2002, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on January 24 and January 25, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Colonial Hotel, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, January 24, 2002, 9:30 a.m.– Research Steering Committee Meeting.

The committee will review its roles and responsibilities. They will review experimental fishery permit correspondence. They will also discuss the development of a mechanism for project tracking and evaluation and incorporation into the management process. The agenda will include planning for the next Request For Proposals. Time permitting, the committee will review Dr. William Phoel's silver hake project report.

Friday, January 25, 2002, 9:30 a.m.– Groundfish Oversight Committee Meeting.

The Groundfish Oversight Committee will resume its work on Amendment 13 to the Northeast Multispecies Fishery Management Plan. Amendment 13 will establish rebuilding programs for overfished stocks, and end overfishing for those stocks where it is occurring. The Committee will review the goals and objectives for the Amendment, and may revise them if necessary. In addition, the Committee will review the management measures under consideration and may select additional management alternatives for future consideration. The Committee will also plan its future work on the Amendment.

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 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 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 Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 4, 2002.

Richard W. Surdi,

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

[FR Doc. 02–550 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010302A]

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: A subcommittee of the Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Strategic Plan Implementation Oversight Committee (SPOC) will hold a meeting which is open to the public.

DATES: The meeting will convene at 1 p.m. on Wednesday, January 30, 2002, recess when business for the day is completed, then reconvene at 8 a.m. Thursday, January 31, 2002, and adjourn at 10 a.m.

ADDRESSES: The meeting will be held in the West Conference Room at the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Fishery Economics Staff Officer, telephone: 503–326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to continue development of a SPOC subcommittee report on options for controlling capacity in the open access fishery. The SPOC subcommittee will discuss catch and participation analyses of the open access fishery, potential qualification criteria for permitting, and other data and issues relevant to capacity reduction in the open access fishery.

Although non-emergency issues not contained in the meeting agenda may come before the SPOC subcommittee for discussion, those issues may not be the subject of formal SPOC subcommittee action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice requiring emergency action under

section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the SPOC subcommittee's intent to take final action to address the emergency.

Special Accommodations

This 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: January 3, 2002.

Richard W. Surdi,

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

[FR Doc. 02–553 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 17 January 2002 at 10:00 am in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 2 January 2002.

Charles H. Atherton,

Secretary.

[FR Doc. 02–493 Filed 1–8–02; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

January 4, 2002.

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

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that Olympic Mills Corporation has violated the requirements for participation in the Special Access Program and has suspended Olympic Mills Corporation from participation in the Program for the one-year period January 14, 2002 through January 13, 2003.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Olympic Mills Corporation during the period January 14, 2002 through January 13, 2003, and to prohibit entry by or on behalf of Olympic Mills Corporation under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 4, 2002.

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

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended Olympic Mills Corporation from participation in the Special Access Program for the period January 14, 2002 through January 13, 2003. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of Olympic Mills Corporation during the period January 14, 2002 through January 13, 2003. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Olympic Mills Corporation manufactured from fabric exported from the United States during the period January 14, 2002 through January 13, 2003.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–509 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Tracey A. Dodenhoff

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Tracey A. Dodenhoff, a revocable, nonassignable, partially exclusive license to practice in the United States, the Government-owned inventions described in U.S. Patent No. 5,769,084, issued June 23, 1998, entitled ''Method and Apparatus For Diagnosing Sleep Breathing Disorders'' and U.S. Patent Application Serial No. 09/724,402, filed on November 28, 2000, entitled ''Method and Apparatus For Diagnosing Sleep Breathing Disorders While A Patient Is Awake'' in the field of underwater acoustic systems.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg 112T, Code 00OC, Newport, RI 02841.

FOR FURTHER INFORMATION CONTACT: Mr. M. J. McGowan, Deputy Counsel-Patents, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg 112T, Code 00OC, Newport, RI 02841, telephone (401) 832–4736.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: December 5, 2001.

T. J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–518 Filed 1–8–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites

comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 11, 2002.

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

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 3, 2002.

John Tressler,

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

Student Financial Assistance

Type of Review: New.

Title: Experimental Sites Initiative—Data Collection Instrument.

Frequency: Annually.

Affected Public: Individuals or household; not-for-profit institutions; state, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 150.

Burden Hours: 1,650.

Abstract: This data collection instrument will be used to collect specific information/performance data for analysis of nine experiments. This effort will assist ED/Student Financial Assistance (SFA) in obtaining and compiling information to help determine change in the administration and delivery of Title IV programs. The experiments cover major financial aid processes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–459 Filed 1–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before February 8, 2002.

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

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

Dated: January 3, 2002.

John Tressler,

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

Office of Educational Research and Improvement

Type of Review: Revision.

Title: FRSS Survey on High School Guidance Counseling.

Frequency: One-time.

Affected Public: State, local or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,000.

Burden Hours: 500.

Abstract: This survey will provide the only national source of information on high school guidance since 1984. The survey is designed to indicate both now counseling in high schools has changed since that time and what the major roles and functions of counseling programs are today. The information will help local, state, and federal policymakers better understand the role of guidance counseling and how it is changing with change in education and labor market systems.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland

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

[FR Doc. 02–460 Filed 1–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before February 8, 2002.

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

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

Dated: January 3, 2002.

John Tressler,

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

Office of Educational Research and Improvement

Type of Review: Revision.

Title: PEQIS survey on distance education in higher education institutions.

Frequency: One-time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,350.

Burden Hours: 675.

Abstract: This survey will provide current nationally representative data about distance education in higher education institutions. This is an area of education that is rapidly changing and the survey will measure change since 1995 and 1998 when previous PEQIS survey collected the first and second nationally representative measures of distance education course offerings and future institutional plans.

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

[FR Doc. 02–461 Filed 1–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–07; Atmospheric Radiation Measurement Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for experimental and theoretical studies of radiation and clouds in conjunction with the Atmospheric Radiation Measurement (ARM) Program as part of the U.S. Global Change Research Program (USGCRP). This notice requests new applications and renewal applications of grants currently funded by DOE under previous ARM Program notices that are relevant to the terms of reference for this announcement and responsive to the particular needs defined below.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. The deadline for submission of preapplications is March 15, 2002. Early submission of preapplications is encouraged to allow time for meaningful responses.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., April 11, 2002, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003.

ADDRESSES: Preapplications referencing Program Notice 02–07 may be sent to the program contact, Dr. Wanda Ferrell, via electronic mail at: *wanda.ferrell@science.doe.gov* or by U.S. Postal Service Mail at: Office of Biological and Environmental Research, Dr. Wanda Ferrell, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Electronic mail is recommended to speed up response to preapplications.

Formal applications referencing Program Notice 02–07 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contract Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–07. This address also must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand-carried by the applicant. An

original and seven copies of the application must be submitted; however, applicants are requested not to submit multiple application copies using more than one delivery or mail service.

FOR FURTHER INFORMATION CONTACT: Dr. Wanda Ferrell, Office of Biological and Environmental Research, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–0043, fax (301) 903–8519, Internet e-mail address: *wanda.ferrell@science.doe.gov.* The full text of Program Notice 02–07 is available via the World Wide Web using the following web site address: *http://www.sc.doe/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION:

Background

Atmospheric Radiation Measurement (ARM) Program

Two of the major scientific objectives of the Environmental Sciences Division (ESD) are to improve the performance of predictive models of the Earth's climate and to thereby make predictions of the response of the climate system to increasing concentrations of greenhouse gases. The purpose of the ARM Program is to improve the treatment of radiation and clouds in the models particularly the General Circulation Models (GCMs) used to predict future climate. This program is one component of a major interagency effort to improve the quality of current models and to support the development of sets of climate models capable of simulating and predicting climate and climate change. The major component of the ARM Program is an experimental testbed to gather data for the study of models of the terrestrial radiation field, properties of clouds, the full life cycle of clouds, and the incorporation of these process-level models into climate models. This facility is referred to as the Cloud and Radiation Testbed (CART).

The ARM program has established CART sites in three climatic regimes. The first site, Southern Great Plains (SGP), began operation in calendar year 1992, with instruments spread over an area of approximately 60,000 sq. km., centered on Lamont, Oklahoma. The second site, the Tropical Western Pacific (TWP), is the area roughly between 10° N to 10° S of the equator from Indonesia to near Christmas Island. This region of the world plays a large role in the interannual variability observed in the global climate system. The first and second of the TWP Atmospheric Radiation and Clouds Stations (ARCS) are operating on the islands of Manus, Papua, New Guinea and the Republic of Nauru respectively, and a third station at Darwin, Australia will be operational in early 2002. Similar instrumentation is gathering data in the vicinity of Point Barrow, on the North Slope of Alaska (NSA) and an inland site near Atqasak. Program information is available on the DOE/OBER WWW site using the URL: *http://www.sc.doe.gov/production/OBER/GC/arm.html.*

Request for Grant Applications

This notice requests applications for grants, both new and renewals that address the broad ARM goal of improving cloud and radiation parameterizations in climate models.

Successful applicants for renewal of previously awarded grants, shall demonstrate: (a) continued relevance of their work to the goals of the ARM Program; (b) the contribution of work conducted under previous support to the goals of the ARM Program, including a listing of publications and presentations; and (c) relevant contribution to the development of the ARM Program, particularly the design and development of ARM facilities, as a result of previous funding. Renewal applications should include a special section covering items (b) and (c) entitled ''Accomplishments Under Previous Support.'' (See *http://www.science.doe.gov/production/grants/App.html.*)

Applications are requested in one or more of the following three areas: (a) The development of models and parameterization of radiative transfer or cloud processes, including aerosol effects, or the testing of these models in climate GCMs or in process-level models; (b) experimental studies at ARM facilities to test elements of process-level models and their performance; or (c) the analysis of existing data, including field data and satellite data, to support model development or testing. Applicants should specifically describe the role of their proposed research in the improvement of climate GCMs and/or related models and delineate the path that their results will take to make those improvements.

The efforts proposed must have as a focus the conduct of research using the ARM data streams or ARM sites. Successful applicants for research on either parameterization development and evaluation or data assimilation will be encouraged to cooperate with the Initial Tendency Error Analysis (*http://www-pcmdi.llnl.gov/itea/*) effort at DOE's Program for Climate Model Diagnosis and Intercomparison (PCMDI). Successful applicants will participate in the continuing development of the detailed experimental approaches for the ARM.

Efforts that request funding to support the development of an instrument or to prove the scientific utility of an instrument will not be considered.

Specific areas of interest to the ARM Program include, but are not limited to:

- Use of ARM data to test quantitatively cloud and radiation parameterizations used in GCMs
- Development of new cloud and radiation parameterizations
- Determination of the concentration and advection of cloud water and ice on the regional scale
- Statistics of cloud fields and their interaction with atmospheric radiation
- Realistic retrievals of the 3D structure of clouds on scales of 10 to 100 km
- Retrieval of ice water path and ice cloud microphysics using remote sensing measurements from the ground or ground and satellite
- Calculation of heating rate profiles in realistic cloud fields
- Climatological properties of aerosols over the SGP site using ARM data
- Combining ground-based and satellite remote sensing data to provide improved characterization of the atmospheric column above and surrounding the ARM sites, particularly at the remote sites in the TWP and NSA

To ensure that the program meets the broadest needs of the research community and the specific needs of the DOE ESD, successful applicants are expected to participate as ARM Science Team members in the appropriate working group(s) relevant to their efforts. Costs for participation in ARM Science Team meetings and subcommittee meetings should be based on two trips of 1 week each to Washington, DC, and two trips of 3 days each to Chicago, Illinois.

Program Funding

It is anticipated that approximately $2,000,000 will be available for awards in Fiscal Year 2003, contingent upon the availability of appropriated funds. Multiple year funding of awards is expected, with out-year funding also contingent upon the availability of appropriated funds, progress of the research, and programmatic needs. The allocation of funds within the research areas will depend upon the number and quality of applications received.

Collaboration

Applicants are strongly encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/Colab.html.*

Preapplications

Potential applicants are strongly encouraged to submit a brief preapplication that consists of two to three pages of narrative describing the research objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the ARM Program. Principal Investigator (PI) address, telephone number, fax number and e-mail address are required parts of the preapplication. A response to each preapplication discussing the potential program relevance of a formal application generally will be communicated within 15 days of receipt. Use of e-mail for this communication will decrease the possibility of delay in responses to the preapplication.

The deadline for the submission of preapplications is March 15, 2002. Applicants should allow sufficient time so that the formal application deadline is met. SC's preapplication policy can be found on SC's Grants and Contracts Web Site at: *http://www.sc.doe.gov/production/grants/preapp.html.*

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation process will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Both federal and non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The technical portion of the application should not exceed twenty-five double-spaced pages and should include detailed budgets for each year of support requested. Awards are expected to begin on or about November 1, 2002. On the grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and e-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: *http://www.nsf.gov/bfa/cpo/gpg/fkit.htm#forms-9.*

In addition to the original and seven copies of the application that must be submitted, the applicants are asked to submit an electronic copy of the abstract in ASCII format to: *wanda.ferrell@science.doe.gov.* The abstract should include the following information: PI and co-PIs, their institutions, and a brief summary of research.

For researchers who do not have access to the World Wide Web (WWW), please contact Karen Carlson, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, phone: (301) 903–3338, fax: (301) 903–8519, e-mail: *karen.carlson@science.doe.gov;* for hard copies of background material mentioned in this solicitation.

Technical information on ARM is available on the WWW at the URL: http://www.arm.gov and the ARM Program Office at the Pacific Northwest National Laboratory, P.O. Box 999, Richland, Washington 99352, telephone: (509) 375–6964.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on December 28, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–500 Filed 1–8–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–12: Natural and Accelerated Bioremediation Research Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. The focus of the NABIR program is on radionuclides and metals that 1) pose the greatest potential risk to humans and the environment at DOE sites, and 2) are tractable for immobilization by means of bioremediation. Applications are especially encouraged that address the radionuclides uranium and technetium. Applications should describe research projects in one of the following categories:

1. Projects that address the scientific aims of the Biomolecular Science and Engineering Element.
2. Projects to be performed at the NABIR Field Research Center (FRC) addressing field scale biostimulation of microbiological processes that immobilize uranium and/or technetium. Interdisciplinary teams must include, at a minimum, expertise in microbiology, geochemistry and hydrology.

DATES: Researchers are strongly encouraged (but not required) to submit a preapplication for programmatic review. Early submission of preapplications is encouraged, to allow time for review for programmatic relevance. A brief preapplication should

consist of one or two pages of narrative describing the research objectives and methods.

The deadline for receipt of formal applications is 4:30 p.m., E.S.T., March 13, 2002, to be accepted for merit review and to permit timely consideration for awards late in Fiscal Year 2002, or in early Fiscal Year 2003. An original and seven copies of the application must be submitted; however, applicants are requested not to submit multiple applications using more than one delivery or mail service.

ADDRESSES: If submitting a preapplication, referencing Program Notice 02–12, it should be sent by e-mail to *anna.palmisano@science.doe.gov.*

Formal applications referencing Program Notice 02–12 on the cover page must be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–12. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9963, e-mail: *anna.palmisano@science.doe.gov,* fax: (301) 903–8519. The full text of Program Notice 02–12 is available via the Internet using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION:

Background

For more than 50 years, the U.S. created a vast network of more than 113 facilities for research, development, and testing of nuclear materials. As a result of these activities, subsurface contamination has been identified at over 7,000 discrete sites across the U.S. Department of Energy (DOE) complex. With the end of the Cold War threat, the DOE has shifted its emphasis to remediation, decommissioning, and decontamination of contaminated groundwater, sediments, and structures at its sites. DOE is currently responsible for remediating 1.7 trillion gallons of contaminated groundwater and 40 million cubic meters of contaminated soil. It is estimated that more than 60% of DOE facilities have groundwater contaminated with metals or radionuclides. The only other type of contaminant that appears more often than metal and radionuclide contaminants in groundwater is chlorinated hydrocarbons. More than 50% of all soil and sediments at DOE facilities are contaminated with radionuclides and metals, the contaminants found with the highest frequency in soil at all DOE waste sites. Indeed, while virtually all of the contaminants found at industrial sites nationwide can also be found at DOE sites, many of the metals and especially the radionuclides found on DOE sites are unique to those sites. The NABIR program aims: (1) To provide the fundamental knowledge to support the development of new remediation technologies for radionuclides and metals, and (2) to advance the understanding of the key microbiological and geochemical processes that control the effectiveness of in situ immobilization as a means of long term stewardship.

While bioremediation of organic contaminants involves their transformation to benign products such as carbon dioxide, bioremediation of radionuclides and metals involves their removal from the aqueous phase to reduce risk to humans and the environment. Microorganisms can directly transform radionuclides and metals by changing their oxidation state to a reduced form that leads to in situ immobilization. Or, microorganisms can indirectly immobilize radionuclides and metals through the reduction of inorganic ions that can, in turn, chemically reduce contaminants to less mobile forms. The long-term stability of these reduced contaminants is as yet unknown. Other mechanisms whereby microorganisms can influence mobility of contaminants include alteration of pH, oxidation/reduction reactions and complexation.

Currently, the fundamental knowledge that would allow cost-effective deployment of in situ subsurface bioremediation of radionuclides and metals is lacking. The focus of the NABIR program is on radionuclides and metals that: (1) Pose the greatest potential risk to humans and the environment at DOE sites, and (2) are tractable for immobilization by means of bioremediation. Thus, research is focused on the radionuclides uranium, technetium, and plutonium and the metals chromium and mercury. Radioactive contaminants such as tritium and cobalt are not a focus because of their relatively short half lives, and strontium and cesium are not addressed because they are not readily amenable to biotransformation. Research is focused on subsurface sediments below the zone of root influence and includes both the vadose (unsaturated) zone and the saturated zone (groundwater and sediments). NABIR research is oriented toward application in areas that have low levels of widespread contamination because it is too costly to clean up those situations with existing technologies. Uranium, technetium, and chromium can be especially mobile in the subsurface under certain conditions; they are risk-driving contaminants at some DOE sites. The effects of co-contaminants, such as nitrate, complexing agents, such as Ethylenediaminetetraacetate and chlorinated solvents, such as trichloroethylene and carbon tetrachloride on the behavior of radionuclides and metals in the subsurface is also of interest to the NABIR program.

NABIR Program

The goal of the NABIR program is to provide the fundamental science that will serve as the basis for development of cost-effective bioremediation and long-term stewardship of radionuclides and metals in the subsurface at DOE sites. The focus of the program is on strategies leading to long-term immobilization of contaminants in place to reduce the risk to humans and the environment. The NABIR program encompasses both intrinsic bioremediation by naturally occurring microbial communities, as well as accelerated bioremediation through the use of biostimulation (addition of inorganic or organic nutrients). NABIR will provide an improved, multidisciplinary understanding of the biogeochemical functioning of terrestrial subsurface systems. The NABIR Program supports hypothesis-driven research that is more fundamental in nature than demonstration projects.

Naturally occurring subsurface microbes may be involved in intrinsic bioremediation of radionuclides and metals by reduction and immobilization, either directly or indirectly. However, these natural processes typically occur at fairly slow rates, and there may be a need to use biostimulation to enhance the rates. The primary focus of the NABIR program is on biostimulation strategies, due to the ubiquity of metal-reducers in nature. In situ immobilization of contaminants is one approach to long-term stewardship, which is the post-closure responsibility of DOE at its contaminated sites. Long-term stewardship involves long-term monitoring and other maintenance activities to ensure that residual in-ground contaminants do not spread

further. Immobilized radionuclides and metals are not removed from the subsurface as may occur with excavation, pump and treat, or biodegradation of organic contaminants. Immobilization is focused on contaminant capture from both vadose zone and groundwater plumes. As such, it may be a strategy applied to prevent the discharge of deep or widely distributed contaminants from the vadose zone to groundwater, or from groundwater to a receiving water body (e.g., the Columbia River at Hanford). Therefore, an important aspect to the NABIR program is to assess factors controlling the long-term stability of the immobilized contaminants and to devise approaches (biological/chemical) to maintain their immobilization through the stewardship phase. Research on phytoremediation is not supported by NABIR.

The NABIR program consists of four interrelated scientific research elements (Biogeochemical Dynamics, Biotransformation, Community Dynamics and Microbial Ecology, and Biomolecular Science and Engineering). Innovative method development for the four NABIR scientific research elements is supported under the Assessment Element. The program also includes an element addressing ethical, legal and social issues of bioremediation called Bioremediation and its Societal Implications and Concerns (BASIC). The NABIR program encourages researchers to integrate laboratory and field research. DOE has a Field Research Center (FRC) at the Y–12 site near Oak Ridge National Laboratory (ORNL). Additional information about NABIR and the FRC can be accessed from the NABIR Homepage: *http://www.lbl.gov/NABIR/*

Current Request for Applications

Two kinds of projects are solicited in this request for applications:

1. Research projects that address the scientific aims of the NABIR Biomolecular Science and Engineering Element.

2. Research projects to be performed at the NABIR FRC addressing field scale biostimulation of microbiological processes that immobilize uranium and/or technetium. Research would be conducted at the FRC that is located near Oak Ridge National Laboratory, Oak Ridge, TN. Interdisciplinary teams must include, at a minimum, experts in the fields of microbiology, geochemistry, and hydrology.

Applications for research on other elements of the NABIR program will not be addressed at this time.

The NABIR Biomolecular Science and Engineering Element

Research in the Biomolecular Sciences and Engineering element provides a knowledge base, at the biomolecular level, of the processes leading to the in situ immobilization of radionuclides (U, Tc, and Pu) and metals (Cr and Hg) by indigenous subsurface microorganisms. Applications for this solicitation are especially encouraged that address the radionuclides uranium and technetium. The primary goal of this element is to understand the genetic, biochemical, and regulatory processes that mediate biotransformation of these specific radionuclides and metals, leading to their immobilization. Characterization of genes, gene products, and genetic regulatory networks associated with these biotransformations is key to this understanding. Secondary goals include: (1) Understanding molecular mechanisms of resistance of subsurface microorganisms to radionuclide and metal toxicity, (2) understanding, at a molecular level, the processes of lateral transfer between microbes of genes involved in biotransformation of these radionuclides and metals, (3) developing novel technologies to provide insights into biomolecular mechanisms of radionuclide and radionuclide biotransformation, and (4) developing approaches to manipulate pathways and enzyme systems that mediate these transformations to improve their ability to immobilize these radionuclides and metals.

DOE subsurface sites encompass a wide range of environments, with a diversity of microbial communities and contaminants. One of the challenges of the Biomolecular Science and Engineering Element is to select microbes for studies that are active members of subsurface microbial communities. A second challenge is to extrapolate laboratory findings on pure cultures under laboratory conditions to complex in situ environmental conditions. This extrapolation is especially critical in studying gene expression, which may be modified by changes in local cellular environments in the subsurface. A third challenge is to take advantage of genomic and other data derived from the DOE Microbial Genome Program on subsurface microorganisms to increase our understanding of how genes relevant to bioremediation are expressed in the environment.

Technical Areas of Interest for the Biomolecular Science and Engineering Element

Research projects are sought that focus on understanding the regulation of genes that have been identified to be important in: (1) The immobilization of radionuclides (U, Tc, and Pu) and metals (Cr and Hg) by naturally occurring microorganisms in contaminated subsurface environments, and (2) the growth and survival of microorganisms in the presence of these radionuclides and metals. Applications should primarily focus on indigenous subsurface microorganisms that can precipitate and immobilize these radionuclides and metals. Applications addressing immobilization of uranium and technetium are strongly encouraged. For mercury and plutonium, two other contaminants targeted by the NABIR program, strategies for immobilization are less clear, and may require the development of novel approaches. Detailed studies of the enzymatic mechanisms for radionuclide/metal reduction are needed to increase our understanding of in situ processes and to identify gene targets for better molecular assessment of radionuclide and metal reduction. Microorganisms selected for Biomolecular Science and Engineering research should be those that may play an important role in reducing these radionuclides and/or metals in subsurface environments. Exploring the effects of key environmental parameters on genetic regulation and expression of radionuclide and/or metal reduction is a critical need. The NABIR FRC provides an opportunity for Biomolecular Science and Engineering researchers to work at a DOE site in collaboration with scientists from the Biogeochemistry, Biotransformation, and Community Dynamics elements. Studies at the NABIR FRC show that microbial reduction of radionuclides and metals is affected by the presence of nitrate and low pH. Thus, research into microbial mechanisms involved in the reduction of these radionuclides and metals in this type of subsurface environment is of special interest. More information on the NABIR FRC and current research being conducted at the FRC can be found at the web site *http://www.esd.ornl.gov/nabirfrc*. The ultimate goal of this element is to improve our ability to predict and to manipulate the activities of microbes in situ, particularly in an in situ immobilization scenario.

New and creative scientific approaches are sought that address the following fundamental research

questions for the Biomolecular Science and Engineering Element:

What are the basic biomolecular mechanisms of uranium and technetium reduction and reoxidation in microorganisms, primarily those indigenous to the subsurface?

How do low pH and high nitrate concentrations impact the biochemistry and gene expression and regulation of uranium and technetium reduction?

How can biomolecular processes be manipulated to enhance the sustainability of immobilization of uranium and technetium?

Are there novel biomolecular mechanisms that can be used to immobilize mercury or plutonium?

For further information on the Biomolecular Science and Engineering Element, please contact Dr. Daniel Drell (*Daniel.Drell@science.doe.gov*), the Program Element Manager.

Field Scale Bioremediation Experiments

Although bioremediation of radionuclides and metals has been studied in the laboratory, and bioremediation technologies have been demonstrated in the field, there are few examples of carefully controlled, hypothesis-driven, in situ bioremediation research at the field-scale. The NABIR FRC provides opportunities for such field-scale experiments. The focus of field experiments at the FRC is on in situ immobilization of radionuclides, such as uranium and technetium by microbiological processes. For more information on the NABIR FRC, access the FRC web site at *http://www.esd.ornl.gov/nabirfrc*. For this solicitation, applicants are especially encouraged to develop experiments for Area 2, a low nitrate, circumneutral site at the FRC. Applicants may also choose to propose research for Area 1, a high nitrate, low pH site. Both sites are described in the following sections; maps and additional information on the sites are available at the FRC web site.

Applicants must propose a testable hypothesis that is based on biologically-mediated mechanisms of immobilization for in situ field research, and they should describe a detailed technical approach that should include (1) establishing a defined (surface area and depth) experimental and control plot within the proposed contaminated field site, and (2) manipulating the experimental plot by amendments of nutrients or other chemicals that might stimulate microbial communities to immobilize uranium or technetium. The technical approach must be described in phases such that completion of each phase could result in publishable results. A statistically robust sampling regimen to determine the efficacy of the manipulation should also be described. Moreover, the applicant must explain the technical feasibility of performing the proposed field research. Technology demonstration projects will not be funded by this solicitation.

The applicants should propose research to be performed as an interdisciplinary team including, at a minimum, expertise in microbiology, geochemistry, and hydrology. The Principal Investigator for the team must have prior experience in relevant field research, and the activities of each team member must be clearly defined. Multi-institutional partnerships are strongly encouraged; for example, applicants may draw expertise from National Laboratories, academia, and other institutions engaged in basic research. The successful team must be willing to partner with other funded NABIR investigators who may wish to obtain samples in conjunction with the proposed field studies.

Although compliance with National Environmental Policy Act (NEPA) is the responsibility of DOE, successful applicants who propose to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation. Successful applicants will also be expected to brief and to obtain approval of their written work plan from the FRC Advisory Panel prior to beginning their field work. For this solicitation, applicants should describe how they would communicate their proposed experimental design and their results to stakeholders, regulators, and community groups. Applicants may wish to review the FRC Communication Plan, which can be found on the FRC web site. All applicants should discuss other relevant societal issues, where appropriate, which may include intellectual property protection, and communication with and outreach to affected communities (including members of affected minority communities where appropriate) to explain the proposed research. For further information on NABIR Field Research, please contact Mr. Paul Bayer (*paul.bayer@ science.doe.gov*), the NABIR Field Activities Manager.

Characteristics of Area 2 at the NABIR FRC

The S–3 Ponds were the primary source of contamination detected at Area 2 of the NABIR FRC. The S–3 Ponds consisted of four unlined ponds constructed in 1951 on the west end of the Y–12 Plant. Liquid wastes, composed primarily of nitric acid plating wastes containing nitrate and various radionuclides and metals (e.g., uranium and technetium) were disposed of in the ponds until 1983. Waste disposal activities at the site have created a mixed waste plume of contamination in the underlying unconsolidated residuum (primarily saprolite and fill) and shale bedrock. Area 2 is located several hundred feet to the southwest of the former Ponds. Contaminants were probably transported to Area 2 through a historic stream channel of Bear Creek during operation of the Ponds. Some contaminated residuum and sediments in Area 2 were excavated and deposited in the S–3 Ponds, however, much contaminated residuum remains and contributes to the groundwater contamination currently detected in Area 2.

A typical geologic profile at Area 2 would consist of about 6 m of reworked fill and saprolite at the surface underlain by 2 m of intact saprolite with weathered bedrock below the saprolite. As much as 300–500 mg/kg of uranium may be associated with the solid phase material. The reworked fill tends to have a higher hydraulic conductivity than the native saprolite. Based on data from a tracer study test conducted in 1998, the rate of interstitial groundwater movement in the unconsolidated fill was calculated to range from 0.7 to 4.5 m/day, with an average rate of about 2.2 m/day. Hydraulic monitoring at the site indicates that the depth to groundwater is approximately 4.5 meters from the surface and the hydraulic gradient ranges between about 0.01 and 0.025 to the southwest towards the Creek. Vertical upward gradients between the shale bedrock and unconsolidated zone are as great as 0.25.

In Area 2, there is a shallow pathway (<10 m) for the migration of groundwater contaminated with uranium (1–2 mg/L) to seep in the upper reach of Bear Creek, which is adjacent to Area 2. Nitrate concentrations are generally <100 mg/L at Area 2, but have been detected above 1,000 mg/L in several of the wells. Technetium concentrations are generally less than 600 pCi/L, and total dissolved solids concentrations are approximately 1,000 mg/L. The pH of groundwater at Area 2 tends to be between 6 and 7 with dissolved oxygen content about 1–2 mg/L. Areas of higher and lower uranium and nitrate exist at Area 2. For example TPB–16 which is representative of an area with higher uranium and lower nitrate contains 28 mg/L nitrate, 98 mg/L sulfate, 310 mg/L chloride, 60 mg/L inorganic carbon, 2 mg/L dissolved

organic carbon, and 1.3 mg/L uranium; well FW003 which is representative of an area with higher nitrate and lower uranium contains 1059 mg/L nitrate, 16 mg/L sulfate, 183 mg/L chloride, 89 mg/L inorganic carbon, 13 mg/L organic carbon, and 0.01 mg/L uranium.

An 8 to 9 m deep trench bisects Area 2 in an east to west direction. The trench was filled with gravel except for an 18 m long section in the middle, which was filled with zero-valent iron. Guar gum slurry was added during excavation to prevent the trench walls from collapsing. The trench is oriented nearly parallel to the direction of groundwater flow and is designed to use both the natural groundwater gradient and the permeability contrast between the gravel and iron in the trench and the native silt and clay outside the trench to direct flow through the iron treatment zone. Approximately 52 wells have been installed at the site. Two 20m X 20m plots (one located on either side of the trench) that are high in uranium are available for use by NABIR PIs for field research.

Characteristics of Area 1 at the NABIR FRC

The S–3 Ponds were also the primary source of contamination detected at Area 1 of the NABIR FRC. A small 7 m X 25 m field plot has been established in Area 1 just south of the S–3 Ponds. This field plot, along with other locations within Area 1, is available for NABIR research. Thirteen monitoring wells have been installed in the field plot. The wells are generally 3 cm in diameter, about 7 m deep and have a 1.5 m length of screened interval at the bottom of the well. The wells have been used in the past for conducting small-scale push-pull tests of various types. A brief description of these experiments can be found at the FRC web site. The impact of these push-pull tests probably does not extend beyond the 7 m X 25 m field plot. A typical geologic profile at the Area 1 field plot would consist of about 1.5 m of reworked fill and saprolite at the surface underlain by about 7 m of intact saprolite with weathered shale bedrock below the saprolite. Hydraulic conductivity of the saprolite is fairly low (about 0.26 m/day) with maximum pumping rates of < 1 liter/minute. Hydraulic monitoring at the site indicates that the depth to groundwater is approximately 3.5 m from the surface and the hydraulic gradient is fairly flat. Contaminants include all the contaminants generally associated with the S–3 Ponds groundwater plume (i.e., nitrate, technetium, uranium, volatile organic compounds and other common anions and cations).

Concentrations of contaminants in groundwater and soil from well to well are variable but tend to be fairly stable over time within individual wells. Nitrate concentrations at the Area 1 field plot in groundwater range from 48 to 10,400 mg/l, uranium ranges from 0.01 to 7.5 mg/l, and technetium-99 ranges from 66 to 31,000 pCi/l. Wells with high uranium (e.g., >1 mg/l) tend to have high to moderate nitrate (>1,000 mg/l) and high technetium concentrations (>12,000 pCi/l). The pH of groundwater at Area 1 tends to be more acidic than Area 2 but ranges between 3.25 and 6.5 with dissolved oxygen content about 1–2 mg/L. Sulfate concentrations range between 219 mg/l and 1 mg/l, and chloride concentrations range between 22 and 760 mg/l. Aluminum can be as high as 620 mg/l, and nickel concentrations average around 8.6 mg/l. Calcium, sodium, magnesium, and manganese are other metals detected at significant concentrations (>100 mg/l) at the site. Tetrachloroethylene (120 ug/l), acetone (230 ug/l), and some other volatile organic compounds (VOCs) are also detected at the Area 1 field plot. As much as 375 mg/kg of uranium is associated with the solid phase material.

Additional Information for Applications

It is anticipated that up to $2 million will be available for multiple awards to be made in late Fiscal Year 2002 and early Fiscal Year 2003, in the categories described above, contingent on availability of appropriated funds. An additional sum, up to $2 million, will be available for competition by DOE National Laboratories under a separate solicitation (LAB 02–12). Applications may request project support up to three years, with out-year support contingent on availability of funds, progress of the research and programmatic needs. Annual budgets for projects in the Biomolecular Science and Engineering are expected to range from $100,000 to $300,000 total costs. Annual budgets for interdisciplinary field research projects at the FRC are expected to range from $300,000–$1,000,000 for total costs. Costs for drilling at the FRC should not be included in the applicant's budget. DOE may encourage collaboration among prospective investigators to promote joint applications or joint research projects by using information obtained through the preliminary applications or through other forms of communication.

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

Also, as part of the evaluation, program policy factors become a selection priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Federal and non-federal reviewers will be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. In addition, for this notice, the research description must be 20 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). Applicants who have had prior NABIR support must include a Progress Section with a brief description of results and a list of publications derived from that funding. Attachments should include short (2 pages) curriculum vitae, QA/QC plan, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: *http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9.*

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health (NIH) ''Guidelines for Research Involving Recombinant DNA Molecules,'' which is available via the world wide web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf,* (59 FR 34496, July 5, 1994,) or such later revision of those guidelines as may be published in the **Federal Register**.

Grantees must also comply with other federal and state laws and regulations as appropriate; for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation.

Additional information on the NABIR Program is available at the following web site: *http://www.lbl.gov/NABIR/.* For researchers who do not have access to the world wide web, please contact Karen Carlson; Environmental Sciences Division, SC–74; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; phone: (301) 903–3338; fax: (301) 903–8519; E-mail: *karen.carlson@science.doe.gov;* for hard copies of background material mentioned in this solicitation.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on December 28, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–501 Filed 1–8–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–044]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

January 3, 2002.

Take notice that on December 28, 2001, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of February 1, 2002:

Fifty-fifth Revised Sheet No. 25
Fifty-fifth Revised Sheet No. 26
Fifty-fifth Revised Sheet No. 27
Forty-eighth Revised Sheet No. 28
Sixth Revised Sheet No. 28B
Seventeenth Revised Sheet No. 29
Twenty-fifth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to an order issued September 15, 1999, by the Commission approving an uncontested settlement that resolves environmental cost recovery issues in the above-referenced proceeding. Columbia Gas Transmission Corporation, 88 FERC 61,217 (1999). The settlement established environmental cost recovery through unit components of base rates, all as more fully set forth in Article VI of the settlement agreement filed April 5, 1999 (Phase II Settlement).

Columbia is required to file annually a limited NGA Section 4 filing to adjust its environmental unit components effective February 1 to recover its environmental costs covered by the Phase II Settlement, within agreed-upon ceilings and recovery percentages. For the annual period February 1, 2002 through January 31, 2003, the Phase II Settlement permits Columbia to collect ''no more than $14 million annually in Main Program Costs'', and ''no more than $3 million annually in Storage Well Program Costs.'' per Article VI(B) of the Phase II Settlement. The instant filing satisfies that requirement. It provides for the February 1, 2002 effectiveness of revised unit components designed to collect $12 million in Main Program Costs and to flowback an overrecovery of $ 0.5 million of Storage Well Program Costs.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–465 Filed 1–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–39–002]

Columbia Gulf Transmission Company; Notice of Compliance Filing

January 3, 2002.

Take notice that on December 28, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective December 1, 2001:

Substitute Sixth Revised Sheet No. 19A
First Revised Sheet No. 83
Substitute Original Sheet No. 87
Original Sheet No. 88
Original Sheet No. 89
Second Revised Sheet No. 331
Original Sheet No. 334

Columbia Gulf states that it is filing the tariff sheets to comply with the Commission's November 30, 2001 order accepting its Rate Schedule PAL effective December 1, 2001.

Columbia Gulf states further that it has served copies of the filing on all parties identified on the official service list in Docket No. RP02–39–000. Copies also have been mailed by first class mail to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are

available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–466 Filed 1–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–025–000]

Copiah County Storage Company; Notice of Route and Site Review

January 3, 2002.

On January 16, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site review of the proposed Copiah Storage Project. The Copiah Storage Project facilities are proposed for construction by Copiah County Storage Company (Copiah). The proposed compressor site and natural gas storage cavern site, located in Copiah County, Mississippi, will be reviewed on January 16, 2002. Representatives of Copiah will accompany the OEP staff.

Anyone interested in attending the route and site review or obtaining further information may contact the Commission's Office of External Affairs at (202) 208–1088. Attendees must provide their own transportation.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–463 Filed 1–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–517–000]

UtiliGroup, Inc.; Notice of Filing

January 3, 2002.

Take notice that on December 10, 2001, UtiliGroup, Inc. (UtiliGroup), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition For Acceptance of Initial Rate Schedule, Waivers and Blanket Authority. The Petition request acceptance of UtiliGroup Rate Schedule FERC No. 1, under which UtiliGroup will engage in wholesale electric power and energy transactions as a marketer.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site 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.

Comment Date: January 11, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–464 Filed 1–8–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7127–2]

Integrated Risk Information System (IRIS); Announcement of 2002 Program; Request for Information

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of IRIS 2002 program and request for scientific information on health effects that may result from exposure to chemical substances.

SUMMARY: IRIS is an Environmental Protection Agency (EPA) data base that contains EPA scientific consensus positions on human health effects that may result from chronic exposure to chemical substances in the environment. On February 22, 2001, EPA announced the 2001 IRIS agenda and solicited scientific information from the public for consideration in assessing health effects from specific chemical substances (66 FR 11165). Most of the health assessments listed in the notice are in progress or near completion. Today, EPA is adding some additional health assessments to the IRIS agenda. This notice describes the Agency's plans, and solicits scientific data and evaluations for consideration in EPA's new assessments. Additional new assessments may be announced in the **Federal Register** later this year.

DATES: Please submit any response to this notice in the form of an initial ''submission inventory'' in accordance with the instructions in this notice by March 11, 2002.

ADDRESSES: A ''submission inventory'' should be sent to the IRIS Submission Desk in accordance with the instructions provided under ''Submission of Information'' in this notice.

FOR FURTHER INFORMATION: For information on the IRIS program, contact Amy Mills, National Center for Environmental Assessment, (mail code 8601D), U.S. Environmental Protection Agency, Washington, DC 20460, or call (202) 564–3204, or send electronic mail inquiries to *mills.amy@epa.gov.* For general questions about access to IRIS, or the content of IRIS, please call the IRIS Hotline at (301) 345–2870 or send electronic mail inquiries to *hotline.iris@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to chemical substances found in the environment. IRIS currently provides health effects information on over 500 specific chemical substances.

IRIS contains chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, i.e., hazard identification and dose-response evaluation. IRIS information includes the reference dose for noncancer health effects resulting from oral exposure, the reference concentration for non-cancer health effects resulting from inhalation exposure, and the carcinogen assessment for both oral and inhalation exposure. Combined with specific situational exposure assessment information, the summary health hazard information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

The IRIS Program

EPA's process for developing IRIS consists of: (1) An annual **Federal Register** announcement of EPA's IRIS agenda and call for scientific information from the public on the selected chemical substances, (2) a search of the current literature, (3) development of health assessments and draft IRIS summaries, (4) peer review within EPA, (5) peer review outside EPA, (6) EPA consensus review and management approval, (7) preparation of final IRIS summaries and supporting documents, and (8) entry of summaries and supporting documents into the IRIS data base.

This notice provides: (1) A list of the IRIS assessments completed in FY 2001 and early FY 2002, (2) a list of the IRIS assessments in progress that the Agency expects to complete in FY 2002 or FY 2003, (3) a list of the IRIS assessments in progress that the Agency expects to complete in FY 2004 or FY 2005, (4) a list of the IRIS assessments announced in the previous IRIS agenda (66 FR 11165) that have been discontinued, (5) information about EPA's IRIS ''needs assessment'' report underway, (6) a list of the new assessments beginning in FY 2002, and (7) instructions to the public for submitting scientific information to EPA pertinent to the development of IRIS assessments.

Assessments Completed in FY 2001 and Early FY 2002

The following assessments were completed and entered into IRIS in FY 2001 and early FY 2002. These assessments were listed in the **Federal Register** of February 22, 2001. All health endpoints, cancer and noncancer, were assessed unless otherwise noted. Where information was available, both qualitative and quantitative assessments were developed.

Name	CAS No.
Bromate	7758–01–2
Chlorine dioxide	10049–04–4
Chlorite (sodium salts)	7758–19–2
Chloroform (oral route)	67–66–3
Hexachlorocyclopentadiene	77–47–4
Methylmercury (noncancer endpoints)	22967–92–6
Methyl chloride	74–87–3
Quinoline	91–22–5

Assessments in Progress—Completion Planned for FY 2002 or FY 2003

The following assessments are underway or generally complete, and are planned for entry into IRIS in FY 2002 or FY 2003. These assessments were announced in the February 22, 2001, **Federal Register**. All health endpoints, cancer and noncancer, are being assessed unless otherwise noted. For all endpoints assessed, both qualitative and quantitative assessments are being developed where information is available. Pesticides denoted with an asterisk (*) will have only oral reference dose and carcinogenicity endpoints assessed.

Name	CAS No.
Acetaldehyde	75–07–0
Acetone	67–64–1
Acrolein	107–02–8
Alachlor*	15972–60–8
Ammonium perchlorate (and other perchlorate salts)	7790–98–9
Antimony and compounds	7440–36–0
Azinphos Methyl*	86–50–0
Benzene (noncancer endpoints)	71–43–2
Benzo(a)pyrene	50–32–8
Bromoxynil*	1689–84–5
Boron	7440–42–8
1,3-Butadiene	106–99–0
Cadmium	7440–43–9
Carbon tetrachloride	56–23–5
Chloroethane	75–00–3
Chloroform (inhalation route)	67–66–3
Chloroprene	126–99–8
Chlorothalonil*	1897–45–6
Chlorpyrifos*	2921–88–2
Copper	7440–50–8
Cyclohexane	110–82–7
Diazinon*	333–41–5
Dichloroacetic acid	79–43–6
1,2-Dichlorobenzene	95–50–1
1,3-Dichlorobenzene	541–73–1
1,4-Dichlorobenzene	106–46–7
1,1-Dichloroethylene	75–35–4
Diesel exhaust	[N.A.]
Di(2-ethylhexyl)phthalate	117–81–7
Diflubenzuron	35367–38–5
Ethanol	64–17–5
Ethion*	563–12–2
Ethylbenzene	100–41–4
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Formaldehyde	50–00–0
Glyphosate*	1071–83–6
Hexachlorobutadiene	87–68–3
Hydrogen sulfide	7783–06–4
Isopropanol	67–63–0
Metolachlor*	51218–45–2
Methidathion*	950–37–8
Methyl isobutyl ketone (MIBK)	108–10–1
Methyl parathion*	298–00–0
Methyl tert-butyl ether (MTBE)	1634–04–4
Mirex	2385–85–5
Nickel (soluble salts)	[N.A.]
Nitrobenzene	98–95–3
Pendimethalin*	40487–42–1
Phenol	108–95–2
Pebulate*	1114–71–2
Pentachlorophenol	87–86–5
Phosgene	75–44–5
Polychlorinated biphenyls (PCBs-noncancer endpoints)	1336–36–3
Refractory ceramic fibers	[N.A.]
Styrene	100–42–5
2,3,7,8-TCDD (dioxin)	1746–01–6
Tetrachloroethylene (perchloroethylene)	127–18–4
Tetrahydrofuran	109–99–9
Toluene	108–88–3
Triallate*	2303–17–5
Trichlopyr*	55335–06–3
Trichloroethylene	79–01–6
Uranium (natural)	7440–61–1
Vinyl acetate	108–05–4
Xylenes	1330–20–7
Zinc and compounds	7440–66–6

Assessments in Progress—Completion Planned for FY 2004 or FY 2005

The following assessments in progress have been delayed and are now expected for completion in FY 2004 or FY 2005:

Name	CAS No.
Acrylamide	79–06–1
Asbestos	1332–21–4
Hexahydro-1,3,5-trinitro-triazine (RDX)	121–82–4
Methanol	67–56–1
Silica (crystalline)	14808–60–7

IRIS summaries and support documents for all substances listed above will be provided on the IRIS web site at *www.epa.gov/iris* as they are completed. This publicly available web site is EPA's primary location for IRIS documents. In addition, external peer review drafts of IRIS documents can be found during their peer review periods via the ''What's New'' page of the IRIS web site. Interested parties should check the ''What's New'' page frequently for the availability of these drafts.

Assessments Discontinued

The following assessments have been removed from the IRIS agenda for FY 2002, but may be reconsidered at a later date:

Name	CAS No.
Arsenic, inorganic	7440–38–2
Bisphenol-A	80–05–7
Hexachlorobenzene	118–74–1
Methylene chloride	75–09–2
Toxaphene	8001–35–2

IRIS ''Needs Assessment''

On July 20, 2001, EPA published a **Federal Register** notice (66 FR 37958) requesting public input to compile a ''needs assessment'' for planning the IRIS program. This notice requested that the public identify those chemical substances for which assessments either need to be added to IRIS or updated. The responses were considered along with EPA program priorities in the development of new starts for the FY 2002 agenda below. The notice also requested input on whether other types of evaluations are needed on IRIS, such

as toxicological evaluations for health effects associated with less-than-lifetime (i.e., acute or subchronic) exposure durations. The notice also requested input on what priority any new type of evaluation should have compared to evaluation of health effects associated with chronic exposures.

Further, the notice asked whether or how EPA should work with external parties, such as other government agencies, industries, or other organizations to develop health assessments that may be used as supporting documents for IRIS. A pilot effort to provide dialogue and feedback to external parties developing health assessments for IRIS was described in the February 22, 2001 notice, and preceding IRIS **Federal Register** notices. Of the six pilot efforts discussed, four are still in progress and two are discontinued. In FY 2002, EPA will continue to evaluate its experience with the current efforts to determine process efficiency and quality of the documents produced.

A separate ''IRIS Needs Assessment'' report will be made available on the IRIS web site when it is completed.

Information Requested on New Assessments for FY 2002

EPA will continue building and updating the IRIS data base. The Agency recognizes that a number of the assessments on IRIS need updating to incorporate new scientific information and methodologies. Further, many additional substances are candidates for adding to IRIS. However, due to limited resources in the Agency to address the spectrum of needs, EPA developed a list of priority substances for attention beginning in FY 2002. The following substances are priorities for IRIS due to one or more reasons: (1) Agency statutory, regulatory, or program implementation needs; (2) new scientific information or methodology is available that might significantly change current IRIS information; (3) interest to other levels of government or the public, including interest expressed via responses to 66 FR 37958; (4) most of the scientific assessment work has been completed while meeting other Agency requirements, and only a modest additional effort will be needed to complete the review and documentation for IRIS.

The following IRIS health assessments have recently begun or will be started in FY 2002, with completion expected in FY 2003 or FY 2004, unless otherwise noted. It is for these substances that the Agency is primarily requesting information from the public for consideration in the assessments. Unless otherwise noted, noncancer and cancer endpoints will be assessed for each substance. Pesticides denoted with an asterisk (*) will have only oral reference dose and carcinogenicity endpoints assessed. Substances denoted with a double asterisk (**) will be evaluated for effects from acute and subchronic exposure, in addition to chronic exposure. These substances constitute a pilot test to evaluate the application of methods, procedures, and resource needs for adding less-than-lifetime information to IRIS. For all endpoints assessed, both qualitative and quantitative assessments are being developed where information is available.

Name	CAS No.
Atrazine*	1912–24–9
Captan*	133–06–2
Di(2-ethylhexyl)adipate (DEHA)	103–23–1
Dibutyl phthalate	84–74–2
Ethalfluralin*	55283–68–6
gamma-Hexachlorocyclohexane (Lindane)*	58–89–9
Hydrogen cyanide †	74–90–8
Methyl ethyl ketone	78–93–3
2-Methylnaphthalene	91–57–6
Methomyl*	16752–77–5
Naphthalene (cancer; inh. route)	91–20–3
PAH mixtures	N.A.
Perfluorooctanoic acid—ammonium salt**	3825–26–1
Perfluorooctane sulfonate—potassium salt**	2795–39–3
Propachlor*	1918–16–7
Thallium†	7440–28–0
1,1,1-Trichloroethane**	71–55–6

† = completion expected FY 2004/FY 2005.

Submission of Information

As in previous **Federal Register** notices announcing the annual IRIS agenda, EPA is soliciting public involvement in new assessments starting in FY 2002. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. We would greatly appreciate receiving scientific information from the public during the information gathering stage for the list of ''new assessments'' listed above. Interested persons should provide scientific analyses, studies, and other pertinent scientific information. Also note that if you have submitted certain information previously, then there is no need to resubmit that information. While EPA is primarily soliciting information on new assessments announced in this notice, the public may submit information on any chemical substance at any time.

Procedures for Submission

Similar to the process described in the February 22, 2001, **Federal Register**, submissions will be handled in a three-step process:

1. *Submission Inventory:* First, you should simply provide a list within 60 days of this notice briefly identifying all the information (studies, reports, articles, etc.) you wish to submit. The list should specify by name and CASRN (Chemical Abstract Service Registry Number) the chemical substance(s) to which the information pertains, state the type of assessment that is being addressed (e.g., carcinogenicity), and describe briefly the information to be submitted for consideration. Where possible, documents should be listed in scientific citation format, that is, author(s), title, journal, and date. Your cover letter should state that the correspondence is an IRIS submission, describe in general terms the purpose of the submission, and include names, addresses, and telephone numbers of person(s) to contact for additional information. Mail two copies of the submission inventory to the IRIS Submission Desk, c/o ASRC, 6301 Ivy Lane, Suite 300, Greenbelt, MD 20770. Note that this is a new address for the Submission Desk.

Alternatively, you may submit the submission inventory and cover letter electronically to *IRIS.desk@epa.gov.* Electronic information must be submitted in WordPerfect format or as an ASCII file. Information also will be accepted on 3.5'' floppy disks. All information in electronic form must be identified as an IRIS submission.

2. *EPA Replies to Submission Inventory:* In the second step, EPA will compare the submission inventory to existing files and identify the information that should be submitted. This step will help prevent an influx of duplicative information. You will receive notification of whether full submission of the information is requested.

3. *Full Submission of Selected Material:* In the third step, you should send in the information indicated by EPA within 30 days of EPA's reply. Prompt response to EPA will ensure that your material can be considered in the assessment in a timely fashion. Submissions should include a cover letter addressing all of the points in Item 1 above. In addition, when you submit results of new health effects studies concerning existing substances on IRIS, you should include a specific explanation of how and why the study results could change the information in IRIS.

Please send two copies, at least one of which should be unbound, to the IRIS Submission Desk, as described in Item 1. The IRIS Submission Desk will acknowledge receipt of your information.

Confidential Business Information (CBI) should not be submitted to the IRIS Submission Desk. CBI must be submitted to the appropriate EPA Office via established procedures for submission of CBI (see 40 CFR, Part 2, Subpart B). If you believe that a CBI submission contains information with implications for IRIS, please note that in the cover letter accompanying the submission to the appropriate office.

You may also request to augment your submission with a scientific briefing to EPA staff. Such requests should be made directly to Amy Mills, IRIS Program Director (see **FOR FURTHER INFORMATION**).

Dated: January 2, 2002.

Art Payne,

Acting Deputy Director, National Center for Environmental Assessment.

[FR Doc. 02–511 Filed 1–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7127–1]

Clean Air Act Advisory Committee: Accident Prevention Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Clean Air Act section 112(r) required EPA to publish regulations to prevent accidental releases of chemicals and to reduce the severity of those releases that do occur. These accidental release prevention requirements build on the chemical safety work begun by the Emergency Planning and Community Right-to-Know Act (EPCRA) which sets forth requirements for industry, State and local governments. On June 20, 1996, EPA published the final rule for risk management programs to address prevention of accidental releases. Facilities that are subject to the rule are required to implement a risk management program at their facility, and submit a summary of this information (the Risk Management Plan, RMP) to EPA. Approximately 15,000 RMPs have been submitted to EPA.

The Accident Prevention Subcommittee was created in September 1996 to advise EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) on these chemical accident prevention issues, specifically, section 112(r) of the Clean Air Act.

DATES: The Accident Prevention Subcommittee of the Clean Air Act Advisory Committee will hold a public meeting on January 24, 2002 from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Ariel Rios North, Emergency Operations Center, Room B444, 1200 Pennsylvania Avenue, NW, Washington DC. Members of the public are welcome to attend in person.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about this meeting, should contact William Finan, Designated Federal Official, U.S. EPA (5104A), 1200 Pennsylvania Avenue, NW, Washington DC 20460, via the Internet at: *finan.bill@epa.gov,* by telephone at (202) 564–7981 or FAX at (202) 564–8444.

SUPPLEMENTARY INFORMATION:

Agenda

Opening Remarks—Jim Makris (8:30–9:00)

Update on Risk Management Plans Submitted to Date (9:00–9:45)

Proposed Third-Party Audits for the RMP Program (9:45–10:45)

National Chemical Safety Assessment (10:45–11:30)

Options on improving site security at chemical facilities (e.g., inclusion in company safety, health, and environment programs; legislation, regulation, standards, voluntary programs) (12:30–1:30)

How we can use upcoming Organization for Economic Cooperation and Development (OECD) publications in the US (the OECD publications are: Guidance on Safety Performance Indicators; and Guiding Principles for Chemical Accident Prevention, Preparedness, and Response (1:30—2:30) Comments from the public (2:30–3:00)

Members of the public who wish to make a brief oral presentation in person in Washington DC to the Subcommittee at the January 24 meeting must contact William Finan in writing (by letter, fax, or email—see previously stated information) no later than January 21, 2002 in order to be included on the agenda. Written comments may be submitted to the Accident Prevention Subcommittee up through the date of the meeting. Please address such material to William Finan at the above address.

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously submitted oral or written statements. In general, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than thirty minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting.

Additional information on the Accident Prevention Subcommittee is available on the Internet at: *http://www.epa.gov/swercepp/acc-pre.html.*

If you would like to automatically receive future information on the Accident Prevention Subcommittee and its Workgroups by email, you can subscribe to the EPA–CEPPO Listserve by following directions at *www.epa.gov/ceppo.*

Dated: January 3, 2002.

William Finan,

Designated Federal Official.

[FR Doc. 02–510 Filed 1–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64062; FRL–6815–9]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on July 8, 2002, unless indicated otherwise.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 266A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select ''Laws and Regulations'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person*. Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 232, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in 12 pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient and specific uses deleted:

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product	Chemical Name	Delete From Label
000769–00229	Suregard 10% Sevin Dust	Carbaryl	Cotton
005905–00521	Trifluralin 60D	Trifluralin	Rapeseed, clover and flax
005905–00532	Trifluralin HFP	Trifluralin	Rapeseed, clover and flax
009779–00303	Trust 4EC	Trifluralin	Clover
009779–00326	Trific 10G	Trifluralin	Clover
033660–00003	Trifluralin Technical	Trifluralin	Mexican clover
033660–00031	Flutrix Five EC	Trifluralin	Mexican clover
033660–00032	Flutrix 4EC ATT	Trifluralin	Mexican clover
033660–00033	Flutrix 4EC	Trifluralin	Mexican clover
033660–00036	VLN Trifluralin Technical	Trifluralin	Mexican clover
042750–00032	Albaugh Trifluralin 4EC	Trifluralin	Rapeseed and flax
042750–00034	Albaugh Trifluralin 10G	Trifluralin	Rapeseed and flax

Note: EPA company numbers 005905 has requested a 30–day comment period for registrations listed.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before July 8, 2002 unless indicated otherwise, to discuss withdrawal of the application for amendment. This 180–day period also permits interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000769 ...	Value Gardens Supply, LLC, Box 585, St. Joseph, MO 64502.
005905 ...	Helena Chemical Co, 225 Schilling Blvd., Suite 300, Collierville, TN 38017.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION— Continued

EPA Company No.	Company Name and Address
009779 ...	Agriliance, LLC, Box 64089, St Paul, MN 55164.
033660 ...	Lewis & Harrison, Agent For: Industria Prodotti Chimici S., 122 C St NW, Ste. 740, Washington, DC 20001.
042750 ...	Pyxis Regulatory Consulting, Agent For: Albaugh Inc., 11324 17th Ave., Ct. NW, Gig Harbor, WA 98332.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail*: Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked February 8, 2002.

2. *In person or by courier*: Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 266A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically*. You may submit your withdrawal request electronically

by e-mail to: hollins.james@epa.gov. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: December 27, 2001.

Donald J. Huddleston,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 02–412 Filed 1–8–02; 8:45 a.m.]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 10, 2002, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes
- December 13, 2001 (Open and Closed)

B. Reports
- Report on Corporate Approvals
- Bookletter ‘‘ Guidance for Involvement by Employees, Agents, and Board Members in the Nominating Committee Process
- 2001 Financial Statement Audit Report

Dated: January 7, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–638 Filed 1–7–02; 1:44 pm]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010786–013.

Title: Contship/Italia Space Charter and Sailing Agreement.

Parties: Contship Containerlines, Italia di Navagazione SpA.

Synopsis: The proposed modification: (1) Replaces Article 5.4 with new language concerning Italia's use of Contship terminals; (2) clarifies procedures in Article 5.7 concerning outside slot charters by Italia; (3) adds an Article 7.2, which provides for termination under conditions of insolvency; (4) restates the force majeure provisions of Article 10; (5) combines present Articles 11 and 12 into a new Article 11 concerning governing law and arbitration; and (6) adds a new Article 12 limiting assignment of rights and obligations under the agreement to related companies.

Agreement No.: 011671–005.

Title: Italia/CP Ships Space Charter and Sailing Agreement.

Parties: Italia di Navigazione, S.p.A., Contship Containerlines, TMM Lines Limited, LLC.

Synopsis: The proposed amendment: narrows the geographic scope of the agreement to the trade between U.S. Pacific ports and points and ports and points in Spain and Italy; provides for a future adjustment in slot allocations and the purchase/sale of slots on an ad hoc basis; adds language regarding exceptional costs; adds new provisions dealing with non-assignment and force majeure; and restates and combines certain existing agreement articles.

Dated: January 4, 2002.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–564 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information

The Commission gives notice that it has requested that the parties to the below identified agreement modification provide additional information pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* The Commission has determined that further information is necessary to evaluate the implications of the proposed modification. This action may prevent the agreement from becoming effective as originally scheduled.

Agreement No.: 011548–005.

Title: Hanjin/SinoTrans Cross Space Charter & Sailing Agreement.

Parties: Hanjin Shipping Co., Ltd. Sinotrans Container Lines, Co., Ltd.

Dated: January 4, 2002.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–560 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 13064N.

Name : Archer International, Inc.

Address : 3340 A Greens Rd, Suite #300, Houston, TX 77032.

Date Revoked: November 8, 2001.

Reason: Failed to maintain a valid bond.

License Number: 3647F.

Name: Frama Forwarding Corp.

Address: 1231 NW 87th Way, Pembroke Pines, FL 33024.

Date Revoked: November 10, 2001.

Reason: Failed to maintain a valid bond.

License Number: 14323N

Name: Hefco International, Inc., dba Hefco International dba Sea Viper Shipping.

Address: 16725 Aldine Westfield, Houston, TX 77032.

Date Revoked: November 8, 2001.

Reason: Failed to maintain a valid bond.

License Number: 14646N.

Name: Mar Shipping Corp.

Address: 8456 N.W. 72nd Street, Miami, FL 33166.

Date Revoked: November 10, 2001.

Reason: Failed to maintain a valid bond.

License Number: 16400N.

Name: North American (U.K.) Limited.

Address: 7–8 Borrowdale Rd., Wokingham, Berkshire RG41 5UX, United Kingdom.

Date Revoked: November 4, 2001.

Reason: Failed to maintain a valid bond.

License Number: 3927F.

Name: S & K 2000, Inc.

Address: One Madison Street, Rutherford, NJ 07073.

Date Revoked: November 11, 2001.

Reason: Failed to maintain a valid bond.

License Number: 14356N.

Name: Zoom Logistics Corp. dba Zoom Line.

Address: 17595 Almhurst Rd., Suite #203–8, City of Industry, CA 91748.

Date Revoked: November 15, 2001.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–563 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
4425F ...	Esprit International Shipping Combined Transport, Inc. dba Capital Freight Management, 701 S. Atlantic Blvd., #200, Monterey Park, CA 91754.	September 5, 2001.
3644N ..	Forward Logistics Group, Inc., 1902 Cypress Lake Drive, Suite 200, Orlando, FL 32837	September 30, 2001.
4513F ...	Kevin C. Ahn dba Baytop Container Co., 2800 Plaza Del Amo Blvd., Torrance, CA 90503	September 30, 2001.
16470F	South Beach Maritime Company, 8626 NW 55th Place, Coral Springs, FL 33067	November 6, 2001.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–562 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have been filed with the Federal Maritime Commission an application for license as Non–Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Grace Lines,Inc., 1521 Santa Fe Trail, Grand Prairie, TX 75052, Officers: Timothy Stephen Mansfield, Vice President, (Qualifying Individual), Glenda Marie Norman, President.

Hyun Dae Trucking Co., Inc., 3022 S. Western Avenue, Los Angeles, CA 90018, Officer: Hong Rul Kook, President, (Qualifying Individual).

International Services Freight Forwarding Co., 1000 Ponce de Leon Blvd., Suite 212, Coral Gables, FL 33034, Officers: Jose Nunez, Vice President, (Qualifying Individual), Haydee S. Teperman, President.

Jetlink Logistics Bangladesh Ltd., LLC, 2927 41st Avenue, Suite 502D, Long Island City, NY 11101, Officers: Mir A. Rob, President, (Qualifying Individual), Mir N. Haque, Managing Director.

Master Freight Transportes Internacionais Ltd, LLC, 7949 NW 21 Street, Miami, FL 33122, Officer: Oswaldo Santiago De Mesquita, President, (Qualifying Individual).

Seabreeze Logistics Inc., 890 Airport Park Road, Suite 118, Glen Burnie, MD 21061, Officers: Jean Hamilton, President, (Qualifying Individual), Charles Russell, CEO.

United Cargo International, Inc., 1916 NW 82 Avenue, Miami, FL 33126, Officers: Eduardo de Quesada, President, (Qualifying Individual), Michelangelo Lamorte, Vice President.

Unifield Parcel Express dba UPE X, Cargo Building 80, Room 223, Jamaica, NY 11430, Officers: Guido Derlly, President, (Qualifying Individual), Avedik Grigorian, Vice President.

Vankor Logistics Int'l (U.S.A.), Inc., 500 Carson Plaza Dr., Suite #118, Carson, CA 90746, Officers: Eun K. Han, Secretary, (Qualifying Individual).

Chul Heui Choi, President.

Worldtrans Co. dba Worldtrans Container Line, 2300 North Barrington Road, S–400, Hoffman Estates, IL 60195, Officer: Charles B. Ozburn, President, (Qualifying Individual).

Tomcar Investment USA, Inc., 2801 NW 74th Avenue, #170, Miami, FL 33122, Officers: Humberto A. Jimenez, Shipping Manager, (Qualifying Individual), Jose Tomas Duche Pina, Director/President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder, Transportation Intermediary Applicants

American Maritime Services and Supplies, Inc., 1922 Tigertail Blvd, Bldg. #12, Dania, FL 33004, Officer: Alberto Pacchioni, President, (Qualifying Individual).

Dolphin Shipping dba Dolphin USA, 5150 E. Pacific Coast Highway, 2nd Fl., Long Beach, CA 90804, Hans J. Dolnitzki, Sole Proprietor.

FMS Logistics, Ltd., 44190 Mercure Circle, Suite 195, Dulles, VA 20166, Officers: Gerard Trampler, Director, (Qualifying Individual), Michael Moore, President.

KCTC International (America), Inc., dba World Bridge Line, 11099 S. La Cienega Blvd., #153, Los Angeles, CA 90045, Officer: Byung Do Moon, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Rose Air, Inc., 181 Hudson Street, 2F, New York, NY 10013, Officers: Luis Garcia, Traffic Coordinator, (Qualifying Individual), Neal Rosenberg, President.

Dated: January 4, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–561 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Population Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for prevention grants under the Adolescent Family Life (AFL) Demonstration Projects Program, as authorized by Title XX of the Public Health Service Act. These grants are for community-based and community-supported demonstration projects to find effective means of preventing pregnancy by encouraging adolescents to abstain from sexual activity through provision of age-appropriate education on sexuality and decision-making skills. Faith-based organizations are eligible to apply for these demonstration grants. These Title XX grants should clearly and consistently focus on promoting abstinence as the most effective way of preventing unintended pregnancy and sexually transmitted infections (STIs), including HIV. All adolescents under age 19 are eligible for services. Funds will be available for approximately 35 projects, which may be located in any State, the District of Columbia, and United States territories, commonwealths and possessions.

DATES: The closing date for this grant announcement is March 11, 2002. Applications will be considered as meeting the deadline if they are postmarked on or before the closing date. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. All hand delivered applications must be received between the hours of 8:30 am and 5 pm on or before the above closing date. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant. *Applications will not be accepted by fax or e-mail. The submission deadline will not be extended.*

ADDRESSES: Application kits consisting of the appropriate forms, a copy of the Title XX legislation, and guidance on the preparation of the application may be downloaded from the following INTERNET address: *http://opa.osophs.dhhs.gov.* If you do not have access to the INTERNET, you may obtain a kit from the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. Written requests for application kits may be faxed to (301) 594–5981. *All completed applications must be submitted to the Grants Management Office at the above mailing address. In preparing the application, it is important to follow ALL instructions contained in the application kit.*

FOR FURTHER INFORMATION CONTACT: The OAPP Program Office at (301) 594–4004. OAPP staff members are available to answer questions and provide limited technical assistance in the preparation of grant applications. Questions may also be sent to OAPP staff via e-mail at *opa@osophs.dhhs.gov*. If contacting the OAPP by e-mail, please place the phrase ''AFL Prevention Question'' in the subject heading.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z. *et seq.,* authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families (Catalog of Federal Domestic Assistance Number 93.995).

Under this program announcement, OAPP intends to make available approximately $6.5 million to support an estimated 35 new PREVENTION demonstration projects only. The awards will range from $150,000 to $250,000.

Please note, in Fiscal Year (FY) 1999, OAPP issued a similar Request for Applications (RFA) announcing approximately $3 million for new abstinence education prevention demonstration projects. In response to that FRA, OAPP received 142 grant applications and was able to fund only 17 new projects.

Grants may be approved for project periods of up to five years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds. A grant award may not exceed 70 percent of the total costs of the project for the first and second years, 60 percent of the total costs for the third year, 50 percent for the fourth year and 40 percent for the fifth year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including facilities, equipment and services.

Applications are encouraged from organizations which are currently operating programs and which have the capability of expanding and enhancing these services to serve significant numbers of adolescents according to the guidelines specified in this announcement.

The specific services which may be funded under Title XX are listed below under the heading entitled ''PREVENTION SERVICES.''

The following application requirements contain information collections subject to OMB approval under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). These information collections have been approved by OMB under control number 0937–0198.

Technical Assistance

The OAPP has scheduled a series of technical assistance workshops to help prospective applicants. At each of the one-day workshops, the public will be able to learn more about the purposes and requirements of the Title XX program, how to apply for funds under this program announcement, program

eligibility requirements, the application selection process, and considerations that might help to improve the quality of grant applications. These workshops are offered at no cost. However, all participants must preregister using the form at *http://opa.osophs.dhhs.gov* or you may obtain a registration form from the OAPP at (301) 594–4004. Written requests for registration forms may be faxed to (301) 594–5981. The address of workshop locations and logistical information will be faxed or e-mailed back to you upon receipt of your registration.

Workshop Dates and Locations: January 22, 2002—Omaha, NE; January 23, 2002—Billings, MT; January 24, 2002—Seattle, WA; January 25, 2002—Las Vegas, NV; January 28, 2002—Charleston, SC; January 29, 2002—Dallas, TX; January 29, 2002—Indianapolis, IN; January 30, 2002—Providence, RI; January 31, 2002—Newark, NJ; and February 1, 2002—Dulles, VA.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. However, only those organizations or agencies which demonstrate the capability of providing the proposed services and meet the statutory requirements are considered for grant awards.

Youth Development or Developmental Assets Approach

Holistic approaches to preventing teen pregnancy are often termed ''youth development'' or ''developmental assets.'' It has been documented that successful holistic projects are those where adolescents themselves are an integral part of the design, implementation, and evaluation phases over the life of the project. Adolescents need to see hope for a future, acquire the skills necessary to turn hopes into reality, and be provided with an array of opportunities to get them to that reality.

The OAPP encourages applicants to take a holistic approach that addresses the societal disparities that contribute adolescent pregnancy, such as unequal access to enrichment programs, job opportunities, support groups, etc. In addition, the OAPP encourages applicants to provide opportunities for improving the adolescents' sense of self through cultural understanding, sports and recreation, visual and performing arts, and other activities that build an adolescent's sense of self-worth and self-efficacy, as long as these activities contain an educational component. All services provided by AFL grantees, however, including all activities that are part of a holistic approach, must be within the scope of the Title XX prevention services listed below and must not be inconsistent with ''abstinence education'' as defined in the ''Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' Pub. L. No. 104–193.

Prevention Services

Under this announcement, funds are available for abstinence education PREVENTION projects only. Community-based, community-supported, faith-based and school-based applicants are encouraged to apply. The project site must be identified in the application rather than selected after the grant is awarded.

Under the Title XX statute, the primary purpose of prevention programs is to find effective means of reaching adolescents, both male and female, before they become sexually active in order to encourage them to abstain from sexual activity. There is general agreement that early initiation of sexual activity brings not only the risk of unintended pregnancy but also substantial health risks to adolescents, primarily infection with STIs, including HIV. Accordingly, applicants must clearly and consistently focus on abstinence as the most effective way of preventing unintended pregnancy and STIs and must provide services that help pre-adolescents and adolescents acquire knowledge and skills that will instill healthy attitudes and encourage and support abstinence from sexual activity. Any information provided for adolescents who may be or become sexually active, which relates to reducing the risk of unintended pregnancy and disease, must be medically accurate and must be presented within the context that abstinence is the most effective choice and is what the project recommends.

Under the statutory requirements of Title XX, applicants for prevention programs are not required to provide any specific array of services. OAPP encourages the submission of applications which focus on educational services relating to family life and which teach the social, psychological and health gains to be realized by abstaining from sexual activity. The legislation also permits a proposal to include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person;

(4) Transportation;

(5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors; and

(6) Nutrition information and counseling.

In addition to the Title XX statutory requirements, programs must not be inconsistent with abstinence education as defined in the ''Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' Pub. L. No. 104–193. Accordingly, under this announcement the term ''abstinence education'' means an educational or motivational program which:

A. Has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

B. Teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

C. Teaches that abstinence from sexual activity is the only certain way to avid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

D. Teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

E. Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

F. Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

G. Teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

H. Teaches the importance of attaining self-sufficiency before engaging in sexual activity.

Faith-based and community-based organizations are eligible to apply for AFL grants. Please note, however, that no funds provided through the AFL program may be expended for sectarian

instruction, worship, prayer, or proselytization. If a religious organization offers such activities, they shall be voluntary for the individuals receiving services and offered separately from the program funded under the AFL program. An AFL program cannot discriminate in providing program services to an individual on the basis of religion, a religious belief, or refusal to hold a religious belief.

The grantee shall submit all curricula and educational materials for use in the AFL project, whether currently available or to be developed, to OAPP for review and approval prior to use in the AFL project, to ensure that these materials are medically accurate, do not violate the restrictions on sectarian activities, and comply with the statutory prohibition on advocating, promoting, encouraging or providing abortions.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at lease one percent but not more than five percent of the Federal funds received under Title XX on evaluation of the project. Waivers of the five percent limit on evaluation may be granted by OAPP in cases where a more rigorous or comprehensive evaluation effort is proposed (*see* sec. 2006(b)(1)). As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding level. *All project evaluations should monitor program processes to determine whether the program has been carried out as planned and measure the program's outcomes.*

The OAPP encourages applications to include a proposed goal(s) statement and related outcome objectives. A goal is a general statement of what the project hopes to accomplish. It should reflect the long-term desired impact of the project on the target group(s) as well as reflect the program goals contained in this program announcement. An outcome objective is a statement which defines a measurable result the project expects to accomplish. Outcome objectives should be described in terms that measure the results the project will bring about (*e.g.*, decrease in premarital sexual activity among the treatment group, increase in intent to remain abstinent among the treatment group). Good applications should contain a few outcome objectives that are specific, measurable, achievable, realistic and time-framed (S.M.A.R.T.).

*S*pecific: An objective should specify one major result directly related to the program goal, state who is going to be doing what, to whom, by how much, and in what time-frame. It should specify what will be accomplished and how the accomplishment will be measured.

*M*easurable: An objective should be able to describe in realistic terms the expected results and specify how such results will be measured.

*A*chievable: The accomplishment specified in the objective should be achievable within the proposed time line and as a direct result of program activities.

*R*ealistic: The objective should be reasonable in nature. The specified outcomes, expected results, should be described in realistic terms.

*T*ime-framed: An outcome objective should specify a target date or time for its accomplishments. It should state who is going to be doing what, by when, etc. The Public Management Institute, *How to Get Grants* (1981).

Section 2006(b)(2) of Title XX requires that the evaluations be conducted by an organization or entity independent of the grantee providing services. To assist in conducting the evaluations, each grantee shall develop a working relationship with a college or university located in the grantee's state which will provide or assist in providing monitoring and evaluation of the proposed program. The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the program goals and objectives of the intervention, identification of the variables to be measured, a clear and organized timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis strategies. Additionally, it is important to establish this collaborative relationship between the applicant organization and the proposed evaluator when preparing the application to ensure that the project's proposed goals and objectives and the evaluation are consistent with each other. The proposed evaluator should be included in the program planning meetings to ensure that there is uniformity in the intended outcomes of the program.

Application Requirements

Applications must be submitted on the forms supplied (OPHS–1, Revised 6/2001) and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The program narrative should not be longer than 50 double-spaced pages.

Applicants must be familiar with Title XX in its entirety to ensure that they have complied with all applicable requirements. A copy of the legislation is included in the application kit.

Additional Requirements

Applicants for grants must also meet *both* of the following requirements (each year):

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant. An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Requirements for Review of an Application Pursuant to Executive Order 12372 (SPOC Requirements).* Applications under this announcement are subject to the review requirements of E.O. 12372, ''Intergovernmental Review of Federal Programs,'' as implemented by 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible, the applicant (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding submission to the relevant SPOC. The SPOC's comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. The SPOC has 60 days from the closing date of this announcement to submit any comments.

Application Assessment and Evaluation Criteria

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All other applications will be reviewed by a multi-disciplinary panel of independent reviewers and assessed according to the following criteria:

(1) The applicant's provision of a clear statement of mission, goals, measurable (outcome) objectives, reasonable methods for achieving the objectives, a reasonable workplan and timetable, and clear statements of expected results. (25 points)

(2) The capacity of the applicant to implement the program, including personnel and other resources, and the applicant's experience and expertise in providing programs for adolescents. (15 points)

(3) The population the project proposes to serve, including ethnic composition, number of adolescent and pre-adolescent clients, family members and community members. [Healthy People 2010 is a set of health objectives for the Nation to achieve over the first decade of the new century. The two goals of Healthy People 2010 are to increase quality of years of healthy life and to eliminate health disparities. In evaluating this criterion, priority will be given to programs which serve minority populations in order to eliminate health disparities.] (15 points)

(4) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods, and reflecting a practical and technically sound approach to assessing the project's achievement of program objectives. (15 points)

(5) The applicant's presentation of the need for the project, including the incidence of adolescent pregnancy in the geographic area to be served and the availability of services for adolescents within this geographic area. (10 points)

(6) The applicant's presentation of an organizational model for service delivery with appropriate design, consistent with the requirements of Title XX. (10 points)

(7) The community commitment to and involvement in planning and implementation of the project, as demonstrated by letters of commitment and willingness to participate in the project's implementation, acceptance of referrals, etc. (10 points)

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs. In making these decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which applications recommended for approval will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and other factors including:

(1) Recommendations and scores submitted by the review panels;

(2) The geographic area to be served, particularly the needs of rural areas;

(3) The reasonableness of the estimated cost of the project based on factors such as the incidence of adolescent pregnancy in the geographic area to be served and the availability of services for adolescents in this geographic area; and

(4) The usefulness for policymakers and service providers of the proposed project and its potential for replication.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: January 4, 2002.

Mireille B. Kanda,

Acting Director, Office of Population Affairs.

[FR Doc. 02–517 Filed 1–8–02; 8:45 am]

BILLING CODE 4150–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the National Human Research Protections Advisory Committee (NHRPAC)

AGENCY: Office of Public Health and Science, Office for Human Research Protections, DHHS.

ACTION: Notice of January 28–29, 2002 Meeting.

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Human Research Protections Advisory Committee (NHRPAC).

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below. Individuals planning on attending the meeting and who want to ask questions must submit their requests in writing in advance of the meeting to the contact person listed below.

DATES: The Committee will hold its next meeting on January 28–29, 2002. The meeting will convene EST from 8:30 a.m. to its recess at approximately 5:30 p.m. on January 28 and resume at 8:30 a.m. to 5:00 p.m. on January 29.

ADDRESSES: Hyatt Regency Bethesda Hotel, One Bethesda Metro, Bethesda, MD, (301) 657–1234.

FOR FURTHER INFORMATION CONTACT: Ms. Kate-Louise Gottfried, Executive Director, National Human Research Protections Advisory Committee, Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852, (301) 435–4917. The electronic mail address is: *kogottfried@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: The National Human Research Protections Advisory Committee was established on June 6, 2000, to provide expert advice and recommendations to the Secretary of HHS, Assistant Secretary for Health, the Director, Office for Human Research Protections, and other departmental officials on a broad range of issues and topics pertaining to or associated with the protection of human research subjects.

Information about NHRPAC, and the draft agenda for the Committee's January 2002 meeting, will be posted on the NHRPAC website at: http://ohrp.osophs.dhhs.gov/nhrpac/nhrpac.htm.

Dated: January 4, 2002.

Greg Koski,

Executive Secretary, National Human Research Protections Advisory Committee.

[FR Doc. 02–516 Filed 1–8–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0563]

Beauregard Plasma, Inc., Jackson Plasma, Inc., Baton Rouge Plasma, Inc., and Claiborne Plasma, Inc.; Opportunity for Hearing on a Proposal to Revoke U.S. License Nos. 1030, 1031, 1032, and 1033

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on a proposal to revoke the biologics licenses (U.S. License Nos. 1030, 1031, 1032, and 1033) issued to Beauregard Plasma, Inc.; Jackson Plasma, Inc.; Baton Rouge Plasma, Inc.; and Claiborne Plasma, Inc., respectively, for the manufacture of Source Plasma. The proposed revocations are based on the fact that authorized FDA employees have been unable to gain access to these establishments' locations for the purpose of carrying out required inspections of the facilities, which are no longer in operation, and manufacturing of products has been discontinued to an extent that meaningful inspections cannot be made.

DATES: The establishments may submit written or electronic requests for a hearing by February 8, 2002, and any data and information justifying a hearing by March 11, 2002. Other interested persons may submit written or electronic comments on the proposed revocations by March 11, 2002.

ADDRESSES: Submit written requests for a hearing, any data and information justifying a hearing, and any written comments on the proposed revocations to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is initiating proceedings to revoke the biologics license (U.S. License No. 1030) issued to Beauregard Plasma, Inc., P.O. Box 96, Hwy. 27, DeQuincy, LA 70633; the biologics license (U.S. License No. 1031) issued to Jackson Plasma, Inc., P.O. Box 788, Hwy. 68, Jackson, LA 70748; the biologics license (U.S. License No. 1032) issued to Baton Rouge Plasma, Inc., P.O. Box 174, Hwy. 74, St. Gabriel, LA 70776; and the biologics license (U.S. License No. 1033) issued to Claiborne Plasma, Inc., Route 2, Box 75, Homer, LA 71040, for the manufacture of Source Plasma. FDA is initiating proceedings to revoke the licenses because authorized FDA employees have been unable to gain access to any of the establishments for the purpose of carrying out required inspections of the facilities, and manufacturing of products has been discontinued to an extent that meaningful inspections cannot be made.

In a certified return-receipt letter dated May 11, 2001, FDA notified the authorized official of the establishments that attempts to conduct inspections of the establishments were unsuccessful because the establishments were apparently no longer in operation, and the manufacture of Source Plasma had been discontinued. The letter advised the authorized official that, under 21 CFR 601.5(b)(1)(i) and (b)(1)(ii) (formerly codified as 21 CFR 601.5(b)(1) and (b)(2)), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection under 21 CFR 600.21 or that manufacturing of a product has been discontinued to an extent that a meaningful inspection cannot be made, the Commissioner of Food and Drugs (the Commissioner) shall institute proceedings for license revocation. In the same letter, FDA notified the establishments of FDA's intent to revoke U.S. License Nos. 1030, 1031, 1032, and 1033 and its intent to offer an opportunity for a hearing.

Because FDA has notified the establishments of the proposed license revocations and has received no response from the establishments, FDA is proceeding under 21 CFR 12.21(b) and publishing an opportunity for a hearing on a proposal to revoke the licenses.

FDA has placed a copy of the May 11, 2001, letter to the establishments on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice. The document is available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Beauregard Plasma, Inc.; Jackson Plasma, Inc.; Baton Rouge Plasma, Inc.; and Claiborne Plasma, Inc., may submit a written or electronic request for a hearing to the Dockets Management Branch by February 8, 2002, and any data and information justifying a hearing must be submitted by March 11, 2002. Other interested persons may submit written or electronic comments on the proposed license revocations to the Dockets Management Branch by March 11, 2002. The failure of the licensees to file timely written requests for hearings constitutes an election by the licensees not to avail themselves of the opportunity for a hearing concerning the proposed license revocations.

FDA's procedures and requirements governing a notice of opportunity for a hearing, notice of appearance and request for a hearing, grant or denial of a hearing, and submission of data to justify a hearing on proposed revocation of a license are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials but must be set forth a genuine and substantial issue of fact. If the Commissioner determines upon review of any objections or requests for a hearing that a hearing is not justified, in whole or in part, or if a request for a hearing is not made within the required time with the required format or required analyses, the Commissioner will deny the hearing request, with an explanation for the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 CFR 10.20(j)(2)(i), 21 U.S.C. 331(j), or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. or 4 p.m. Monday through Friday.

This notice is issued under section 351 of the Public Health Service Act (42 U.S.C. 262) and sections 201, 501, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, and 371), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Biologics Evaluation and Research (21 CFR 5.67).

Dated: December 27, 2001.

Mark Elengold,

Deputy Director for Operations, Center for Biologics Evaluation and Research.

[FR Doc. 02–483 Filed 1–8–02; 8:45 am]

BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0583]

Food Security Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two guidance documents related to food security entitled ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance'' and ''Importers and Filers: Food Security Preventive Measures Guidance.'' ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance'' is designed as an aid to operators of food establishments (i.e., firms that produce, process, store, repack, relabel, distribute, or transport food or food ingredients, or that prepare or distribute food at retail). It identifies the kinds of preventive measures that they can take to minimize the risk that food under their control will be subject to tampering or criminal or terrorist actions. ''Importers and Filers: Food Security Preventive Measures Guidance'' is designed as an aid to operators of food importing establishments, storage warehouses, and filers. It identifies the kinds of preventive measures that they can take to minimize the risk that food under their control will be subject to tampering or criminal or terrorist actions.

DATES: Submit written or electronic comments by March 11, 2002 to ensure their adequate consideration in the preparation of revised guidance, if warranted. However, you may submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance'' or ''Importers and Filers: Food Security Preventive Measures Guidance'' to John Kvenberg, Office of Field Programs (HFS–600), Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Include a self-addressed adhesive label to assist that office in processing your request.

Submit written comments on the guidance documents to Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance documents.

FOR FURTHER INFORMATION CONTACT: John Kvenberg, Office of Field Programs (HFS–600), CFSAN, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–205–4187, e-mail:jkvenberg@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Operators of food establishments, food importing establishments, and filers are encouraged to review their current procedures and controls in light of the potential for tampering or criminal or terrorist actions and make appropriate improvements. ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance'' aids operators of food establishments (i.e., firms that produce, process, store, repack, relabel, distribute, or transport food or food ingredients, or that prepare or distribute food at retail). It is relevant to all sectors of the food system (i.e., from farm-to-table), including farms, aquaculture facilities, fishing vessels, producers, transportation operations, processing facilities, packing facilities, warehouses, retail, and food-service establishments. ''Importers and Filers: Food Security Preventive Measures Guidance'' aids operators of food importing establishments, storage warehouses, and filers. Both guidance documents identify the kinds of preventive measures that operators can take to minimize the risk that food under their control will be subject to tampering or to criminal or terrorist actions. They take the operator through each segment of the farm-to-table system that is within their control, in order to minimize the risk of tampering or of criminal or terrorist action at each segment. Implementation of these measures requires commitment from both management and employees to be successful and, therefore, both should participate in their development and review.

The two guidance documents are level 1 guidances issued consistent with FDA's good guidance practices regulation (GGPs) (21 CFR 10.115). The agency is soliciting public comment, but is implementing these two guidance documents immediately in accordance with § 10.115(g)(2) (21 CFR 10.115(g)(2)). The two guidance documents were prompted by the tragedies of September 11, 2001, and the resulting scrutiny of, and interest in, food safety and security that followed. FDA believes it is critical to our national interest and the public health to make guidance on food security available to the food industry quickly. Thus, the agency has determined that prior public participation is not feasible or appropriate.

FDA is also interested in comments on whether the guidance documents ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance'' and ''Importers and Filers: Food Security Preventive Measures Guidance'' should be revised to include the following additional preventive measures:

- The use of tamper-evident packaging. FDA is particularly interested in information on: the utility of the various methods of tamper-evident packaging in minimizing the risk that foods so packaged will be subject to tampering or criminal or terrorist actions; and, the practicality of applying tamper-evident packaging to the broad spectrum of foods presently in commerce;
- The use of procedures and/or records that enable shipments of food from a food establishment or food importing establishment to be traced to shipments of food received by the food establishment or food importing establishment and vise versa. FDA is particularly interested in information on the types of procedures and/or records that are both practical and effective in facilitating trace-back of incoming shipments, trace-forward of outgoing shipments, and linkages between the two.

These guidance documents represent the agency's current thinking on appropriate measures that can be taken by operators of food establishments, food importing establishments, storage warehouses, and filers to minimize the risk of food being subjected to tampering or criminal or terrorist actions. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the guidance documents at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance documents

and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of these guidance documents also are available on the Internet at http://www.cfsan.fda.gov/~dms/guidance.html. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

Dated: January 3, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–542 Filed 1–4–02; 4:12 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0044]

Small Entity Compliance Guide: ''Structure/Function Claims;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide (SECG) for a final rule published in the **Federal Register** of January 6, 2000 (65 FR 1000), entitled ''Regulations on Statements Made for Dietary Supplements Concerning the Effect on the Structure or Function of the Body.'' This SECG is intended to set forth the requirements of that final rule in plain language and to help small businesses understand the regulation.

DATES: Submit written or electronic comments on the SECG at any time.

ADDRESSES: Submit written comments concerning this SECG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written requests for single copies of the SECG to the Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send one self-adhesive address label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Robert Moore, Center for Food Safety and Applied Nutrition (HFS–811), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4605, FAX 202–205–4594.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 6, 2000 (65 FR 1000), FDA issued a final rule defining the types of statements that can be made concerning the effect of a dietary supplement on the structure or function of the body. The regulation also established criteria for determining when a statement about a dietary supplement is a claim to diagnose, cure, mitigate, treat, or prevent disease. The final rule clarified the types of claims that may be made for dietary supplements without prior review by FDA and the types of claims that require prior authorization as health claims or prior approval as drug claims. This final rule became effective February 7, 2000.

FDA examined the economic implications of that final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–602). The agency determined that the final rule would have a significant economic impact on a substantial number of small entities.

In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), FDA is making available this SECG stating in plain language the requirements of this regulation.

FDA is issuing this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

I. Comments

Interested persons may, at any time, submit written or electronic comments on the SECG entitled ''Structure/Function Claims; Small Entity Compliance Guide'' to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the SECG and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

II. Electronic Access

Copies of the SECG may also be viewed on a personal computer with access to the Internet. The Center for Food Safety and Applied Nutrition's home page includes the SECG, which can be found at http://www.cfsan.fda.gov/dms/guidance.html.

Dated: December 26, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–451 Filed 1–8–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: February 7–8, 2002.

Open: February 7, 2002, 8:30 a.m. to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: February 7, 2002, 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive,

Bethesda, MD 20892, 301/435–0260, *beebed@nhlbi.nih.gov*.

Information is also available on the Institutes's/Center's homepage: *www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 2, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–476 Filed 1–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel SLEEP AND SLEEP DISORDERS IN CHILDREN.

Date: February 20, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Arthur N. Freed, PhD, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 3, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–477 Filed 1–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Permits; Draft Environmental Impact Statement on Double-Crested Cormorant Management

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) announces the rescheduling of two of the public meetings associated with the comment period for a Draft Environmental Impact Statement (DEIS) on double-crested cormorant management. The DEIS has been prepared under the authority of the National Environmental Policy Act and the Migratory Bird Treaty Act and analyzes the potential environmental impacts of several management alternatives to address conflicts associated with double-crested cormorants. This notice identifies the locations, dates, and times of public meetings and identifies the Service official to whom comments may be directed.

DATES: Written comments regarding the DEIS should be submitted by February 28, 2002, to the address below. Dates and times for ten public meetings are listed in the table under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Requests for copies of the DEIS should be mailed to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 634, Arlington, VA 22203. Written comments on the DEIS can be sent by the following two methods:

(1) By mail to the above address; or

(2) by email to: cormorant_eis@fws.gov.

Please include your name and mailing address in all comments submitted; anonymous comments will not be considered. The public meetings will be held at the locations listed in the table under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Division of Migratory Bird Management, (703) 358–1714.

SUPPLEMENTARY INFORMATION: On December 19, 2001, we published a notice of meetings in the **Federal Register** announcing ten public meetings associated with the comment period for a DEIS on double-crested cormorant management. Because of a conflict with the previously-scheduled meeting dates and the World Aquaculture Association annual meeting, we are rescheduling the Little Rock, Arkansas, and Jackson, Mississippi, meetings. These are listed in the table below.

Date	City	Location	Time
January 7, 2002	Green Bay, Wisconsin	Ramada Plaza Hotel 2750 Ramada Way	7:00 PM
January 8, 2002	Mackinaw City, Michigan	Hamilton Inn Select 701 S. Huron Avenue	7:00 PM
January 16, 2002	Washington, DC	Main Interior Building Auditorium 1849 C Street, NW.	10:00 AM
February 4, 2001	Athens, Texas	Texas Freshwater Fisheries Center 5550 Flat Creek Road (Farm Road 2495).	7:00 PM
February 5, 2002	Jackson, Mississippi	Clarion Hotel and Convention Center 400 Greymont Avenue.	6:00 PM
February 6, 2002	Little Rock, Arkansas	University of Arkansas Division of Agriculture Cooperative Extension Service 2301 S. University Avenue.	6:00 PM
February 11, 2002	South Burlington, Vermont	Clarion Hotel 1117 Williston Road	7:00 PM
February 12, 2002	Watertown, New York	Dulles State Office Building 317 Washington Street	7:00 PM
February 13, 2002	Syracuse, New York	Sheraton University Hotel 801 University Avenue	7:00 PM
February 19, 2002	Portland, Oregon	Doubletree Hotel—Lloyd Center 1000 NE Multnomah.	7:00 PM

Dated: December 26, 2001.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish & Wildlife Service.

[FR Doc. 02–531 Filed 1–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information under 30 CFR part 842 which allows the collection and processing of citizen complaints and requests for inspection.

DATES: Comments on the proposed information collection must be received by March 11, 2002, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in 30 CFR Part 842, Federal inspections and monitoring. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Federal inspections and monitoring—30 CFR part 842.

OMB Control Number: 1029–0118.

Summary: For purposes of information collection, this part establishes the procedures for any person to notify the Office of Surface Mining in writing of any violation that may exist at a surface coal mining operation. The information will be used to investigate potential violations of the Act or applicable State regulations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Citizens, State governments.

Total Annual Responses: 126.

Total Annual Burden Hours: 95 hours.

Dated: December 12, 2001.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–480 Filed 1–8–02; 8:45 am]

BILLING CODE 4310–05–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States. Advisory Committee on Rules of Evidence.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The public hearing on proposed amendments to the Federal Rules of Evidence, scheduled for January 23, 2002, in Washington, DC, has been canceled. [Original notice of hearing appeared in the **Federal Register** of August 29, 2001.]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 3, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–478 Filed 1–8–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: January 23, 2002.

TIME: 8:30 a.m to 5:00 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 3, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–479 Filed 1–8–02; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No.—2178–01]

Immigration and Naturalization Service Airport and Seaport Inspections User Fee Advisory Committee Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service Airport and Seaport Inspections User Fee Federal Advisory Committee.

Date and time: Wednesday, February 6, 2002, at 1 p.m.

Place: Immigration and Naturalization Service Headquarters, 425 I Street, NW., Washington, DC 20536, Shaughnessy Conference Room, Sixth Floor.

Status: Open. Twenty-third meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2. The responsibility of this standing Advisory Committee is to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspection services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Advisory Committee focuses its attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least 5 days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received by the contact person at least 5 days prior to the meeting will be considered for discussion at the meeting.

Contact person: Charles D. Montgomery, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 4064, 425 I Street, NW., Washington, DC 20536; telephone: (202) 616–7498; fax: (202) 514–8345; E-mail: *charles.d.montgomery@usdoj.gov*.

Dated: December 28, 2001.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–508 Filed 1–8–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Availability of Funds and Solicitation for Grant Applications (SGA) for the Purpose of Training Child Care Providers

AGENCY: Employment and Training Administration, Department of Labor.

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, invites proposals for up to ten (10) awards. These awards will be for the implementation of the Quality Child Care Initiative. It will assist with the initiation of building a national system for the education and training of professional child care providers and expand the National Apprenticeship System by incorporating diversification of occupational entities through development of new and innovative strategies for increasing the participation among the child care industry.

DATES: Applications will be accepted commencing January 9, 2002. The closing date for receipt of applications is March 11, 2002, at 4 P.M., (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mamie D. Williams, Reference: SGA/DFA 02–103, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Mamie D. Williams, Grants Management Specialist, Division of Federal Assistance, Fax (202) 693–2879. This is not a toll-free number. All inquiries should include the SGA number (SGA/DFA 02–103) and a contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's Homepage at *http://www.doleta.gov*. Award notifications will also be published on this Homepage.

Quality Child Care Initiative Solicitation

Part I. Purpose

To invite proposals for providing a credentialed career path for development of professional child care provider through the utilization of the National Registered Apprenticeship System; which will reduce turnover, increase wages for providers, provide a more stable environment for children and lower the concern of parents.

Part II. Background

The Child Care Industry is in trouble. A 1989 study by the national Center of Early Childhood Workforce found that the quality of services provided by most day care centers was rated as Abarely adequate,'' and a more recent four-State study by the University of Colorado at Denver found that only 14 percent of child care centers were rated as good quality. In addition, child care workers are faced with relatively low wages, inadequate benefit coverage, and high job turnover.

On October 23, 1997, former President and Mrs. Clinton hosted the White House Conference on child care—to focus the Nation's attention on the importance of addressing the need for safe affordable, available, quality child care. Integral to providing the ''right'' care is the quality of the child care worker.

Quality child care service goes hand in glove with having an adequate supply of competent, professional child care providers. This requires enhanced training opportunities and a redefinition of the basic concept of what constitutes a child care provider. A national focus on accreditation demands that practitioners have access to education and training that will promote professional development. As the field of early care and education becomes established as a profession, practitioners are required to master basic knowledge, skills and core competencies of early childhood development. As professionals, practitioners must develop practical knowledge that will enable them to apply new approaches and strategies for working effectively with young children.

Part III. Statement of Work

As our society continues to evolve and demands are placed on parents to secure full time job/careers, the need for safe, affordable, available, quality child care has been brought to the forefront. Utilization of the National

Apprenticeship System can provide needed training for early care and education practitioners. High quality training has the potential to change the culture of the child care industry from one dominated by low pay and high turnover to one of respected professional service. No longer would child care be equated to baby-sitting.

The apprenticeship model validates the integral part that child care plays in the economy, as working families rely on dependable, accessible care for their children. As families move from welfare to work, additional sources of training child care providers are in demand.

Note: All successful applicants are expected to provide information relative to the projected number of participants (i.e., employers, apprentices and the diverse make-up of the participants) in order to assist the grantor in determining the amount of awards to be given.

The major tasks of this project will be, but not limited, to the following:

- System and capacity building by incorporating in a collaborative spirit organizations, agencies, employers, associations and higher education to develop a vision for implementation of an individual statewide sustainable infrastructure built upon successful registered apprenticeship and best practice models;
- From the above activity, establishment of an oversight body to provide direction and guidance to the vision, utilizing the services of an Apprenticeship and Training Representative;
- Utilization of an established curriculum or development of a curriculum based on developmentally appropriate inclusive practices for young children and an interactive adult education teaching approach that is effective for adult learners;
- Adoption of or establishment of a train-the-trainer system that will ensure the availability of knowledge, experienced, skilled instructors for the related instruction course work;
- Development of a process to promote career lattice for those graduates of the registered apprenticeship system (i.e., articulation into an Associates Degree or higher);
- Ensuring the inclusion of those with other nationally recognized credentials such as the Child Development Associate (CDA) through previous credit for documented prior experience;
- Demonstration of in-kind support from institutions involved in the process (i.e., time spent to facilitate and foster the process and/or free facilities to conduct related instruction);
- Development and implementation of a strategy or strategies to ensure inclusion of practitioners representing diversity of culture, ethnicity, gender and ability;
- Development of policies, procedures and formulas to ensure the consistency and integrity of system implementation and beyond. The system will be sustainable and ownership established, if the process is followed throughout the state;

Part IV. Eligible Applicants

Eligible Applicants: Those eligible to apply are as follows: States that have a State Apprenticeship Agency (SAA) , State Agencies designated by the Governor, Governor's Early Childhood Initiative, other State Agencies with responsibility for child care regulations or funding. Only one proposal will be accepted per State and for States without a SAA a letter from the Governor designating the agency must accompany the proposal. Those States who received Child Care Initiative awards in Round 1 (1999) and Round 2 (2000), are not eligible to compete for this procurement action.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement prodedures must require thall all procurement transaction must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

Note: Administrative Costs: Pursuant to 20 CFR 667.210(b), grantees are advised that there is a 10% limitation on administrative costs on funds administered under this grant. The Grant Officer may, however, approve additional administrative costs up to a maximum of 15% of the total award amount, if adequate justification is provided by the grantee at the time of the award. In no event, may administrative costs exceed 15% of the total award amount. The cost of administration shall include those disciplines enumerated in 20CFR 667.220(b) and (c).

Part V. Application Process

Application Submittal. Applicants must submit one (1) copy of their proposal with an A. original signature and two (2) additional copies of their proposal. The applications shall be divided into two distinct parts: Part I—which contains the Standard Form (SF) 424, ''Application for Federal Assistance,'' (Appendix A) and ''Budget Information Sheet,'' (Appendix B). All copies of the (SF) 424 MUST have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the (SF) 424 the organization's IRS Status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c) 4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The Catalog of Federal Domestic Assistance number is 17.262. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Part II shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this section. Applicants must describe their plan in light of each of the Evaluation Criteria. Applicants MUST limit the program narrative section to no more than 30 double-spaced pages, on single-sided numbered pages with the exception of the Executive Summary. The Executive Summary must be limited to no more than two single-spaced, single-sided pages. Note: The Executive Summary is not included in the 30 page limitation. A font size of at least twelve (12) pitch is required throughout on 8.5 × 11 inch paper with 1-inch margins. This includes any attachments. Letters of general support or recommendation for a proposal should NOT be submitted and will count against the page limits. Applications that fail to meet the page limitation requirement will not be considered.

Part VI. Late Applications

Any application received after the exact date and time specified for receipt at the office designed in this notice will not be considered, unless it is received before awards are made and it—(a) was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or (b) was sent by the U.S. Postal Service Express Mail Next Day Service to addresses not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term ''working days'' excludes weekends and federal holidays. The term ''''post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression)

that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

Part VII. Hand Delivered Proposals

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, Hand-delivered applications must be received by 4:00 P.M., (Eastern Time), on the closing date at the specified address. TELEGRAPHED AND/FAXED APPLICATIONS WILL NOT BE HONORED. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and MUST BE RECEIVED by the above specified date and time.

Part VIII. Funding Availability and Period of Performance

The Department expects to makeup to 10 awards with a maximum total investment for these projects of $3.3 million. Grants will be awarded up to $325,000. The period of performance will be for 18 months from the date the grant is awarded.

Part IX. Review Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

Evaluation Criteria

A. *System and Capacity Building*—The extent to which the offeror has delineated collaboration strategies to develop a vision and implementation plan for a statewide infrastructure utilizing the registered apprenticeship system of training and forecast of implementation. (25 points)

B. *Sustainability*—Plan for long term viability of the system after this funding ends. (15 points)

C. *Curriculum*—Delineation of utilization or development of curriculum based on developmentally appropriate inclusive practices for young children and an interactive adult educational component for effective adult learners and a forecast of implementation. (15 points)

D. *Career Lattice*—Describe the process for inclusion of participants with documented prior experience linked with substantial increases in compensation and next steps for apprenticeship graduates in the process (awarding of college credit and articulation with higher education). (20 points)

E. *Diversity*—Outline the strategy or strategies developed to ensure inclusion of participants representing diversity of culture, ethnicity, gender and ability (i.e., projected number of employers and apprentices) and a forecast of implementation. (15 points)

F. *Consistency and Integrity*—Delineation of the policies, procedures, and formulas developed to ensure consistency and integrity of the statewide system. (10 points)

The grants will be awarded based on applicant response to the above mentioned criteria and what is otherwise most advantageous to the Department.

Part X. Reporting Requirements

- Attendance to a post award orientation briefing, is tentatively scheduled to take place in Atlanta, Georgia, where BAT will reiterate and delineate the overall desired outcomes of the project;
- Detailed work plan, budget, and schedule within 30 days of grant award;
- Quarterly Status Reports within 30 days of quarters' end;
- Monthly cost vouchers;
- Final report on completed tasks, and specific recommendations for future grants for Child Care Initiatives, no later than 45 days following the end of the grant.

Signed in Washington, DC, this 3rd day of January, 2002.

James W. Stockton,

Grant Officer.

Appendix A: (SF) 424—Application Form

Appendix B: Budget Information Form

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):
_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-88
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: ***Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).***

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 02–495 Filed 1–8–02; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act, Sections 127 and 167 Migrant and Seasonal Farmworker Youth Program

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Migrant and Seasonal Farmworker (MSFW) Youth Program under the Workforce Investment Act (WIA).

SUMMARY: All information required to submit a grant application is contained in this announcement. The U.S. Department of Labor (the Department), Employment and Training Administration (ETA), announces the availability of funds as authorized in section 127(b)(1)(A)(iii) of the Workforce Investment Act, to provide MSFW youth workforce investment activities.

It is anticipated that up to $10,000,000 will be available for the grant year (commencing April 1, 2002) for funding up to 15 projects covered by this Solicitation. It is the Department's intent to fund grants in the 12 agricultural geographic areas of the United States. Grantees will be selected for a two-year designation period. The Department intends to provide non-competitive funding for the succeeding one-year period for grantees that perform satisfactorily during the first year, subject to availability of federal funds.

DATES: Applications will be accepted commencing on the date of publication. The closing date for receipt of applications under this announcement is February 15, 2002, at 4:00 p.m. Eastern Standard Time (EST). No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered.

ADDRESSES: Applications shall be mailed or hand-carried to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mrs. Serena Boyd, SGA/DFA 02–104, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to (202) 693–2879 (this is not a toll-free number) to the attention of Mrs. Serena Boyd. All inquiries should include the SGA number 02–104, and a contact name, fax, and telephone numbers. This Solicitation is also being published on the Internet at ETA's homepage at *http://www.doleta.gov*. Award notifications will also be published on the ETA homepage.

Part I. General Information

A. Background

The purpose of the MSFW youth program is to provide an effective and comprehensive array of educational opportunities, employment skills, and life enhancement activities to at-risk MSFW youth that lead to academic success, economic stability and development into productive members of society.

The MSFW Youth program is described at 20 CFR 669.600 through 669.680. It is designed:

(1) to strengthen the ability of eligible farmworker youth to obtain or retain unsubsidized employment, or

(2) to stabilize their unsubsidized employment by providing related assistance, integrated and coordinated with other appropriate services.

B. MSFW Youth Participant Eligibility

Eligible participants must be 14 to 21 years of age, and a farmworker or a dependent of farmworker parent(s) (or guardian(s)) as defined in section 167(h) of the Workforce Investment Act and at 20 CFR part 669.

Eligible farmworkers are those economically disadvantaged persons who, for 12 consecutive months out of the 24 months preceding their application for services, have been primarily employed in agricultural labor that is characterized by chronic unemployment or underemployment. Complete eligibility requirements will be provided upon request.

C. Eligible Entities

To be eligible for receipt of funds under this program, an organization must have:

(1) Documented experience in providing services to migrant and seasonal farmworker youth;

(2) a working familiarity with the geographic area to be served and be able to show its ability to work within the existing service environment;

(3) the capacity to administer the program of activities and services proposed for MSFW youth; and

(4) the appropriate legal status to enter into a grant agreement with the U.S. Department of Labor (e.g. a private non-profit corporation or a unit of State or local government).

D. Consultation With Governors and Local Boards

Executive Order No. 12372, ''Intergovernmental Review of Federal Programs,'' and the implementing regulations at 29 CFR part 17, are applicable to this program. Under these requirements, the applicant must provide a copy of the application for comment to the States that have established a consultation process under the Executive Order. Applications must be submitted to the State's Single Point of Contact (SPOC) no later than the deadline for submission of the application to the Department.

For States that have not established a consultative process under Executive Order No. 12372, and have established a State Workforce Investment Board (State Board), the State Board will be the SPOC. For WIA implementation purposes, this consultation process fulfills the requirement of WIA section 167(e) concerning consultation with Governors and Local Boards. To strengthen the implementation of Executive Order No. 12372, the Department establishes the following time-frame for its treatment of comments from the State's SPOC on WIA section 167 applications:

1. The SPOC must submit comments, if any, to the Department and to the applicant, no later than 30 days after the deadline date for submission of applications;
2. The applicant's response to the SPOC comments, if any, must be submitted to the Department no later than 15 days after the post-marked date of the comments from the SPOC;
3. The Department will notify the SPOC of its decision regarding the SPOC comments and applicant response; and
4. The Department will implement that decision within 10 days after it has notified the SPOC.

E. Grant Duration and Period of Performance

The Department anticipates that grants will be funded for two one-year time periods—with funding in the second year contingent on satisfactory performance during the first year and the availability of funding in the second year. The period of performance for the first year is expected to commence April 1, 2002.

Part II. Application Process and Guidelines

A. Submission of the Grant Application Package

Applicants must submit an original and three (3) copies of the complete application package for review.

Applications must be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they must be received at the designated place by 4:00 p.m., Eastern Standard Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received by the specified time and closing date. Telegraphed, faxed and e-mailed proposals will not be honored. Applications that do not adhere to the above instructions will not be honored.

B. Late Applications

Any applications received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g. an offer submitted in response to a solicitation requiring a receipt of application by the 30th of January must have been mailed by the 25th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days prior to the date specified for receipt of application. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal will be processed as if it had been mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been applied or affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applications should request the postal clerk to place a legible hand cancellation ''bulls eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by ''Express Mail Next Day Service-Post Office to Addressee'' is the date entered by the post office receiving clerk on the Express Mail Next Day Service-Post Office to Addressee label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

C. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before the award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and representative signs a receipt for the proposal.

D. Grant Application Package

The grant application package must consist of:

(1) A Standard Form 424 (Application for Federal Assistance) found in OMB Circular A–102 and as an attachment to this Solicitation.

(2) A Standard Form 424A (Budget) found in OMB Circular A–102 and as an attachment to this Solicitation. Costs in section B (Budget Categories), Item 6 (Object Cost Categories) should be budgeted by Administrative, Program, and Total. Administrative costs are to be included in column (1), program costs in column (2), and the total cost in column (5) of Form 424A. Budgets are required only for the first year of the two-year plan and designation period. Administrative costs are limited to 15 percent of the total grant award.

(3) A certification, prepared within the last six months prior to the submission of this application, attesting to the adequacy of the entity's fiscal management and accounting systems to account for and safeguard Federal funds properly. The required certification must be obtained as follows:

a. For incorporated organizations, from a Certified Public Accountant.

b. For public agencies, by its Chief Fiscal Officer.

(4) A statement describing the entity's legally constituted authority under which the organization functions. A nonprofit organization should submit a copy of its Charter or Articles of Incorporation, including proof of the organization's nonprofit status;

(5) A copy of the current indirect cost rate agreement issued by the cognizant federal agency, if applicable.

(6) The completed grant application as described below.

E. Format of the Grant Application

The grant application is limited to 50 numbered pages, double-spaced, using type no smaller than 11 point. The page number limitation does not include letters of support or the required attachments. Proposals may be fastened using a binder clip. Please do not use 3-ring binders, or otherwise bind your proposal package. To ensure full consideration, the application must follow the numerical sequence of the sections 1 through 5 as presented in II E of this solicitation immediately below. The application must include a table of contents. To ensure your application is considered fully, be sure to respond completely to each section. All attachments should be included at the end under a section 6 heading.

F. Contents of the Grant Application

Specific Rating Criteria for section 1 [15 points]—This factor rates the applicant's understanding of the proposed service area and its experience within the service environment described. Ratings will be based on factors such as the reasonableness of matching the proposed service area to the scope of the program and the amount of funds sought and the applicant's ability to work within the service environment, as evidenced by the existence of appropriate and documented linkages—especially those related to other MSFW program activities.

Section 1—Knowledge of the Area To Be Served and Capacity To Operate Within the Existing Service Environment

(A) Geography:

(1) Identify the geographic boundary of the proposed service area (or areas). An explanation should be provided, wherever there are service areas that are not contiguous. Include a map.

(2) Describe your organization's capacity to operate in the proposed service area.

(B) Community Resources:

(1) Describe the communities where migrant and seasonal farmworker youth, who would be served by the proposed project, reside and where they travel for work purposes. The description must include a discussion of the educational, social, cultural, workforce, community programs and services and other relevant opportunities available for youth. Be sure to explain how these community services are responding to the needs of MSFW youth.

(2) Describe how your organization works with the community resources described above.

(C) NFJP Relationship: Describe the relationship between the grant applicant and the NFJP grantees operating the area under your proposal. Specifically, where the applicant is not the current NFJP grantee in the proposed service area, describe the arrangements that

have been or will be made to coordinate the delivery of services and avoid duplication of services.

(D) One-Stop Coordination: Provide an itemization of Workforce program linkages. Specifically include the name of each entity with whom a linkage has been established, the relationship of each entity to the applicant, the specific service to be provided by the established linkage and an explanation of how the linkage will support the proposed program. Please indicate if documentary evidence of the linkage is provided as an attachment.

Specific Rating Criteria for section 2 [15 points]—This factor rates the applicant's knowledge and understanding of the needs, problems, and demographic characteristics of the target group. Ratings are based on the degree to which the narrative shows how the applicant organization has developed its capacity to understand the MSFW youth population within the proposed service area.

Section 2—The Problems of Migrant and Seasonal Farmworker Youth

Provide a socio-economic analysis of the migrant and seasonal farmworker youth in the area you propose to serve, made as follows:

(A) Describe the demographic and socio-economic characteristics of migrant and seasonal farmworker youth in the service area, and identify the sources (which may include experiences or knowledge developed by your agency) you rely upon;

(B) Describe the needs and problems of farmworker youth you have identified for serving, and show how you have made the identification; and

(C) Describe the farmworker youth that you propose to serve.

Specific Rating Criteria for section 3 [50 points]—Applications will be rated according to how well the proposed program of services is shown to respond to the identified MSFW Youth needs. You must show how your service delivery system will respond by offering services to the MSFW Youth in the area that are appropriate to the needs you have identified for them. Up to 15 points may be earned under part (C).

Section 3—Proposed Program Activities and Services

Noting any differences between the first and second years, provide a detailed description of the proposed program activities:

(A) State two or more goals for the proposed MSFW Youth program.

(B) Provide a detailed description of the proposed program of activities and services. The description must address each of the following program elements:

(1) Core services, including outreach, recruitment and eligibility determination;

(2) Intensive services (Preliminary information from two of the migrant youth demonstration grants is showing there are broad benefits to be gleaned from parental participation in the development of their child's individual service strategy. Include a description of your plans for parental participation);

(3) Training services;

(4) Life skill activities which may include self and interpersonal skills development;

(5) Community service projects;

(6) Small business development, technical assistance and training in conjunction with entrepreneurial training;

(7) Supportive services and other related assistance services, described in 20 CFR 669.430; and

(8) Other proposed activities and services, if any, that conform to the use of funds for youth activities described in 20 CFR part 664.

(C) Provide an analysis that shows how the proposed program of services and activities is responsive to the needs of MSFW Youth described in part (C) of section 2. Provide an explanation how the proposed program will lead to the fulfillment the goals proposed in part (A) of section 3.

Specific Rating Criteria for section 4 [10 points]—Based on the applicant's previous relevant program experience and performance, applicants will be rated according to their relative capacity to provide effectively workforce investment activities for MSFW youth.

Section 4—Capacity To Operate a Workforce Investment Program for MSFW Youth

(A) Provide the published mission or principal goals/objectives of the applicant organization and explain how service to MSFW youth promotes the organization's mission.

(B) Describe the applicant organization's experience providing services to youth, to MSFWs and to MSFW youth.

(C) Describe the programs operated by the applicant organization during the last two years, presented in tabular form. Each entry on the table must include:

(1) Funding source (Name of Agency/Organization, Address, Telephone, and Contact Person);

(2) Program Information (Type of Program, Grant/Contract/Agreement Number, Principle Activities, Period of Performance and Funding Amount);

(3) Customers (Number of participants served, percent of MSFW participant, percent of MSFW youth (age 14–21) served);

(4) Performance standards and outcomes achieved; and

(5) Outcomes achieved specifically for farmworker youth (ages 14–21).

(D) Provide a description of the proposed implementation schedule, which clearly shows exactly when the proposed program will be fully operational.

Specific Rating Criteria for section 5 [10 points]—This factor rates the applicant's managerial experience and the potential for efficient and effective administration of the proposed program and budget.

Section 5—Applicant's Administrative and Management Capability:

(A) Provide a chart depicting the applicant's overall organization structure, including the organizational design of the proposed youth program. The chart must clearly show how the proposed program will be supported by the organizational structure. It must include both staffing patterns and office locations. In addition, the chart must show which parts of the proposed MSFW youth program structure are in place and which parts would be established if the proposal were funded.

(B) Describe the applicant's administrative and program management processes which include the fiscal management systems and the program management systems (including management information system). Program management must describe the applicant's systems for participant tracking, follow-up, program monitoring and oversight, and the provision of training and technical assistance for those individuals who work directly with participants.

(C) Provide a proposed budget and describe in narrative form how the proposed cost categories and amounts were determined. The description should explain and justify the costs budgeted for the first year only. Be sure to include in your description how you believe the budgeted cost supports the proposed program of activities and services and the staffing pattern.

Section 6—Attachments

All attachments referenced in the proposal are to be included under a section 6 heading of your proposal. The first page should itemize the attachments.

Part III—Review Process of Grant Application Panel Review

The Grant Officer will select potential grantees utilizing all information available to him/her. A review panel will rate each proposal using the specific criteria cited above. Panel results are advisory in nature and are not binding on the Grant Officer. The Grant Officer will give appropriate consideration to an entity in any service area for which the entity has been designated as a WIA section 167 MSFW program grantee (20 CFR 669.630). Further, the Grant Officer will make selections that promote a geographic distribution of funds where merited (20 CFR 669.650). The Grant Officer may, at his/her discretion, request an applicant to submit additional or clarifying information if deemed necessary to make a selection. However, selections may be made without further contact with the applicants.

Responsibility Review

Prior to awarding a grant to any applicant, the Department will conduct a responsibility review. The responsibility review is an analysis of available information and records to determine if an applicant has established a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the competitive process. Applicants failing to meet the requirements of this section may be disqualified for designation as a grantee without respect to their standing in the competitive process. An applicant that is not selected as a result of the Grant Officer's responsibility review will be advised of its appeal rights. The responsibility tests that will be considered are required by the WIA regulations at 20 CFR 667.170.

Notification of Non Selection

Any applicant that is not selected as a potential grantee, or that has its grant application denied in whole or in part by the Department for receipt of funds, will be notified in writing by the Grant Officer and will be advised of all appeal rights.

Notification of Selection

Applicants that are selected will be notified in writing by the Grant Officer. Formal designation as a grantee will be contingent on the successful negotiation of a grant agreement for the first year of operation.

Signed at Washington, DC, this 3rd day of January 2002.

Lorraine H. Saunders,

Grant Officer, Office of Grants and Contract, Management, Division of Federal Assistance.

Attachments

1. Appendix A—''Application for Federal Assistance'' (Standard Form 424)
2. Appendix B—Budget Information Form

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):
_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits****: Indicate the rate and amount of fringe benefits.*

3. ***Travel****: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment****: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies****: Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual****: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other****: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs****: Add lines 1 through 7.*

9. ***Indirect Costs****: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested****: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 02–494 Filed 1–8–02; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10762, et al.]

Prohibited Transaction Exemption 2002–01; Grant of Individual Exemptions; Key Trust Company of Ohio, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition, the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Key Trust Company of Ohio (Key Trust), Located in Cleveland, OH

[Prohibited Transaction Exemption 2002–01; Exemption Application No. D–10762]

Exemption

I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply to the making of interest-free loans to a defined contribution plan (the Plan) by its respective sponsor (the Plan Sponsor) pursuant to the terms of a credit facility arrangement (the Credit Facility Arrangement), established by Key Trust and its affiliates (collectively, KeyBank), which enables daily transactions, such as participant investment transfers, distributions or participant loans, in connection with the Plan's unitized employer stock fund (the Unitized Employer Stock Fund or Fund) within KeyBank; and (2) the repayment, by the Plan to the Plan Sponsor, of any interest-free loan within 90 days with cash proceeds received from the sale of employer stock (Employer Stock) held in the Unitized Employer Stock Fund.

II. General Conditions

(a) Each loan made under the Credit Facility Arrangement provides short-term funds to the Plan for a period of no longer than 90 days for the purpose of facilitating Plan participant transfers, distributions, loans and other participant transactions involving the Plan's Unitized Employer Stock Fund.

(b) The maximum amount of short-term funds available to a Plan under the Credit Facility Arrangement, in the aggregate, does not exceed 25 percent of the fair market value of the Plan's Unitized Employer Stock Fund.

(c) Each loan made under the Credit Facility Arrangement is repaid with proceeds from the sale of Employer Stock held in the Unitized Employer Stock Fund.

(d) For purposes of repaying a loan under the Credit Facility Arrangement, the sales price for the Employer Stock is based upon its fair market value as determined on the New York Stock Exchange (the NYSE) or other applicable securities exchange where such Employer Stock is primarily traded on the date of the transaction, as calculated by an independent pricing service.

(e) Each loan made under the Credit Facility Arrangement is unsecured and no commitment fees, interest or commissions are paid by the Plan.

(f) In the event of a loan default or delinquency, the Plan Sponsor has no recourse against the Plan.

(g) Each loan is initiated, accounted for and administered by KeyBank, the independent fiduciary, which will monitor the terms and conditions of the exemption on behalf of the Plan, at all times.

(h) KeyBank maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (i) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of KeyBank, such records are lost or destroyed prior to the end of such six year period; and

(2) No party in interest, other than KeyBank, shall be subject to the civil penalty that may be assessed under section 502(i), or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (h).

(i)(1) Except as provided in paragraph (h)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (h) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of a Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraph (i)(1)(B) or (C) shall be authorized to examine the trade secrets of KeyBank or commercial or financial information which is privileged or confidential.

[1] Unless otherwise noted, references to specific sections of the act refer also to the corresponding provisions of the Code.

III. Definitions

For purposes of this exemption,

(a) The term ''KeyBank'' refers to Key Trust Company of Ohio and its affiliates.

(b) An ''affiliate'' of KeyBank includes—

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with KeyBank;

(2) Any officer, director, employee, relative or partner in KeyBank; and

(3) Any corporation or partnership of which KeyBank is an officer, director, partner or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''closing price'' means the final price at which Employer Stock has traded on the NYSE (or such other exchange on which Employer Stock is primarily traded) on the date of the transaction as may be reported to KeyBank using an independent pricing service for the reporting of final prices.

(e) The term ''Employer Stock'' refers to common stock issued by a Plan Sponsor, an affiliate of the Plan Sponsor, a former Plan Sponsor, or an affiliate of the former Plan Sponsor.[2]

(f) The term ''Plan Sponsor'' refers to an employer (or an affiliate of the employer) sponsoring a defined contribution plan which has entered into a Unitized Employer Stock Fund Investment Policy Agreement with KeyBank in order to structure the investment by the Plan's Unitized Employer Stock Fund in Employer Stock.

(g) The term ''Unitized Employer Stock Fund'' refers to an investment fund established by KeyBank whose assets will consist primarily of shares of Employer Stock.

(h) The ''trading day'' refers to any day on which KeyBank and the NYSE are open for business and are able to transact trades involving Employer Stock as a Plan investment. The close of trading day will be the time of the close on the NYSE. In the event that either KeyBank or the NYSE (or any other exchange on which the Employer Stock is primarily traded) is incapable of processing trades involving Employer Stock, or in the event trading in Employer Stock is suspended, the close of the trading day will be the last time by which transactions involving Employer Stock are processed on any such day.

(i) The term ''drift allowance'' refers to the range of percentages, comprised of a maximum and minimum percentage, which is determined and established by the Plan Sponsor as being the proper percentages within which the liquidity component of the Unitized Employer Stock Fund should represent of the entire market value of such Fund on any given day.

(j) The term ''liquidity component'' means the short-term investment vehicle which is selected by the Plan Sponsor and used to invest any uninvested cash in the Plan's Unitized Employer Stock Fund.

(k) The term ''target percentage'' means the number, expressed as a percentage, which is determined and established by the Plan Sponsor, as being the proper percentage that the liquidity component of the Unitized Employer Stock Fund will represent of the entire market value of such Fund (including the liquidity component and the Employer Stock). The target percentage will take into consideration factors such as the daily market volume for trading in the Employer Stock and the average daily trading activity of such stock in the Unitized Employer Stock Fund.

(l) The term ''transaction valuation date'' refers to any day on which KeyBank and the NYSE (or any other national securities exchange on which Employer Stock is primarily traded) are open for business and are able to transact trades.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 7, 2001 at 66 FR 46830.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

[2] The Department notes that the term ''Employer Stock,'' as defined in this final exemption, may not satisfy the definition of ''employer security'' contained in section 407(d)(1) of the Act.

The Golden Retirement Savings Program (the Savings Program); and The Golden Comprehensive Security Program (the Security Program), (collectively, the Plans) Located in New York, New York

[Prohibited Transaction Exemption No. 2002–02; Exemption Application Nos. D–10913; D–10914]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 27, 2000, to the past acquisition and holding by the Savings Program of 1,896.294 publicly traded warrants and by the Security Program of 2,073.554 publicly traded warrants (the Warrants) of Golden Books Family Entertainment, Inc. (the Employer), a party in interest with respect to the Plans, provided that the following conditions were or will be met:

(a) The acquisition and holding of the Warrants by the Plans occurred in connection with the Employer's bankruptcy proceeding pursuant to which all holders of the old common stock of the Employer were treated in the same manner;

(b) The Plans had little, if any, ability to affect the negotiation of the Employer's plan of reorganization with respect to the bankruptcy proceeding;

(c) The Warrants were acquired automatically and without any action on the part of the Plans; and

(d) The Plans did not pay any fees or commissions in connection with the receipt of the Warrants, nor did the Plans pay any fees or commissions in connection with the holding of the Warrants.

EFFECTIVE DATE: This exemption is effective as of January 27, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption (the Notice) published on September 7, 2001 at 66 FR 46839.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Metropolitan Life Insurance Company (MetLife Insurance Company) and Its Affiliates (collectively, MetLife) Located in New York, NY

[Prohibited Transaction Exemption 2002–03; Exemption Application No. D–10954]

Exemption

Section I. Retroactive Exemption for the Acquisition, Holding and Disposition of Metlife, Inc. Common Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code,[3] shall not apply, as of December 7, 2000 until (insert the date the final exemption is published in the **Federal Register**), to

[3] For purposes of this exemption, references to provisions of the Act refer also to corresponding provisions of the Code.

the acquisition, holding and disposition of the common stock of MetLife, Inc. (the MetLife, Inc. Stock), by Index and Model-Driven Funds (collectively, the Funds) that are managed by MetLife, in which client plans of MetLife invest, provided that the following conditions and the General Conditions of Section III are met:

(a) The acquisition or disposition of MetLife, Inc. Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring MetLife, Inc. Stock which is intended to benefit MetLife or any party in which MetLife may have an interest.

(b) All aggregate daily purchases of MetLife, Inc. Stock by the Funds do not exceed on any particular day the greater of—

(1) 15 percent of the average daily trading volume for the MetLife, Inc. Stock, occurring on the applicable exchange and automated trading system (as described in Section I(c) below) for the previous 5 business days, or

(2) 15 percent of the trading volume for MetLife, Inc. Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date.

(c) All purchases and sales of MetLife, Inc. Stock occur (i) either on a recognized U.S. securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis; (ii) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is registered under the Securities Exchange Act of 1934 (the 1934 Act) and thereby subject to regulation by the Securities and Exchange Commission (SEC), or an automated trading system operated by a recognized U.S. securities exchange, which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arm's length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC.

(d) No transactions by a Fund involve purchases from, or sales to, MetLife (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(e) No more than 5 percent of the total amount of MetLife, Inc. Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by MetLife.

(f) MetLife, Inc. Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(g) A fiduciary of a plan, which is independent of MetLife, authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife, Inc. Stock, pursuant to the procedures described herein.

(h) A fiduciary independent of the MetLife directs the voting of MetLife, Inc. Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife, Inc. Stock are required or permitted to vote.

Section II. Prospective Exemption for the Acquisition, Holding and Disposition of Metlife, Inc. Stock and/or the Common Stock of a Metlife Affiliate

The restrictions of sections 406(a)(1)(D), 406(b)(1) and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of MetLife, Inc. Stock and/or common stock issued by a MetLife affiliate (together, the MetLife Stock), by Index and Model-Driven Funds that are managed by MetLife, in which client plans of MetLife invest, provided that the following conditions and the General Conditions of Section III are met:

(a) The acquisition or disposition of MetLife Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring MetLife Stock which is intended to benefit MetLife or any party in which MetLife may have an interest.

(b) Whenever MetLife Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of MetLife Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of MetLife Stock occur either (i) on a recognized U.S. securities exchange (as defined in Section IV(j) below), (ii) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is registered under the 1934 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(i) below) that is operated by a recognized U.S. securities exchange (as defined in Section IV(j) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of MetLife Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require MetLife Stock, MetLife appoints a fiduciary which is independent of MetLife to design acquisition procedures and monitor compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of MetLife Stock to its specified weighting in the index or model pursuant to the restrictions described in Section II(b) above, all aggregate daily purchases of MetLife Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for MetLife Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous 5 business days, or

(2) 15 percent of the trading volume for MetLife Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in MetLife Stock not otherwise described above in Section II(b) are either—(i) entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section IV(j) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, MetLife (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than 5 percent of the total amount of MetLife Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by MetLife.

(g) MetLife Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A fiduciary of a plan which is independent of MetLife authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife Stock, pursuant to the procedures described herein.

(i) A fiduciary independent of the MetLife directs the voting of MetLife Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife Stock are required or permitted to vote.

Section III. General Conditions

(a) MetLife maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MetLife, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than MetLife shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) of this Section III and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section III are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the SEC,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this Section III(b)(1) shall be authorized to examine trade secrets of MetLife or commercial or financial information which is considered confidential.

Section IV. Definitions

(a) The term ''Index Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by MetLife, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which MetLife does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit MetLife or any party in which MetLife may have an interest.

(b) The term ''Model-Driven Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by MetLife, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of MetLife, to transform an independently maintained Index, as described in Section IV(c) below;

(2) Which contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit MetLife or any party in which MetLife may have an interest.

(c) The term ''Index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information,

evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of MetLife; and,

(3) The index is a generally-accepted standardized index of securities which is not specifically tailored for the use of MetLife.

(d) The term ''opening date'' means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term ''Buy-up'' means an acquisition of MetLife Stock by an Index or Model-Driven Fund in connection with the initial addition of such stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such stock.

(f) The term ''MetLife'' refers to Metropolitan Life Insurance Company, its parent, MetLife, Inc. and their current or future affiliates, as defined below in paragraph (g).

(g) An ''affiliate'' of MetLife includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(h) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(i) The term ''automated trading system'' means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS [17 CFR Part 242.300], as such definition may be amended from time to time, or an ''automated quotation system'' as described in Section 3(a)(51)(A)(ii) of the 1934 Act [15 U.S.C. 8c(a)(51)(A) (ii)].

(j) The term ''recognized U.S. securities exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under Section 6 of the 1934 Act (15 U.S.C. 78f), as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (*e.g.,* 17 CFR part 240.3b–16).

EFFECTIVE DATE: This exemption is effective from December 7, 2000 until *(insert the date the final exemption is published in the* **Federal Register**) with respect to the transactions described in Section I above, and is effective as of *(insert the date the final exemption is published in the* **Federal Register**) for the transactions described in Section II above.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 27, 2001 at 66 FR 49400.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Kimball International, Inc. Retirement Plan (the Plan), Located in Jasper, Indiana

[Prohibited Transaction Exemption No. 2002–04; Exemption Application No. D–10949]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of stock (the Shares) of SVB&T Corporation (Springs Valley) to Springs Valley, the Trustee of the Plan and a party in interest with respect to the Plan, provided that the following conditions are met:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) The fair market value of the Shares is determined by a qualified, independent appraiser;

(d) The Plan does not pay any commissions, costs or other expenses in connection with the Sale; and

(e) The Plan receives as consideration an amount that is no less than the greater of: (1) the fair market value of the Shares as of the date of the Sale or (2) $40 per Share.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on October 23, 2001 at 66 FR 53635.

Written Comments

One written comment was received by the Department, which was submitted by the applicant, Kimball. The comment requested a change to the Notice as described below.

On page 53635 of the Notice, with respect to the operative language describing the transaction, the reference to Springs Valley Bank & Trust should be deleted and, in lieu thereof, SVB&T Corporation (Springs Valley) should be inserted.

The Department concurs in this change submitted by the applicant. Accordingly, after giving full consideration to the entire record, including the comments by the applicant, the Department has determined to grant the exemption as modified. In this regard, the comment submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue. NW, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Alaska United Food and Commercial Workers Health and Security Trust Fund (the Plan) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 2002–05; Exemption Application No. L–10896]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the purchase by Plan participants and beneficiaries of prescription drugs from Safeway, Inc. (Safeway), a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of Safeway and its wholly owned subsidiary, SMCrx; (c) at least 50% of the preferred providers participating in the Preferred Provider Network (PPN) involving Safeway are unrelated to Safeway or any other party

in interest with respect to the Plan; (d) Safeway will be treated no differently than any other pharmacy participating in the PPN; and (e) the transaction is not part of an agreement, arrangement or understanding designed to benefit Safeway or any other party in interest with respect to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 23, 2001 at 66 FR 53637.

EFFECTIVE DATE: This exemption is effective as of August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 3rd day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–549 Filed 1–8–02; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Solicitation for Expressions of Interest in Participation in Design of a State Justice Community Evaluation Instrument

AGENCY: Legal Services Corporation.

ACTION: Solicitation of expressions of interest in participation in design of a State Justice Community Evaluation Instrument

DATE: Submit expressions of interest must be received by January 15, 2002.

SUMMARY: LSC is establishing a Design Team to advise its consultant group on the development and testing of a tool that will effectively evaluate state justice community efforts and outcomes. LSC hereby solicits expressions of interest in appointment to the Design Team from individuals with experience in the provision of civil legal services to low income people and in outcome evaluation protocols.

FOR FURTHER INFORMATION CONTACT: Patricia M. Hanrahan, Special Assistant to the Vice President for Programs, Legal Services Corporation, 750 First St., NE., Tenth Floor, Washington, DC 20002–4250; (202) 336–8848; *phanrahan@lsc.gov.*

SUPPLEMENTARY INFORMATION: LSC has retained Greacen Associates to develop a state justice community evaluation instrument that allows LSC to make reasonable and comparative judgments about the effectiveness, efficiency and adequacy of state justice communities established through state planning. To assist with this process and ensure the effectiveness of the product, LSC is establishing a Design Team composed of twelve members; up to six will be solicited through the LSC Web site and **Federal Register**. LSC is seeking external members representing national legal services advocacy organizations; individual recipients (preferable reflecting large/small and/or urban/rural diversity); clients; national and local organized bar associations; and other interested stakeholders. While there are no specific ''criteria'' for membership, it is expected that applicants will have the support of their organizations in participating in the effort and be knowledgeable about the issues. Interested parties should have experience in evaluating outcomes, particularly in civil legal services organizations. Understanding the goals and purposes of state planning and related issues is also critical.

There will be three meetings: March 13 to 15, 2002 in Washington, DC; April 16 and 17 in Cleveland; May 16 and 17, 2002. Participation in conference calls and other communications such as e-mail is also expected. The project will take nine months.

LSC hereby solicits expressions of interest in appointment to the Design Team from the civil legal services community, clients, advocates, the organized bar and other interested parties. Expressions of interest must be submitted no later than 15 days from the date of publication of this notice. Expressions of interest must be submitted in writing (by regular mail, fax or e-mail) to LSC's Patricia M. Hanrahan at the addresses listed in this notice.

Once LSC has received expressions of interest, the President working in consultation with the Vice President for Programs, will make appointments of individuals and organizations to the Design Team. Groups or organizations asked to participate in the Design Team will be responsible for selecting and designating their own representatives.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 02–520 Filed 1–8–02; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681–MLA–11; ASLBP No. 02–795–02–MLA]

International Uranium (USA) Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding:

International Uranium (USA) Corporation
White Mesa Uranium Mill

(Source Material License Amendment)

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a December 15, 2001 hearing request submitted by William E. Love. The request was filed in response to an NRC staff proposal, following a staff environmental assessment and finding of no significant impact, to authorize an amendment to the International Uranium (USA) Corporation (IUSA) source material license for its Blanding, Utah White Mesa Uranium Mill that would permit IUSA to receive and process alternate feed materials from the Molycorp site located in Mountain Pass, California. The notice of final finding of no significant impact and opportunity for a hearing was published in the **Federal Register** on December 11, 2001 (66 FR 64,064).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Rosenthal and Cole in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Alan S. Rosenthal, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 3rd day of January 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–496 Filed 1–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Portland General Electric Company; Trojan Independent Spent Fuel Storage Installation Notice of Docketing of Materials License SNM–2509 Amendment Application

By letter dated October 26, 2001, Portland General Electric Company (PGE) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR part 72, requesting the amendment of the Trojan independent spent fuel storage installation (ISFSI) license (SNM–2509) and the technical specifications for the ISFSI located in Columbia County, Oregon. PGE is seeking Commission approval to amend the materials license and the ISFSI technical specifications to reflect a change in supplier to Holtec International for portions of the Trojan ISFSI.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–17 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of December, 2001.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–497 Filed 1–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–338]

Virginia Electric and Power Company; North Anna Power Station, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License (FOL) No. NPF–4, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Unit 1, located in Louisa County, Virginia. As required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the FOL and Technical Specifications (TS) to remove expired license conditions, make editorial changes, relocate license conditions, remove redundant license conditions that are covered elsewhere in the license, and remove license conditions and TS associated with completed modifications.

The proposed action is in accordance with the licensee's application dated January 9, 2001.

The Need for the Proposed Action

The proposed action is needed because some requirements in the North Anna, Unit 1, FOL have become obsolete. In addition, the need for editorial changes has been identified.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed license amendment and associated changes to the TS are administrative in nature and have no effect on plant equipment or plant operation.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no

significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the North Anna Power Station, Unit 1, dated April 1973.

Agencies and Persons Consulted

On December 20, 2001, the staff consulted with the Virginia State official, Mr. Les Foldesi of the Virginia Department of Health, Bureau of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 9, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 3rd day of January, 2002.

For the Nuclear Regulatory Commission.

Stephen R. Monarque,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–498 Filed 1–8–02; 8:45 am]

BILLING CODE 7590–01–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: U.S. Commission on Ocean Policy.

ACTION: Notice; change of meeting time.

SUMMARY: The U.S. Commission on Ocean Policy will hold its first regional meeting, the Commission's third public meeting, to hear and discuss issues of concern to the Southeastern Region of the United States, covering the coastal area from Delaware to Georgia. Notice of this meeting was originally published on December 20, 2001. The purpose of this second notice is to provide new meeting times.

DATES: Meetings will now be held Tuesday, January 15, 2002 from 8:30 a.m. to 6:20 p.m. and Wednesday, January 16, 2002 from 8:45 a.m. to 5:00 p.m.

ADDRESSES: The meeting location is the Physicians Memorial Auditorium, College of Charleston, 66 George Street, Charleston, SC, 29424.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW, Washington, DC 20036, 202–418–3442, *tschaff@nsf.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Public Law 106–256, Section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by January 10, 2002 to the meeting Point of Contact. Additional meeting information, including a draft agenda, will be posted as available on the Commission's web site at *http://www.oceancommission.gov.*

Dated: January 3, 2002.

Admiral James D. Watkins,

USN (ret.), Chairman, U.S. Commission on Ocean Policy.

[FR Doc. 02–484 Filed 1–8–02; 8:45 am]

BILLING CODE 6820–WM–P

SECURITIES AND EXCHANGE COMMISSION

Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extensions:

Rule 701—OMB Control No. 3235–0522, SEC File No. 270–306

Regulations 14D and 14E—OMB Control No. 3235–0102, SEC File No. 270–114

Schedule 14D–9

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Securities Act rule 701 requires when offerings in excess of $5 million are made under the employee benefit plan exemptive rule, the issuers must provide the employees with risk and financial statement disclosures among other things. The purpose of rule 701 is to ensure that the basic level of information is available to employees and others when substantial amounts of securities are issued in compensatory arrangements. Approximately 300 companies annually rely on rule 701 exemption and it takes an estimated .5 hours to prepare and review. It is estimated that 25% of the 600 total annual burden hours (150 hours) is prepared by the company.

Regulations 14D and 14E and Schedule 14D–9 require information important to security holders in deciding how to respond to tender offers. Approximately 310 companies annually file Schedule 14D–9 and it takes 64.43 hours to prepare and review. It is estimated that 25% of the 79,803 total burden hours (19,973 burden hours) is prepared by the company.

Written comments are invited on: (a) Whether these collections of information are 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 of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: December 28, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–527 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extensions:

Rule 425—OMB Control No. 3235–0521, SEC File No. 270–462

Schedule TO—OMB Control No. 3235–0515, SEC File No. 270–456

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 425 requires the filing of certain prospectuses and communications under rule 135 in connection with business combinations. The purpose of the rule was to relax existing restrictions on oral and written communications with shareholders about tender offers, mergers and other business combination transactions by permitting the dissemination of more information on a timely basis as long as the written communications are filed on the date of first use. Approximately 5,739 issuers file communications under rule 425 for a total of 1,435 annual burden hours.

Schedule TO must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under section 12 of the Exchange Act (which offer, if consummated, would cause that person to own over 5 percent of that class of the securities) must file Schedule TO. The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. Approximately 3,038 issuers annually file Schedule TO and it takes 43.5 hours to prepare for a total of 132,153 annual burden hours. It is estimated that 50% of the 132,153 total burden hours (66,077 burden hours) is prepared by the company.

An agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 2, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–526 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549

Extension:

Form S–6—OMB Control No. 3235–0184, SEC File No. 270–181

Form N–8F—OMB Control No. 3235–0157, SEC File No. 270–136

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget (OMB) a request for extension of the previously approved collections of information discussed below.

Form N–8F is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that the registration of that investment company cease to be in effect. The form requests, from investment companies seeking a deregistration order, information about (i) the investment company's identity, (ii) the investment company's distributions, (iii) the investment company's assets and liabilities, (iv) the events leading to the request to deregister, and (v) the conclusion of business. The information is needed by the Commission to determine whether an order of deregistration is appropriate.

Form N–8F takes approximately 3 hours on average to complete. It is estimated that approximately 200 investment companies file Form N–8F annually, so that the total annual burden for the form is estimated to be 600 hours. The collection of information on Form N–8F is not mandatory. The information provided on N–8F is not kept confidential.

Form S–6 is used for registration, under the Securities Act of 1933 (1933 Act), the securities of any unit investment trust registered under the Investment Company Act of 1940 (1940 Act) on Form N–8B–2.[1] A separate registration statement under the 1933 Act must be filed for each series of units issued by the trust. Form S–6 consists of two parts. Part I contains the prospectus, and Part II consists of a list of exhibits and financial information and contains other information required in the registration statement but not required to appear in the prospectus.

Section 10(a)(3) of the 1933 Act (15 U.S.C. 77j(a)(3)) provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use. Unit investment trusts file post-effective amendments to their registration statements on Form S–6 in order to update their prospectuses. As a result, most unit investment trusts update their registration statements on Form S–6 on

[1] Form N–8B–2 is the form used for registration statements filed by unit investment trusts under the 1940 Act. The form requires that certain material information about the trust, its sponsor, its trustees, and its operation be disclosed. The registration on Form N–8B–2 is a one-time filing that applies to the first series of the unit investment trust as well as any subsequent series that is issued by the sponsor.

an annual basis in order that their sponsors may continue to maintain a secondary market in the units.

The purpose of the registration statement on Form S–6 is to provide disclosure of financial and other information that investors may use to make informed decisions regarding the merits of the securities offered for sale. To that end, unit investment trusts must furnish to investors a prospectus containing pertinent information set forth in the registration statement. Without the registration requirement, this material information would not necessarily be available to investors. The Commission reviews registration statements filed on Form S–6 to ensure adequate disclosure is made to investors.

Each year investment companies file approximately 3,639 Forms S–6. It is estimated that preparing Form S–6 requires a unit investment trust to spend approximately 35 hours so that the total burden of preparing Form S–6 for all affected investment companies is 127,365 hours. The collection of information on Form S–6 is mandatory. The information provided on Form S–6 is not kept confidential.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The Commission 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.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 3, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–528 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2008; 803–142]

Longview Management Group LLC; Notice of Application

January 3, 2002.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

Applicant: Longview Management Group LLC (''Longview'').

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(F) from section 202(a)(11) of the Advisers Act.

SUMMARY OF APPLICATION: Applicant requests an order declaring it to be a person not within the intent of section 202(a)(11), which defines the term ''investment adviser.''

FILING DATES: The application was filed on August 6, 1999 and amended on November 5, 2001 and December 19, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 30, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicant, Longview Management Group LLC, 222 North LaSalle Street, Suite 2000, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Don L. Evans, Staff Attorney, at (202) 942–0529 or Jennifer L. Sawin, Assistant Director, at (202) 942–0719 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102, (202) 942–8090.

Applicant's Representations

1. Applicant was organized in 1998 and is an investment adviser registered under the Advisers Act. Applicant is a ''family office'' for the members of the extended Crown family and was created to conduct the investment affairs and manage the assets of the Crown family. Applicant's sole equity holder is the Edward Memorial Trust, the ultimate beneficiaries of which solely are members of the Crown family.

2. Applicant represents that, although it employs a small number of non-Crown family members to assist in its day-to-day operations, most of its officers, employees and portfolio managers are Crown family members. Crown family members are solely responsible for key decisions, such as asset allocation and security selection, over Longview accounts.

3. Applicant performs advisory and portfolio management services for Crown family members and for individual accounts, trusts, corporations, partnerships and other entities that are beneficially owned by or for the benefit of the various members of the Crown Family and which are operated by members of the family (''Crown Family Investment Entities'').

4. Applicant also provides portfolio management services to three types of charitable entities: (1) charitable entities created solely by the Crown family and administered under the sole discretion of the Crown family, (2) a charitable entity created by the Crown family but under the control of an independent board of directors, which includes members of the Crown family, and (3) a charitable entity which was formed and funded by friends of Henry Crown after his death and which is managed by Applicant.

5. Applicant also provides advisory and portfolio management services for the assets of a small number of individuals who are not members of the Crown family. Applicant provides advisory and portfolio management services to the families of two longtime Crown family employees. The two employees are now deceased and the assets were placed under Longview's management prior to their deaths. Applicant also manages the assets of two individuals that the Crown family has allowed to invest, along with family members, in a Crown Family Investment Entity that holds a diversified basket of marketable securities. These two individuals are a long-time former employee of Henry Crown & Company with over 40 years of service to the Crown family, and a long-time Crown family attorney with over 50 years of

service to the family. Applicant states that the number of investments by these individuals has declined over time and is no longer permitted. In addition, Applicant manages certain investment vehicles (e.g., limited liability companies or limited partnerships) (each such entity an ''Investment Vehicle'') that the Crown family uses to purchase an asset such as an operating entity. On occasion, the Crown family has permitted a non-Crown family member to participate in the Investment Vehicle. The total amount of non-Crown family member assets to which Applicant provides services is less than 1.34% of the total assets managed by Applicant.

6. Applicant does not hold itself out to the public as an investment adviser and states that it is not listed in the phone book or any other directory as an investment adviser. Applicant does not engage in any advertising, attend investment management-related conferences as a vendor, or conduct any marketing activities.

7. Applicant states that it does provide, as a part of the comprehensive services it provides to Crown family members, a limited amount of certain administrative services to its clients, through a contract with Henry Crown & Company LLC (''HC&Co.'').

8. Applicant represents that the fees charged for its investment advisory services are far below market prices for such services because they are intended to cover Applicant's costs for providing such services and not to serve as a profit center for the Crown family. Applicant states that it uses the fees it receives to pay for the administrative services HC&Co. provides through its contract with Applicant.

9. Applicant has no public clients in the sense of retail or institutional investors and has no plans, now or in the future, to solicit or accept clients from the retail public.

Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines ''investment adviser'' to mean ''any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. . . .''

2. Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of ''investment adviser'' persons that are not within the intent of section 202(a)(11).

3. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement. Applicant asserts that it has determined it does not qualify for any of the exemptions provided by section 203(b). Applicant states that it is not prohibited from registering with the SEC under section 203A(a) of the Advisers Act.

4. Applicant asserts that there is no public interest in requiring it to be registered under the Advisers Act. Applicant states that it is a private organization that was formed to be the ''family office'' for the Crown family. Applicant represents that all of its clients have a close relationship with the Crown family in that they are all either immediate members of the Crown family, a Crown Family Investment Entity or a limited number of close, long-time family associates and their descendants, as well as the senior executives of Longview and certain operating companies. Applicant states that it was organized to provide a ''family office'' for the Crown family, and that is, and will be, the sole purpose for its existence.

5. Applicant requests exemptive relief from section 203(a) of the Advisers Act and requests that the SEC issue an order under section 202(a)(11)(F) declaring it to be a person not within the intent of section 202(a)(11).

Applicant's Conditions

1. Non-Crown family members to whom Longview provides investment advice, including through investments in Crown Family Investment Entities, are limited to their current investments.

2. No new non-Crown family member may make an investment in a Crown Family Investment Entity or in an Investment Vehicle to which Longview provides investment advice.

3. Longview will not enter into any new advisory relationships with a non-Crown family member.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–525 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25354; 812–12728]

American Balanced Fund, Inc., *et al.*

January 3, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for relief from section 2(a)(19) of the Act.

SUMMARY OF APPLICATION: Applicants request an order under section 6(c) of the Act declaring that a director on the boards of certain registered investment companies, who also is an outside director for the parent company of a registered broker-dealer, will not be deemed an ''interested person'' of the registered investment companies.

Applicants: American Balanced Fund, Inc. (''AMBAL''), Fundamental Investors, Inc. (''FI''), The New Economy Fund (''NEF''), SMALLCAP World Fund, Inc. (''SCWF''), The Growth Fund of America, Inc. (''GFA''), and The Income Fund of America, Inc. (''IFA'') (collectively, the ''Funds''); Capital Research and Management Company (''Capital Research''); and American Funds Distributors, Inc. (''AFD'').

FILING DATES: The application was filed on December 20, 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 28, 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 5th Street, NW., Washington, DC 20549–0609. Applicants: 333 South Hope Street, Los Angeles, CA 90071–1447.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. NEF is a Massachusetts business trust. AMBAL, FI, GFA, SCWF and IFA are Maryland corporations.

2. Capital Research, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser to the Funds and certain other registered investment companies. The Funds and these investment companies, together with any future registered investment company advised by Capital Research, are referred to as the ''American Funds.'' AFD, a wholly-owned subsidiary of Capital Research, is the principal underwriter of the Funds.

3. Each Fund has a board of directors (''Board''), a majority of whom are not ''interested persons'' within the meaning of section 2(a)(19) of the Act. ICA and NPF also have advisory boards, as defined in section 2(a)(1) of the Act, whose members consult with Capital Research and the Funds' Boards.

4. Patricia K. Woolf serves as a director of the Funds. The Funds, together with such other American Funds that in the future elect Ms. Woolf as a director or advisory board member who is not an ''interested person'' of the American Fund within the meaning of section 2(a)(19) of the Act, are referred to as the ''Applicant Funds.'' Ms. Woolf's principal occupation is as a lecturer at Princeton University. Ms. Woolf also is a non-employee director of National Life Holding Company (''NLHC'').[1] NLHC is a mutual insurance holding company that is primarily engaged in the life insurance business. One of NLHC's indirect wholly-owned subsidiaries is Equity Services, Inc. (''ESI''), a broker-dealer registered under the Securities Exchange Act of 1934. Approximately 3.2% of NLHC's consolidated revenues comes from ESI.[2]

5. ESI is a relatively small retail-oriented firm. It does not execute any portfolio transactions for the American Funds. ESI provides *de minimis* distribution services to the American Funds. The gross sales by ESI of shares of the American Funds during the period January 1, 1998 through December 31, 2000 was approximately $61.83 million, or 0.05% of the total gross sales of American Funds shares by all broker-dealers for the same period. The fees received by ESI from the sale of shares of the American Funds during 2000 represented approximately 0.07% of NLHC's total consolidated revenues. The American Funds have adopted plans pursuant to rule 12b–1 under the Act and make payments to their distributors, including ESI, pursuant to those plans.

Applicants' Legal Analysis

1. Section 2(a)(19)(A)(v) of the Act defines an ''interested person'' of an investment company to include any person or any affiliated person of a person that, at any time during the last six months, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for (a) the investment company; (b) any other investment company having the same investment adviser or holding itself out to investors as a related company for purposes of investment or investor services; or (c) any account over which the investment company's investment adviser has brokerage placement discretion. Applicants state that Ms. Woolf may be deemed an affiliated person of ESI by virtue of her position as a director of NLHC, an entity that controls ESI within the meaning of section 2(a)(9) of the Act. Because Ms. Woolf may be deemed an affiliated person of ESI, Ms. Woolf currently is considered an interested person of the Funds.

2. Applicants believe that, because Ms. Woolf's affiliation with ESI is solely the result of her position as a non-employee director of NLHC, and because ESI provides only *de minimis* distribution services to the American Funds, it would be more appropriate to treat Ms. Woolf as an independent director. Applicants thus request an order under section 6(c) of the Act declaring that Ms. Woolf will not be deemed an interested person under section 2(a)(19) of the Act.[3]

4. Section 6(c) of the Act provides, in part, that the Commission may exempt any person from any provision of the Act or any rule under the Act if and to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants contend that their request for relief from interested person status for Ms. Woolf meets this standard because Ms. Woolf's relationship with ESI is attenuated and poses no real or potential conflict of interest and because ESI's only business relationship with the Funds involves a *de minimis* amount of distribution services for the Funds.

5. Applicants state that, in her position as a non-employee director of NLHC, Ms. Woolf has no authority or responsibility for the operations of ESI and does not control or influence the day-to-day management of ESI. Applicants also represent that Ms. Woolf has no material business or professional relationship with NLHC, ESI, the American Funds, Capital Research, AFD or any affiliated person of these entities.

6. Applicants state that, as one of the conditions to the proposed relief, certain requirements will apply if the Commission has declared by order (''Status Order'') the non-interested status of more than one director serving on the Board of a particular Applicant Fund, and the director is an affiliated person of, or an affiliated person of an affiliated person of, a broker or dealer doing a limited amount of business with one or more American Funds (a ''B–D Director'').[4] In such a case, the Applicant Fund would not rely on Status Orders relating to more than one B–D Director in complying with all applicable board composition requirements under the Act (including regulations under the Act) (''Board Composition Requirements''). In addition, for purposes of actions requiring the separate vote of a majority of the Applicant Fund's non-interested directors (''Special Voting Requirements''), only one of the B–D Directors would be counted as a non-interested director.

[1] In 2000, Ms. Woolf's aggregate compensation from NLHC (consisting of annual retainer and meeting fees, and term insurance) was $43,080. Ms. Woolf, as a policyowner of National Life Insurance Company, a subsidiary of NLHC, is entitled to one vote at meetings of the members of NLHC. During 2000 and 2001, Ms. Woolf received advice from an employee of ESI regarding certain estate planning issues. In addition, in the future Ms. Woolf may establish a brokerage or similar account with ESI (or an affiliate thereof). In each case, the transaction or relationship was, or would be, a routine, retail transaction or relationship under which Ms. Woolf was not, or will not be, accorded special treatment.

[2] This figure is based on NLHC's consolidated revenues in 2000.

[3] Applicants are not requesting relief from the provisions of rule 12b–1(b)(2) that require a rule 12b–1 plan to be approved by the directors of an investment company ''who * * * have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan.'' Applicants state that they intend to treat Ms. Woolf as a director who meets these requirements, based on Ms. Woolf's lack of a material business or professional relationship with NLHC or ESI. Applicants represent that, should Ms. Woolf develop a direct or indirect financial interest in the operation of the American Funds' rule 12b–1 plans, she will no longer be treated as meeting the above requirements of rule 12b–1.

[4] In 1998, the Commission granted an order to Capital Research, AFD, and certain American Funds, permitting the applicants to treat William H. Kling as a non-interested director. EuroPacific Growth Fund, Investment Company Act Release Nos. 23307 (July 9, 1998) (notice) and 23374 (Aug. 4, 1998) (order).

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The American Funds will comply with all of the requirements of section 2(a)(19) of the Act (and any rules thereunder) except for the clauses concerning the distribution of investment company shares in subparagraphs (A)(v) and (B)(v) of section 2(a)(19), as those clauses relate to distribution of shares of the American Funds by ESI.

2. The amount of distribution business engaged in by ESI on behalf of any one Applicant Fund (other than a money market fund) may not exceed five percent of gross share sales (prior to payment of dealer and underwriter commissions) for such Applicant Fund.

3. The amount of distribution business engaged in by ESI on behalf of all American Funds in the aggregate may not exceed five percent of gross share sales (prior to payment of dealer and underwriter commissions and exclusive of money market fund share sales) for American Funds in the aggregate.

4. No more than one percent of NLHC's consolidated gross revenues may come from sales by ESI of shares on behalf of any one Applicant Fund.

5. No more than five percent of NLHC's consolidated gross revenues may come from sales by ESI of shares on behalf of all American Funds in the aggregate.

6. ESI may not serve as a regular broker or dealer, as defined in rule 10b–1 under the Act, for any American Fund.

7. To the extent Board Composition Requirements or Special Voting Requirements are applicable, each Applicant Fund will comply with such requirements without taking into account more than one B–D Director subject to a Status Order. For all other purposes under the Act, each Applicant Fund may treat as ''non-interested'' all B–D Directors subject to one or more Status Orders.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–524 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45232; File No. SR–DTC–2001–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Deadline in Connection With the Direct Registration System Facility

January 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 3, 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In File No. SR–DTC–2001–07, DTC established a deadline of November 1, 2001, by which (i) All securities issues eligible for DTC's Direct Registration System (''DRS'') which do not participate in the Profile Modification System (''Profile''), which is part of DRS, were to move to Profile and (ii) a request by a broker for a withdrawal by transfer (W.T.) for a DRS-eligible security which W.T. does not specifically request a certificate was to automatically default to a DRS book-entry position (an ''S'' position) on the books of the issuer or its transfer agent.[2] The proposed rule change extends the November 1, 2001, deadline to December 14, 2001.

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 these statements.[3]

(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 allow issuers and their transfer agents adequate time to move all DRS-eligible securities issues to Profile.[4] Due to the events of September 11, 2001, and ensuing communications problems, some issuers and their transfer agents found it difficult to meet the November 1, 2001 deadline.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because it will encourage more issuers to allow their securities to be included in Profile which is an integral part of DRS. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the operation of DRS, as modified by the proposed rule change, will be similar to the current operation of DRS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse 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

Written comments from DTC Participants or others have not been solicited or received on the proposed rule change. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii)[5] of the Act and Rule 19b–4(f)(4)[6] promulgated thereunder because the proposal effects a change in an existing service of DTC that (A) does not adversely affect the safeguarding of securities or funds in the custody or

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44696 (August 14, 2001), 66 FR 43939.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] For previous orders relating to Profile, refer to Securities Exchange Act Release Nos. 41862 (September 10, 1999), 64 FR 51162; 42366 (January 28, 2000), 65 FR 5714; 42704 (April 19, 2000), 65 FR 24242; 43586 (November 17, 2000), 65 FR 70745; 44696 (August 14, 2001), 66 FR 43939.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

control of DTC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of DTC or persons using the service because the proposed rule change consists of an interpretation of a prior DTC filing on Form 19b–4. 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 chnage 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 section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2001–18 and should be submitted by January 30, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–522 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45229; File No. SR–NASD–2001–91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Establishing Effective Date of Rules Requiring Debt Securities Reporting and Dissemination (TRACE Rules)

January 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 13, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), 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 NASD Regulation. NASD Regulation has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act.[3] 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

NASD Regulation is filing a proposed rule change to establish July 1, 2002 as the effective date for the new Rule 6200 Series (''TRACE Rules''). The TRACE Rules, when effective, will require NASD members to report secondary market transactions in eligible debt securities to the NASD and will subject certain transaction information to dissemination. The NASD also is proposing to replace the term, ''Trade Reporting and Comparison Entry Service'' with ''Trade Reporting and Compliance Engine.'' This change preserves the ''TRACE'' acronym, by which the system is commonly known, while more accurately describing the functions of the TRACE system.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(1).

[4] The SEC approved the Rule 6200 Series on January 23, 2001. *See* Securities Exchange Act Release No. 43873 (January 23, 2001); 66 FR 8131 (January 29, 2001) (SR–NASD–99–65) (''TRACE Approval Order'').

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are [bracketed].

* * * * *

6200. *Trade Reporting and Compliance Engine (Trace)* [Trade Reporting and Comparison Entry Service (Trace)]

6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in the Association's By-Laws and Rules unless otherwise specified.

(a) No change.

(b) The term *''Trade Reporting and Compliance Engine''* [''Trade Reporting And Comparison Entry Service''] or ''TRACE'' shall mean the automated system owned and operated by the NASD that, among other things, accommodates reporting and dissemination of transaction reports where applicable in TRACE-eligible securities and which may submit ''locked-in'' trades to National Securities Clearing Corporation for clearance and settlement and provide participants with monitoring and risk management capabilities to facilitate a ''locked-in'' trading environment.

(c) through (i). No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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 NASD is filing the proposed rule change to establish July 1, 2002 as the effective date of the TRACE Rules and to substitute the term, ''Trade Reporting and Compliance Engine,'' within the rules for the term, ''Trade Reporting and Comparison Entry Service,'' as discussed in greater detail below.

a. *Effective Date.* The NASD is filing the proposed rule change to establish July 1, 2002 as the effective date of the

TRACE Rules. The TRACE Rules, when effective, will require NASD members to report secondary market transactions in eligible debt securities to the NASD and will subject certain transaction information to dissemination.

In the TRACE Approval Order, the Commission stated that the effective date of the TRACE Rules should be 180 days after the date that the NASD provided technical specifications concerning TRACE to members to allow members to make the system changes necessary to comply with TRACE.[5] On June 1, 2001, the NASD published technical specifications.[6] Subsequently, the NASD targeted the first day of reporting under the TRACE system as February 4, 2002,[7] which was the time the NASD estimated was needed to complete development of the system, provide members and vendors time to implement the specifications published on June 1, 2001, and avoid the implementation of an industry-wide regulatory program during a major holiday.

The NASD represents that, since the September 11, 2001 terrorist attacks, it has worked with its members to help the securities industry recover from the attacks. As part of this process, the NASD is delaying the TRACE implementation date to allow its members the time they need to re-establish, to the extent possible, normal business operations. The NASD determined that the original February 2002 implementation date would have been a hardship on the industry in its efforts to recover from September 11. Accordingly, the NASD is proposing to implement the TRACE system, including the TRACE Rules, on July 1, 2002.

b. *Renaming the Initiative.* At the same time, the NASD proposes to substitute a new term, ''Trade Reporting and Compliance Engine,'' for the term used for the TRACE system and related rules approved by the SEC on January 23, 2001. The current term, ''Trading Reporting and Comparison Entry Service,'' was developed when the NASD proposed to provide comparison services as part of the TRACE initiative. In the TRACE Approval Order, the Commission noted that the NASD intended to rename the system and the related rules.[8] By substituting the new term, ''Trade Reporting and Compliance Engine,'' the NASD is able to eliminate the reference to the comparison function, which will no longer be part of TRACE, while preserving the acronym, ''TRACE,'' which is currently in widespread use.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD's proposed rule change, if approved, will implement existing rules for the reporting and dissemination of information on eligible debt securities transactions. NASD believes that the proposed rule change will provide the NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with heightened capabilities to regulate the debt securities markets to prevent fraudulent and manipulative acts and practices; and that the proposed rule change, by requiring reporting and dissemination of such transaction information, will protect investors and the public interest by, among other things, increasing transparency in the debt securities markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Association as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under Rule 19b–4(f)(1) under the Act.[9] It has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 purpose 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. 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 NASD. All submissions should refer to File No. SR–NASD–2001–91 and should be submitted by January 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–523 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* Amendment No. 4 to SR–NASD–99–65, dated January 5, 2001, p. 4.

[6] *See* NASD Regulation web site at *http://www.nasdr.com/trace.htm.*

[7] The NASD clarified the timing of its targeting of the February 4, 2002 date in a telephone conversation between Sharon K. Zackula, Assistant General Counsel, NASD Regulation and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission (January 3, 2002).

[8] TRACE Approval Order, 66 FR 8131, 8132, n. 11.

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30-(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45225; File No. SR–NASD–2001–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Service of Process for Arbitration

January 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') 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 NASD Dispute Resolution. NASD Dispute Resolution submitted Amendment No. 1 to the proposed rule change on December 7, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to add a new rule to the NASD Code of Arbitration Procedure to give claimants who are represented by counsel the option of serving initial arbitration claims on respondents directly, rather than having NASD Dispute Resolution staff serve those respondents. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

103xx.[4] Optional Direct Service by Claimant

(a) General

A Claimant who is represented by counsel may serve a Respondent directly instead of initiating the Claim in the manner provided by Rule 10314(a). Claimant shall serve the following documents upon any Respondent that Claimant chooses to serve directly: a Statement of Claim specifying the relevant facts and the remedies sought, together with the documents in support of the Claim, the Uniform Submission Agreement, and a copy of NASD Form XYZ.[5]

(b) Manner of Service

Service may be made under this Rule in the manner provided for service of demands for arbitration under the law of the jurisdiction in which the Respondent is being served.

(c) Additional Mailing

(1) No later than one business day following service on the first Respondent to be served under this Rule, Claimant shall mail a copy of the Statement of Claim to all Respondents together with information stating which Respondents were served in accordance with this Rule.

(2) If any Respondent is a member, the mailing shall be addressed ''Attention Legal and Compliance Department'' and sent to the main office of the member. The outside of the envelope shall state: ''Important Legal Documents Enclosed.''

(d) Filing with the Association

Within twenty (20) days of service on the last Respondent whom Claimant serves under this Rule, Claimant must file with the Director of Arbitration;

(1) An affidavit of service on each Respondent served;

(2) The names of any additional Respondents whom Claimant wants the Association to serve;

(3) An affidavit of mailing in accordance with paragraph (c);

(4) An executed Submission Agreement;

(5) A Statement of Claim of the controversy in dispute, together with the documents in support of the Claim, in the form in which it was served on Respondent(s);

(6) The required deposit; and

(7) Sufficient additional copies of the Submission Agreement, the Statement of Claim and supporting documents for each party that has not been served directly and for each arbitrator.

(e) Time to Answer

When filing under paragraph (d) is complete and any deficiencies have been resolved, the Association shall acknowledge that fact in writing to all parties. All time periods that are measured from receipt of the Statement of Claim or service of a Claim under Rule 10314(b) shall commence upon receipt of such written notification from the Association.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution 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. NASD Dispute Resolution 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

NASD Dispute Resolution proposes an optional procedure to allow arbitration claimants who are represented by counsel the choice of serving respondents directly. The proposed rule could be used to serve some respondents and not other respondents in a given case, as claimant chooses. NASD Dispute Resolution staff would serve any remaining respondents as usual. The National Arbitration and Mediation Committee of NASD Dispute Resolution recommended adoption of the proposed rule in response to suggestions from some frequent users of the NASD Dispute Resolution arbitration forum who normally represent claimants and requested an optional direct service process.

As background, the current procedure is for all initial claims to be served by NASD Dispute Resolution.[6] After resolving any deficiencies, such as missing or unsigned documents or improper fees, NASD Dispute Resolution serves all respondents at the same time. Respondents then have 45 calendar days from receipt of the claim in which to answer.

NASD Dispute Resolution believes that the proposed rule contains several safeguards to ensure that the direct service option would result in proper service. For the protection of claimants whose awards might later be challenged because of improper service, use of the proposed rule is limited to parties that are represented by counsel, who would be familiar with applicable law concerning service of demands for arbitration. To avoid any detriment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Jean I. Feeney, Chief Counsel, NASD Dispute Resolution, to Florence Harmon, Assistant Director, Division of Market Regulation, Commission, dated December 7, 2001 (''Amendment No. 1''). Amendment No. 1 makes certain technical changes to the proposed rule language. Amendment No. 1 also clarifies that the phrase ''the law of the jurisdiction in which the Respondent is being served'' in paragraph (b) of the proposed Rule 103xx refers to state rather than federal law, and could encompass the laws of the District of Columbia. Finally, Amendment No. 1 states that NASD Dispute Resolution will provide NASD Form XYZ to the Commission prior to the Commission's approval of the proposed rule change.

[4] A rule number will be assigned prior to implementation of the proposed rule change.

[5] This form will explain the direct service process. It will be drafted and assigned an official number prior to implementation of the proposed rule change.

[6] NASD 10314(a) sets forth the process for initiating a proceeding. Under NASD Rules 10314(b) and (c), and 10328(a), the parties already serve directly any counterclaims, cross-claims, third-party claims, or amended pleadings.

where there is a delay in serving all respondents, the proposed rule requires a notice to all respondents immediately after the first respondent has been served directly. To forestall the possibility that a member firm may not be aware of service on a remote branch office, the proposed rule requires the claimant, no later than one business day following service on the first respondent to be served under the proposed rule, to provide all respondents with the Statement of Claim and information indicating which respondents were served in accordance with this rule. Such information is to be sent to the main office of a member firm, addressed to the Legal and Compliance Department, in an envelope marked on the outside to indicate its importance. Finally, to avoid having different or uncertain due dates for answers, the time to answer would not begin to run until NASD Dispute Resolution notified all parties of the due date, as described below.

Following direct service on all respondents to be served directly, claimants must file the claim and submission agreement, affidavits of service and mailing, other related documents, and the proper fees with NASD Dispute Resolution. If claimants wish NASD Dispute Resolution to serve any remaining respondents, they must provide that information as well. The NASD Dispute Resolution staff would review such submissions for any deficiencies, as at present. Once any deficiencies have been resolved, NASD Dispute Resolution would notify the parties and the time to answer would begin to run. Details of the proposed rule are set forth below.

Highlights of Proposed Rule

Proposed paragraph (a) states that claimants who are represented by counsel may elect to serve any respondent directly. Claimants are not required to use this rule, nor are they required to use the rule for all respondents in a particular case. For example, claimants may be willing to serve an active member firm respondent directly, but may be unsure of how to find and serve a particular associated person respondent. In such a case, NASD Dispute Resolution would serve the associated person as it does now.

Along with the Statement of Claim specifying the relevant facts and the remedies sought, claimants must serve any documents in support of the claim, the Uniform Submission Agreement, and a copy of a standard cover letter explaining the process in simple terms (temporarily referred to as ''NASD Form XYZ'' in the proposed rule). That cover letter would indicate to the respondent being directly that: (i) the respondent need to file an answer to the claim at this time, and (ii) the arbitration claim is not reportable to the Central Registration Depository (CRD) by respondents who are associated persons until NASD Dispute Resolution notifies the respondent in writing as provided in paragraph (e) of the proposed rule. The proposed cover letter would be made available to claimants and would be posted on the NASD Dispute Resolution Web site.

Proposed paragraph (b) provides that claimants exercising the option of directly serving respondents must serve the claim in the manner provided for service of demands for arbitration under the law of the state or other jurisdiction in which the respondent is being served. NASD Dispute Resolution would not be providing advice to claimants on such legal requirements; as noted above, this procedure is only available to parties who are represented by counsel.

Proposed paragraph (c)(1) requires the claimant to mail a copy of the Statement of Claim to all respondents together with information stating which respondents were served in accordance with the proposed rule, and to do this no later than one business day following service on the first respondent to be served under the rule.

Paragraph (c)(2) requires that mailings addressed to respondents who are members must be addressed to the Legal and Compliance Department of the firm, sent to the main office, and state on the envelope: ''Important Legal Documents Enclosed.'' This would alert the member firm immediately, and will reduce the chance that service would be made on the wrong office.

Proposed paragraph (d) provides that claimant must file the enumerated documents, including affidavits of service, with the Director of Arbitration within 20 days of service on the last respondent whom claimant serves under the proposed rule. Proposed paragraph (e) provides that time periods measured from receipt of the Statement of Claim or service of a claim under Rule 10314(b) would commence upon receipt of written notification from the Association. The claim would not be considered officially filed until deficiencies have been resolved, as in the current procedure. When the filing is complete, the staff would acknowledge that fact in writing, and the time to answer would begin for all respondents. This prevents the confusion that would occur if the time to answer began to run when each respondent was served.

b. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that the proposed rule change will protect investors and the public interest by giving claimants the option of serving claims directly and by providing specific procedures to ensure that service is accomplished properly.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not solicited or received.

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 NASD Dispute Resolution 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 proposal, as amended, 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

[7] 15 U.S.C. 78*o*–3(b)(6).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2001–55 and should be submitted by January 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–530 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45227; File No. SR–SCCP–2001–11]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Extending Approval of Restructured and Limited Clearing Services

January 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 17, 2001, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by SCCP. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP proposes to extend, for a one year period ending December 31, 2002, the ability to provide limited clearance and settlement services. Specifically, SCCP seeks to continue to provide trade confirmation and recording services for members of the Philadelphia Stock Exchange, Inc. (''Phlx'') effecting transactions through Regional Interface Operations (''RIO'') and ex-clearing accounts. SCCP will also continue to provide margin accounts to certain participants cleared through an account established by SCCP at the National Securities Clearing Corporation (''NSCC'').[2]

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.[3]

(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 continue SCCP's restructured and limited clearance and settlement business for an additional one year period ending December 31, 2002. In an agreement dated as of June 18, 1997, (''Agreement'') by and among the Phlx, SCCP, Philadelphia Depository Trust Company (''Philadep''), NSCC and The Depository Trust Company (''DTC''), Philadep and SCCP agreed to certain provisions, including that: (i) Philadep would cease providing securities depository services; (ii) SCCP would make available to its participants access to the facilities of one or more other organizations providing depository services; (iii) SCCP would make available to SCCP participants access to the facilities of one or more other organizations providing securities clearing services; and (iv) SCCP would transfer to the books of such other organizations the CNSS system open positions of SCCP participants on the books of SCCP.

In December, 1997, the Commission approved a proposed rule change which gave effect to this Agreement and which reflected Philadep's withdrawal from the depository business and SCCP's restructured and limited clearance and settlement business.[4] In that approving order, the Commission stated, ''because a part of SCCP's proposed rule change concerns the restructuring of SCCP's operations to enable SCCP to offer limited clearing and settlement services to certain Phlx members, the Commission finds that it is approprirate to grant only temporary approval to the portion of SCCP's proposed rule change that amends SCCP's By-Laws, Rules or Procedures. This will allow the Commission and SCCP to see how well SCCP's restructured operations are functioning under actual working conditions and to determine whether any adjustments are necessary. Thus, the Commission is approving the portion of SCCP's proposal that amends its By-Laws, Rules and Procedures through December 31, 1998.'' In December 1998, December 1999, and December 2000, one-year extensions of such approval were granted by the Commission to continue SCCP's restructured and limited clearance and settlement services.[5]

SCCP is hereby requesting an additional one year extension of such approval noting that such extension is appropriate in order that SCCP may continue to provide services to its participants. SCCP believes that its restructured operations have functioned consistent with the original proposed rule change, and SCCP will continue to evaluate whether any adjustments are necessary.

In the original proposed rule change and order approving SCCP's restructured business, many SCCP rules were amended and discussed at length. No new rule changes are proposed at this time. Thus, the purpose of the proposed rule change is to extend the effectiveness of SCCP's restructured business.

SCCP believes that the extension of the Commission's temporary approval to permit SCCP's continued operation of its restructured and limited clearance and settlement services is consistent with the requirements of the Act and the rules and regulations thereunder applicable to SCCP and in particular with Section 17A(b)(3)(F) which requires that a clearing agency be organized and its rules be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions. SCCP believes that the extension of SCCP's restructured business should promote the prompt and accurate

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* SCCP Rule 1.

[3] The Commission has modified the text of the summaries prepared by SCCP.

[4] Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703 (December 19, 1997) (SR–SCCP–97–04).

[5] Securities Exchange Act Release Nos. 40872 (December 31, 1998), 64 1264 (January 8, 1999) (SR–SCCP–98–05); 42320 (January 6, 2000), 65 FR 2218 (January 13, 2000) (SR–SCCP–99–04); and 43781 (December 28, 2000), 66 FR 1167 (January 5, 2001) (SR–SCCP–00–05).

clearance and settlement of securities transactions by integrating and consolidating clearing services available to the industry.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that this extension should impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Based on the information the Commission has to date, the Commission believes that SCCP's restructured operations have functioned satisfactorily to provide prompt and accurate clearance and settlement. During the upcoming temporary approval period, the Commission expects to review with SCCP in detail the functioning of SCCP's restructured operations.

SCCP has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will allow SCCP to continue to offer its restructured clearing operations for another year without interruption.

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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–2001–11 and should be submitted by January 30, 2002.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–SCCP–2001–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–529 Filed 7–8–02; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–11237]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0596 and 2115–0597

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Claims Under the Oil Pollution Act of 1990, and (2) State Access to The Oil Spill Liability Trust Fund For Removal Costs Under the Oil Pollution Act of 1990. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before March 11, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2001–11237] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. 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) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

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

The Docket Management Facility maintains the public docket for this 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 docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2001–11237], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* Claims Under the Oil Pollution Act of 1990.

OMB Control Number: 2115–0596.

Summary: The Coast Guard will use the information collected to determine whether claims submitted to the Oil Spill Liability Trust Fund are compensable and, if they are, to ensure that the Fund reimburses them in the correct amounts.

Need: Coast Guard will ensure the making of fair and reasonable payments to claimants and will protect the interest of the Federal Government. Claims that are submitted must be fully substantiated, and the procedures for advertising and presentation of claims must be followed, as required by OPA 90 [33 U.S.C. 2708, 2713 and 2714].

Respondents: Claimants and responsible parties of oil spills.

Frequency: On occasion.

Burden Estimate: The estimated burden is 13,722 hours a year.

2. *Title:* State Access to the Oil Spill Liability Trust Fund for Removal Costs Under the Oil Pollution Act of 1990.

OMB Control Number: 2115–0597.

Summary: The Coast Guard will use information provided by the State to the Coast Guard National Pollution Funds Center to determine whether expenditures submitted by the state to the Fund are compensable and, if they are, to ensure payment of the correct amount of funding from the Oil Spill Liability Trust Fund.

Need: Under the authority of 33 U.S.C. 2712, Coast Guard has promulgated regulations detailing the manner in which to obligate the Fund. To ensure fair and reasonable payments to States and to protect the interests of the Federal Government, States must fully substantiate all expenditures that they submit and must follow the procedures for presentation of those expenditures to the Fund.

Respondents: State Governments.

Frequency: On occasion.

Burden Estimate: The estimated burden is 3 hours a year.

Dated: December 31, 2001.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 02–547 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10998]

National Coast Guard Museum; Environmental Assessment

AGENCY: Coast Guard, DOT.

ACTION: Notice; extension of comment period.

SUMMARY: On November 21, 2001, the Coast Guard published a notice requesting comments on a draft Environmental Assessment (EA) regarding the National Coast Guard Museum in New London, Connecticut. During the review period, the potential threat from anthrax-contaminated mail caused considerable delay in the delivery of mail, the EA was not immediately available in the docket, and a comment was received regarding more time needed to review references in the EA. Because of these factors, the Coast Guard is extending the comment period through February 8, 2002.

DATES: Comments on the draft Environmental Assessment must reach the Docket Management Facility on or before February 8, 2002.

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

(1) By mail to the Docket Management Facility, (USCG–2001–10998), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

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

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

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

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public thus far as well as the draft Environmental Assessment (EA) are part of this docket, these and future comments received 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 docket, including the draft EA, on the Internet at *http://dms.dot.gov.* (Once you enter the web site, click on ''Search,'' enter the last five digits of the docket number (''10998'') in the search box, and press the Enter key.)

FOR FURTHER INFORMATION CONTACT: If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number (USCG–2000–7514), indicate the specific proposed change to which each comment applies, and give the reason for each comment. You may submit your comments and materials by mail or hand delivery, submit them in an unbound format, no larger than 8½ x 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received on or before February 8, 2002.

SUPPLEMENTARY INFORMATION: On November 21, 2001, the Coast Guard published a notice in the **Federal Register** (66 FR 58547) requesting comments on a draft Environmental Assessment (EA). The EA reviewed the proposal to accept a gift of land for purposes of relocating the Coast Guard Museum to a site near the U.S. Coast Guard Academy in New London, Connecticut. During the initial comment period, the EA was not immediately available in the docket, a comment was received regarding more time needed to review references in the EA, and the potential threat from anthrax-contaminated mail caused considerable delay in the delivery of mail. Because of these factors, the Coast Guard is extending the comment period through February 8, 2002.

Dated: January 2, 2002.

K. J. Eldridge, RADM,

Assistant Commandant for Governmental and Public Affairs.

[FR Doc. 02–548 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–11236]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The License Implementation Working Group of the Towing Safety Advisory Committee (TSAC) will meet to discuss and develop the performance criteria to be used with the Towing Officer Assessment Record (TOAR)

required in Title 46, Code of Federal Regulations 10.304(h). The meetings are open to the public.

DATES: The Working Group will meet on Tuesday, February 12, 2002, from 1 p.m. to 5 p.m., and on Wednesday, February 13, 2002, from 8:30 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before February 5, 2002.

ADDRESSES: The Working Group will meet in the 7th Floor, All-Hands Conference Room at Coast Guard's National Pollution Fund Center, 4200 Wilson Blvd., Arlington, VA. Send written materials and requests to make oral presentations to Mr. Gerald P. Miante; Commandant (G–MSO–1), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov. Security notice:* All non-military/government participants MUST first go to the 10th floor of the Pollution Fund Center's offices with a photo ID (driver's license) and sign in. You will then receive a 2-day pass for the meetings.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, TSAC, telephone 202–267–0229, fax 202–267–4570, or e-mail at: gmiante@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. The performance criteria to be discussed at this working group meeting, when developed, will be announced by a notice in the **Federal Register** and made available for review and comment. Sample Towing Officer Assessment Records (TOARs) were published on May 21, 2001, as part of the Navigation and Vessel Inspection Circular 4–01 (NVIC 4–01) entitled ''Licensing and Manning for Officers of Towing Vessels.'' This NVIC provides guidance on the implementation of a recent interim rule, also titled Licensing and Manning for Officers of Towing Vessels (Docket Number USCG 1999–6224), published in the **Federal Register** on April 26, 2001 (66 FR 20931). The NVIC is available on the Internet at *http://www.uscg.mil/hq/g-m/nvic/4_01/n4_01.pdf.* The rulemaking history is also available on the Internet at *http://dms.dot.gov* under the same docket number (USCG 1999–6224).

Agenda of Meeting

The agenda includes the Working Group's review of the TOARs and the drafting of performance criteria proposals that will be presented to the full Committee for approval at a later date.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director on or before February 1, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: December 26, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–544 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Boca Raton, Airport Boca Raton, Florida

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Boca Raton Airport Authority for Boca Raton Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Boca Raton Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before June 30, 2002.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 31, 2001. The public comment period ends March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Boca Raton Airport are in compliance with applicable requirements of part 150, effective December 31, 2001. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 30, 2002. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Boca Raton Airport Authority submitted to the FAA on December 11, 2001, noise exposures maps, descriptions and other documentation which were produced during the Boca Raton Airport part 150 Noise Compatibility Study Update conducted between March 1999 and December 2001. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise

compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Boca Raton Airport Authority. The specific maps under consideration are ''2001 Noise Exposure Map with Existing Noise Compatibility Program'' and ''2006 Noise Exposure Map with Recommended Noise Compatibility Program'' in the submission. The FAA has determined that these maps for Boca Raton Airport are in compliance with applicable requirements. This determination is effective on December 31, 2001. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposures contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Boca Raton Airport, also effective on December 31, 2001. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 30, 2002.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, December 31, 2001.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 02–491 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on January 23–25, 2002, starting at 9:00 am.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- January 23:
- Opening Plenary Session (Welcome and Introductory Remarks, Review Minutes of Previous Meeting)
- Review and Act on Comments received during the Final Review and Comment Period for the Document *Next Generation Air/Ground Communications (NEXCOM) Principles of Operations VHF Digital Link (VDL) Mode 3*
- Closing Plenary Session (Date and Place of Next Meeting)
- January 24–25:
- Working Group 3 Editorial and Final Changes to the VDL–3 Principles of Operation Document
- Working Group 4, NEXCOM Plan, US National Airspace System (NAS) Plan for Transition to Air/Ground ICAO VDL–3 based Integrated Voice and Data
- Working Group 5, NEXCOM Safety and Performance Requirements (SPR) Document

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 18, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–486 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held January 29–February 1, 2002 starting at 9 a.m. each day.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, SW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- January 29:
- Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting)
- Form Working Group 2: Review and Schedule Minimum Aviation System Performance Standard (MASPS) work
- Form Working Group 3: VHF Data Link 2 Minimum Operational Performance Standard (MOPS) work
- January 30:
- Working Group 3: VHF Data Link 2 MOPS work continues
- January 31:
- Plenary Reconvenes (Report and Review Status of Working Groups 2 and 3)
- Review Relevant International Activities (ICAO Aeronautical Mobile Communications Panel WG status, EUROCAE WG 47 status and issues)
- Report on Digital Activities (NEXCOM, AEEC status)
- Closing Plenary Session (Other Business, Date and Place of Next Meeting)
- February 1:
- Working Group 3 (or 2): Continues as required

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–487 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 181/EUROCAE Working Group 13: Standards of Navigation Performance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 181/EUROCAE Working Group 13 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 181/EUROCAE Working Group 13: Standards of Navigation Performance.

DATES: The meeting will be held January 22–25, 2002 starting at 9:00 am.

ADDRESSES: The meeting will be held at the Quality Suites Hotel Melbourne/Oceanfront, 1665 North State Route A1A, Indialantic, FL, 32903, telephone (321) 723–4222.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org;* (2) Roger Burns, Rockwell Collins, Inc., telephone (319) 295–4563, E-mail *rdburns2@rockwellcollins.com.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 181/EUROCAE Working Group 13 meeting. **Note:** *Working Group 1 will meet separately January 22–24.* The plenary agenda will include:

- January 25:
- Opening Plenary Session (Chairman Remarks, Review/Approval of Previous Meeting Minutes)
- Working Group Reports
- Review of Required Navigation Performance (RNP) Minimum Operational Performance Standard (MOPS) and Minimum Aviation System Performance Standards (MASPS) Status
- Closing Plenary Session (New Business, Future Meeting Schedule, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–488 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–18–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 199: Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 199 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 199: Airport Security Access Control Systems.

DATES: The meeting will be held on January 24, 2002 starting at 9:00 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 199 meeting. The agenda will include:

- January 24:
- Opening Session (Welcome, Introductory and Administrative Remarks, Agenda Overview, Review Minutes of Previous Meeting, Action Items from Last Meeting, Review of Previous Meeting's Industry Presentations)
- Workgroups and Discussions on New Standard Text and Comments From Members (sections 1–4)
- Biometric Access Control Standards
- New Access Control Systems Requirements and Standards Consequent on the Recent Legislation
- Closing Session (Any Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability.

With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–489 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement for Transit Improvements in the Southeast-Universities-Hobby Corridor Extending from Downtown Houston, Harris County to the Vicinity of Hobby Airport in Southeast Harris County, Texas

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Metropolitan Transit Authority of Harris County (METRO), intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), to evaluate transportation improvements in the Houston metropolitan area (Harris County).

The EIS will evaluate the following transit alternatives: a No Build Alternative, consisting of already planned improvements to the corridor, and a Build Alternative, consisting of a wide range of transit improvements. The type, location, and need for ancillary facilities, such as maintenance facilities, will also be considered for each alternative. Scoping will be accomplished with a series of public meetings, and through correspondence with interested persons, organizations, and Federal, State and local agencies.

Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, a Locally Preferred Investment Strategy (LPIS) will be selected and evaluated in the EIS. The EIS will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No Build Alternative.

The sequence of events for the planning and development for this project include the following major milestones:

- *Scoping Process*—early opportunity for public input to the study scope and project alternatives. Scoping will be accomplished with a series of public meetings, and through correspondence with interested persons, organizations, and Federal, State and local agencies.
- *Planning Studies*—evaluation of proposed improvement alternatives, early consideration of environmental factors, concluding with the selection of a LPIS.
- *Conceptual Engineering and Draft Environmental Impact Statement (EIS)*—conceptual definition of the alternatives to be evaluated including their physical features and potential impacts, consideration of mitigation measures, preparation and circulation of the Draft EIS, and public hearing(s).
- *Preliminary Engineering and Final EIS*—detailed definition of the proposed alternative's physical features, assessment of potential impacts, development of selected mitigation measures, responses to comments offered during the Draft EIS comment period, and preparation of the Final EIS.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts considered should be sent to the Metropolitan Transit Authority of Harris County by March 15, 2002. See **ADDRESSES** below.

Scoping Meetings: Public Scoping meetings for the Southeast-Universities-Hobby Corridor will be held on February 19th, February 21st and February 27th, 2002. See **ADDRESSES** below for meeting times and locations.

All of the scoping meetings will be held in wheelchair-accessible locations. Any person who requires language interpretation or special communication accommodations is encouraged to contact the project's public participation coordinator at 713–739–6049 at least 72 hours prior to the meeting. Every reasonable effort will be made to meet your needs. Scoping information material will be available at the meetings and may also be obtained in advance of the meetings by contacting the public participation coordination or by contacting METRO at the address or e-mail identified in **ADDRESSES** below. Oral and written comments may be given at the scoping meetings. A court reporter will record all comments.

ADDRESSES: Written comments should be sent to METRO Mobility 2025, Room 21034, PO Box 61429, Houston, Texas 77208–1429. E-mail: southeast-universities-hobby@ridemetro.org.

Scoping meetings will be held at the following locations:

1. February 19, 2002, Jesse H. Jones Senior High School, 7414 St. Lo, Houston, Texas 77033, 5:00–8:00 p.m. Open House, 6:30 p.m. Presentation.
2. February 21, 2002, Texas Southern University, School of Technology Atrium, 3100 Cleburne Avenue, Houston, Texas 77004, 5:00–8:00 p.m. Open House, 6:30 p.m. Presentation.
3. February 27, 2002, Houston-Galveston Area Council, 3555 Timmons Lane—2nd Floor, Houston, Texas 77027, 3:00–5:00 p.m. Agency Scoping Meeting, Conference Room A, 5:00–7:00 p.m. Open House, Conference Room B.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Balleza, Community Planner, FTA, Region VI, 819 Taylor Street, Fort Worth, Texas 76102, Telephone (817) 978–0550.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and METRO invite all interested individuals and organizations, and Federal, State, regional, and local agencies to participate in defining the alternatives to be evaluated and identifying social, economic, or environmental issues related to the alternatives. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated, and suggesting alternatives that may be less costly or have less adverse environmental impacts, but achieve similar objectives. Comments during scoping should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated through the planning process or during the comment period for the Alternatives Analysis Report.

Prior to initiating the EIS, planning studies will identify a LPIS that includes transit improvements. Interested individuals, organizations, and Federal, State, and local agencies are invited to participate in refining the purpose, alternatives, schedule, and analysis approach, as well as participate in the active public involvement program throughout the planning process and project implementation. The public is invited to comment on corridor needs and alternatives to be addressed; modes and technologies to be evaluated; alignments and station-capital facility locations; the environmental, social, and economic

impacts to be analyzed; and the evaluation approach to be used to select a LPIS. The scoping process will provide input to the process to be used for the evaluation of alternatives during the planning process and the early identification of environmental issues to be considered during the planning studies and in the EIS.

Scoping activities are being initiated at the outset of the planning studies, in advance of the EIS, to maximize the opportunity for public involvement in the consideration of alternatives and reaching decisions about the transportation investments that will be advanced into the EIS phase of project development.

II. Description of the Project Area and Need

Planning studies for the Southeast-Universities-Hobby Corridor will be initiated in a broadly defined area in Harris County, Texas. The planning area is defined to include part of downtown Houston, extending eastward and then to the southeast, generally bounded by IH 45 on the east, and SH 288 and Almeda Road on the west. The Southeast-Universities-Hobby Corridor includes the Third Ward, the convention center, Enron Field (home of the Houston Astros), the Texas Southern University (TSU) and University of Houston (UH) campuses, communities to the south, and Hobby Airport. The southern boundary is inside Beltway 8.

The corridor is significantly more densely developed than the City of Houston as a whole. Southeast Houston has a large transit dependent population, with lower average household income and car ownership and higher percentages of elderly and disabled persons than citywide. Transit (bus) ridership in the corridor is strong, but there are no high capacity transit facilities in the corridor. ''Super-stops'' have been proposed at the University of Houston and Texas Southern University.

New development and redevelopment is occurring along this corridor and is expected to generate further increases in demand for transit services. The universities are growing in enrollment. Hobby Airport is a significant employment center, as are TSU and UH. Outside this corridor, Downtown and the Texas Medical Center are the nearest major activity centers. There is a recognized demand linkage between the corridor and Houston's Midtown area and the Uptown-West Loop area to the west.

III. Alternatives

In accordance with NEPA, a public scoping process will be initiated to identify corridor needs and alternatives. The scoping process will provide the basis for the evaluation of alternatives as part of the planning studies, and the selection of a LPIS and implementation program. The planning studies will consider a variety of transit options in the corridor based on input received during the scoping process. It is expected that the LPIS will be a combination of one or more alternative options identified. Subsequent to the selection of the LPIS, the selected alternatives will be refined and documented in the EIS. At a minimum, the alternatives to be considered in the planning studies include:

- No Build Alternative;
- Light Rail Transit (LRT);
- Bus Rapid Transit;
- Commuter Rail along existing railroad facilities in the corridor; and
- HOV system improvements.

Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects and Potential Impacts for Analysis

FTA and METRO will evaluate all social, economic and environmental impacts of the alternatives analyzed in the EIS. Impacts may include: land use, zoning, and economic development; secondary development; cumulative impacts; land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy; construction impacts; safety and security; utilities; finance; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be identified.

V. FTA Procedures

In accordance with FTA policy, all federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the Department of Transportation Act, will be addressed to the maximum extent practicable during the NEPA process.

Issued on: January 2, 2002.

Robert C. Patrick,

Regional Administrator, Federal Transit Administration, Region VI, Fort Worth, Texas.

[FR Doc. 02–558 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement on Transit Improvements in the Uptown-West Loop Corridor Located in Uptown and Along the West Loop (IH–610 West) in Houston, Harris County, Texas

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Metropolitan Transit Authority of Harris County (METRO), intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), to evaluate transportation improvements in the Houston metropolitan area (Harris County).

The EIS will evaluate the following transit alternatives: a No Build Alternative, consisting of already planned improvements to the corridor, and a Build Alternative, consisting of a wide range of transit improvements. The type, location, and need for ancillary facilities, such as maintenance facilities, will also be considered for each alternative. Scoping will be accomplished with a series of public meetings, and through correspondence with interested persons, organizations, and Federal, State and local agencies.

Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, a Locally Preferred Investment Strategy (LPIS) will be selected and evaluated in the EIS. The EIS will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No Build Alternative.

The sequence of events for the planning and development for this

project include the following major milestones:

• *Scoping Process*—early opportunity for public input to the study scope and project alternatives. Scoping will be accomplished with a series of public meetings and through correspondence with interested persons, organizations, and Federal, State and local agencies.

• *Planning Studies*—evaluation of proposed improvement alternatives, early consideration of environmental factors, concluding with the selection of a LPIS.

• *Conceptual Engineering and Draft Environmental Impact Statement (EIS)*—conceptual definition of the alternatives including their physical features and potential impacts, consideration of mitigation measures, preparation and circulation of the Draft EIS, and public hearing(s).

• *Preliminary Engineering and Final EIS*—detailed definition of the proposed alternative's physical features, assessment of potential impacts, development of selected mitigation measures, responses to comments offered during the Draft EIS comment period, and preparation of the Final EIS.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts considered should be sent to the Metropolitan Transit Authority of Harris County by March 15, 2002. See **ADDRESSES** below.

Scoping Meetings: Public Scoping meetings for the Uptown-West Loop Corridor will be held on February 12, 2002 and February 27, 2002. See **ADDRESSES** below for meeting times and locations.

All scoping meetings will be held in wheelchair-accessible locations. Any person who requires language interpretation or special communication accommodations is encouraged to contact the project's public participation coordinator at 713–739–6049 at least 72 hours prior to the meeting. Every reasonable effort will be made to meet your needs. Scoping information material will be available at the meetings and may also be obtained in advance of the meetings by contacting the public participation coordination or by contacting METRO at the address or e-mail identified in **ADDRESSES** below. Oral and written comments may be given at the scoping meetings. A court reporter will record all comments.

ADDRESSES: Written comments should be sent to METRO Mobility 2025, Room 21034, P.O. Box 61429, Houston, Texas 77208–1429. E-mail: uptown-*westloop@ridemetro.org.* Scoping meetings will be held at the following locations:

1. February 12, 2001, J.W. Marriott Hotel, Exhibition Room, 5150 Westheimer, Houston, Texas 77077, 11:30 a.m.–2:30 p.m. Open House, 6–8:30 p.m. Open House.
2. February 27, 2002, Houston-Galveston Area Council, 3555 Timmons Lane—2nd Floor, Houston, Texas 77027, 3–5 p.m. Agency Scoping Meeting, Conference Room A, 5–7 p.m. Open House, Conference Room B.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Balleza, Community Planner, FTA, Region VI, 819 Taylor Street, Fort Worth, Texas 76102, Telephone (817) 978–0550.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and METRO invite all interested individuals and organizations, and Federal, State, regional, and local agencies to participate in defining the alternatives to be evaluated and identifying social, economic, or environmental issues related to the alternatives. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated, and suggesting alternatives that may be less costly or have less environmental impacts, but achieve similar objectives. Comments during scoping should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated through the planning process and during the comment period for the Alternatives Analysis Report.

Prior to initiating the EIS, planning studies will identify a LPIS that includes transit improvements. Interested individuals, organizations, and Federal, State, and local agencies are invited to participate in refining the purpose, alternatives, schedule, and analysis approach, as well as participate in the active public involvement program for throughout the planning process and project implementation. The public is invited to comment on corridor needs and alternatives to be addressed; modes and technologies to be evaluated; alignments and station locations; the environmental, social, and economic impacts to be analyzed; and the evaluation approach to be used to select a LPIS. The scoping process will provide input to the process to be used for the evaluation of alternatives during the planning process and the early identification of environmental issues to be considered during the planning studies and in the EIS.

Scoping activities are being initiated at the outset of the planning studies, in advance of the EIS, to maximize the opportunity for public involvement in the consideration of alternatives and reaching decisions about the transportation investments that will be advanced into the EIS phase of project development.

II. Description of the Project Area and Need

The study area for the Uptown-West Loop Corridor is located on the near west side of the City of Houston. The study area extends approximately four miles on either side of the West Loop from the Katy Freeway (IH–10) on the north to the Southwest Freeway (U.S. 59) on the south. The West Loop is the primary north-south transportation facility in the corridor providing access to the Uptown/Galleria area, major employment, residential, retail and activity centers, and to the City of Bellaire. The freeway facility, with an average right-of-way width of 350 feet, connects with other portions of the IH–610 loop, such as the North Loop and the South Loop, that circle Houston. In addition, the West Loop provides a strategic connection to other regional freeway corridors including the Northwest Freeway (U.S. 290), the Katy Freeway, and the Southwest Freeway. The study area also includes METRO transit center facilities on the north and south ends of the corridor. There are a variety of travel markets in the study that include home-to-work trips, and non-home base trips such as business and visitor trips, and recreational-entertainment trips.

Substantial new development and redevelopment is occurring throughout the corridor. However, future development and potential redevelopment could be restricted due to limits on roadway and transit system capacity and parking facilities. Improved transit service, connectivity, access, and capacity are seen as essential to support and enhance economic development activity and help provide a framework for creating a livable and sustainable community.

In general, the following needs and problems have been identified as detrimental to the continued success of the Uptown-West Loop Corridor:

(1) Exclusive transit corridor to improve reliability and travel time;

(2) Pervasive congestion at key intersections;

(3) Service to distinct travel markets

a. Line-haul services on the Katy Freeway, West Loop, Westpark Toll Road, and Southwest Freeway

b. Collection and distribution services for Uptown Houston;

(4) Poor pedestrian environment and linkages;

(5) Conservation of Memorial Park and other sensitive land uses;

(6) Air and noise pollution;

(7) Visual impacts of potential transportation improvements.

The growth in population and employment in the corridor is significantly large in both relative and absolute numbers. Previous study projections indicate that patronage to retail/entertainment venues in the corridor will increase as well. The projected consequence of this growth is higher traffic volumes throughout local streets and the West Loop throughout the study area. Traffic congestion in the study area will increase in both severity and duration as the peak period ''spreads'' to encompass earlier and later hours. Travel on parallel arterials will increase proportionately as congestion on the West Loop causes a higher fraction of travel to use alternative routes. Restricted ingress and egress to the Uptown-West Loop area and servicing arterials has contributed to the unreliability of transit services and will deteriorate if not effectively addressed.

III. Alternatives

In accordance with NEPA, a public scoping process will be initiated to identify corridor needs and alternatives. The scoping process will provide the basis for the evaluation of alternatives as part of the planning studies, and the selection of a LPIS and implementation program. The planning studies will consider a variety of transit options in the corridor based on input received during the scoping process. It is expected that the LPIS will be a combination of one or more alternative options identified. Subsequent to the selection of the LPIS, the selected alternatives will be refined and documented in the EIS. At a minimum, the alternatives to be considered in the planning studies include:

- No Build Alternative;
- Bus Rapid Transit;
- HOV system improvements; and
- Light Rail Transit (LRT).

Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects and Potential Impacts for Analysis

FTA and METRO will evaluate all social, economic and environmental impacts of the alternatives analyzed in the EIS. Impacts may include: Land use, zoning, and economic development; secondary development; cumulative impacts; land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy; construction impacts; safety and security; utilities; finance; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be identified.

V. FTA Procedures

In accordance with FTA policy, all federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the Department of Transportation Act, will be addressed to the maximum extent practicable during the NEPA process.

Issued on: January 2, 2002.

Robert C. Patrick,

Regional Administrator, Federal Transit Administration, Region VI, Fort Worth, Texas.

[FR Doc. 02–557 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement(s) on Highway and Transit Improvements in the North-Hardy Corridor Extending Along and Between Interstate 45 (IH 45) and Hardy Toll Road From SH 242 in Southern Montgomery County, Texas to Spur 527 (Louisiana Street Exit From US 59 South), Harris County

AGENCY: Federal Transit Administration and Federal Highway Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement(s).

SUMMARY: The Federal Transit Administration (FTA) and Federal Highway Administration (FHWA), in cooperation with the Metropolitan Transit Authority of Harris County (METRO), the Texas Department of Transportation (TxDOT), and the Houston-Galveston Area Council (H–GAC), intend to prepare one or more Environmental Policy Act (NEPA) to evaluate highway and transit improvements in the North-Hardy Corridor of the Houston metropolitan area.

The EIS(s) will be prepared following completion of studies of potential transportation improvements in the North-Hardy Corridor of the Houston metropolitan area. The planning studies will conclude with the selection of a Locally preferred Investment Strategy (LPIS) that may identify both transit and highway improvements to be implemented in the corridor. Transit and highway improvements selected for implementation will be evaluated in the EIS. If the selected investments are in proximity to each other (i.e. within the same right-of-way) it is likely that a single EIS will be prepared. If the selected investments are in different locations, two EIS will be prepared. If the selected investments are in different locations, two EIS documents may be prepared. The decision about the number of EIS documents to be prepared will be determined at the conclusion of the planning studies. The EIS(s) will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No Build Alternative.

The sequence of events for the planning and development for this project include the following major milestones:

- Scoping Process—early opportunity for public input to the study scope and project alternatives. Scoping will be accomplished with a series of public meetings and through correspondence with interested persons, organizations, and Federal, State and local agencies.
- Planning Studies—evaluation of proposed improvement alternatives, early consideration of environmental factors, concluding with the selection of a LPIS. A decision on the number of EIS documents to be prepared will occur at the conclusion of the planning studies.
- Conceptual Engineering and Draft Environmental Impact Statement (EIS)—conceptual definition of the alternatives to be evaluated including their physical features and potential impacts, consideration of mitigation measures, preparation and circulation of the Draft EIS(s) comment period, and preparation of the Final EIS(s).
- Preliminary Engineering and Final EIS—detailed definition of the proposed alternative's physical features, assessment of potential impacts,

development of selected mitigation measures, responses to comments offered during the Draft EIS(s) comment period, and preparation of the Final EIS(s).

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts considered should be sent to the Metropolitan Transit Authority of Harris County by March 15, 2002. See **ADDRESSES** Below.

Scoping Meetings: Public Scoping meetings for the North-Hardy Corridor will be held on February 5th, February 6th, February 13th, February 20th and February 27th, 2002. See **ADDRESSES** below for meeting times and locations.

All scoping meetings will be held in wheelchair-accessible locations. Any person who requires language interpretation or special communication accommodations is encouraged to contact the project's public participation coordinator at 713–739–6049 at least 72 hours prior to the meeting. Every reasonable effort will be made to meet your needs. Scoping information material will be available at the meetings and may also be obtained in advance of the meetings by contacting the public participation coordination or by contacting METRO at the address or e-mail identified in **ADDRESSES** below. Oral and written comments may be given at the scoping meetings. A court reporter will record all comments.

ADDRESSES: Written comments should be sent to METRO Mobility 2025, Rm 21034, PO Box 61429, Houston, Texas 77208–1429. E-mail: *north-hardy@ridemetro.org.* Scoping meetings will be held at the following locations:

1. February 5, 2002, Wesley Community Center—Social Hall, 1410 Lee Road, Houston, Texas 77009, 4:30–7:30 p.m.
2. February 6, 2002, Northline Mall—Community Room (316), Interstate–45 at Crosstimbers, Houston, Texas 77022, 4:30–7:30 p.m.
3. February 13, 2002, North-Harris Montgomery Community College, Student Center—South Dining Room, 2700 W. W. Thorne Blvd., 4:30–7:30 p.m.
4. February 20, 2002, Houston Community College System, Administration Auditorium, 3100 Main Street at Elgin, 4:30–7:30 p.m.
5. February 27, 2002, Houston-Galveston Area Council, 3555 Timmons Lane—2nd Floor, 3:00–5:00 p.m. Agency Scoping Meeting, Conference Room A, 5:00–7:00 p.m. Open House, Conference Room B.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Balleza, Community Planner, FTA, Region VI 819 Taylor Street, Fort Worth, Texas 76102, Telephone (817) 978–0550 or Mr. John Mack, District Engineer, FHWA, 300 East 8th Street, Suite 826, Austin, TX 78701, Telephone: 512–536–5960.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA, FHWA, METRO, TxDOT, and the Houston-Galveston Area Council (H–GAC) invite all interested individuals and organizations, and Federal, State, regional, and local agencies to participate in defining the alternatives to be evaluated and identifying social, economic, or environmental issues related to the alternatives. During scoping, comments should focus on identifying specific, social, economic, or environmental impacts to be evaluated, and suggesting alternatives that may be less costly or have less environmental impacts, but achieve similar objectives. Comments during scoping should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated through the planning process and during the comment period for the Alternatives Analysis Report.

Prior to initiating the EIS(s), planning studies will identify a LPIS that is anticipated to include transit and highway components. Interested individuals, organizations, and Federal, State, and local agencies are invited to participate in refining the purpose, alternatives, schedule, and analysis approach, as well as participate in the active public involvement program throughout the planning process and project implementation. The public is invited to comment on corridor needs and alternatives to be addressed; modes and technologies to be evaluated; alignments and station locations; the environmental, social, and economic impact to be analyzed; and the evaluation approach to be used to select a LPIS. The scoping process will provide input to the process to be used for the evaluation of alternatives during the planning process and the early identification of environmental issues to be considered during the planning studies and in the EIS(s).

Scoping activities are being initiated at the outset of the planning studies, in advance of the EIS(s), to maximize the opportunity for public involvement in the consideration of alternatives and reaching decisions about the transportation investments that will be advanced into the EIS phase of project development.

II. Description of the Project Area and Needed

Planning studies for the North-Hardy Corridor will be initiated in a broadly defined study area in Harris and Montgomery counties, Texas, extending along and between IH 45 and the Hardy Toll Road from SH 242 on the north to Spur 527 (Louisiana Street exit from US 59 South). The North Hardy Corridor includes adjacent communities as well as the George Bush Intercontinental Airport and connects the rapidly growing northern suburbs and the re-developing northside neighborhoods to downtown and other significant activity centers in Houston.

Some areas of IH 45 do not meet accepted modern highway design criteria and congestion is a persistent problem throughout the corridor. A multi-modal approach to expanding transit and highway capacity within the corridor is to be considered.

III. Alternatives

In accordance with NEPA, a public scoping process will be initiated to identify corridor needs and alternatives. The scoping process will provide the basis for the evaluation of alternatives as part of the planning studies, and the selection of LPIS and implementation program. The planning studies will consider a variety of multi-modal highway and transit options in the corridor based on input received during the scoping process. It is expected that the LPIS will be a combination of one or more alternative options identified. Subsequent to the selection of the LPIS, the selected alternatives will be refined and documented in the EIS(s). It may be necessary to prepare more than one EIS for the North Hardy Corridor based on the outcome of the planning studies. At a minimum, the alternatives to be considered in the planning studies include:

- No Build Alternative;
- Extension of the Light Rail Transit line currently under construction in Downtown Houston;
- Commuter Rail along existing railroad facilities in the corridor;
- Highway upgrades or expansion; and
- HOV system improvements.

Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects and Potential Impacts for Analysis

FTA, FHWA, METRO, TxDOT, and H–GAC will evaluate all social, economic and environmental impacts of

the alternatives analyzed in the EIS(s). Impacts may include: Land use, zoning, and economic development; secondary development; cumulative impacts; land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems (threatened and endangered species); water resources; energy; construction impacts; safety and security; utilities; finance; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be identified.

V. FTA/FHWA Procedures

In accordance with FTA/FHWA policy, all federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the Department of Transportation Act, will be addressed to the maximum extend practicable during the NEPA process.

Issued on: January 2, 2002.

Robert C. Patrick,

Regional Administrator, Federal Transit Administration, Region VI, Fort Worth, Texas.

[FR Doc. 02–556 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–11041; Notice 1]

Toyota Motor Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

Toyota Motor Corporation (TMC) has determined that certain 2000–2001 Model Year (MY) Celicas are equipped with daytime running lamps (DRLs) which fail to meet the spacing requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices and Associated Equipment.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), TMC has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The DRLs on the Celica are provided by the upper beam headlamps operating at a lower intensity, with each lamp having a maximum luminous intensity of roughly 5,880 candelas at test point H–V (as described in FMVSS No. 108 test procedures). S5.5.11(a)(4) of FMVSS No. 108 requires that ''* * * if not optically combined with a turn signal lamp, (the DRL) (shall be) located so that the distance from its lighted edge to the optical center of the nearest turn signal lamp is not less than 100 mm, unless * * * the luminous intensity of the DRL is not more than 2,600 candela any location in the beam. * * *'' However, for the noncompliant Celicas the distance from the DRL's lighted edge to the optical center of the nearest turn signal lamp is only 45.6 mm and therefore, the DRLs exceed the maximum luminous intensity specified in section 5.5.11(a)(4)(i) of FMVSS 108.

Toyota believes that this noncompliance is inconsequential to motor vehicle safety, and therefore creates no unreasonable risk to highway safety for the following reasons:

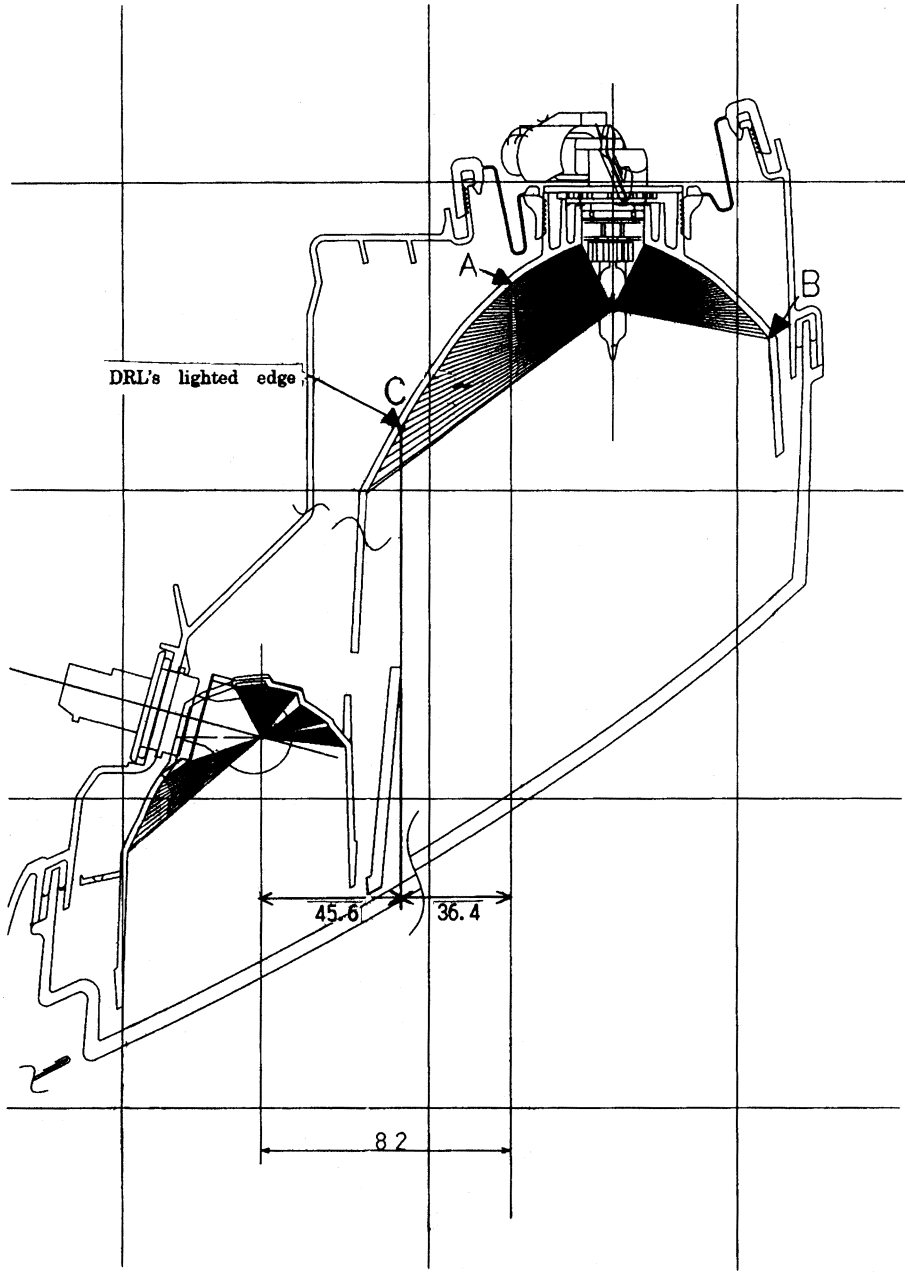
S.5.5.11(a) permits an upper beam headlamp intended to operate as a DRL to have a maximum intensity of 7000 cd, and in conjunction, a turn signal lamp with a minimum intensity of 200 cd, as long as the spacing is 100 mm or greater. Toyota conducted subjective evaluations of turn signal visibility using 20 contractors for the subject vehicles under various conditions, and confirmed that visibility for the subject vehicles is substantially better than vehicles that were modified to meet the minimum turn signal/maximum DRL luminous intensity permitted by the standard. According to Toyota's evaluation, the flashing of the subject turn signals can be readily discerned by a driver in an oncoming vehicle at a distance of 300 feet, and much more so than vehicles with modified signals/DRLs. The assessment distance of 300 feet is the same used in NHTSA's own evaluation of turn signal masking, as described in the final rule published in the Monday, January 11, 1992 **Federal Register** (58 FR 3500).

In addition to the subjective measures, we also provide the following technical factors which contribute to good visibility of the turn signal lamps:

The turn signal lighted area is 45.1cm^2, two times larger than the 22cm^2 required by FMVSS 108;

The luminous intensity of the subject vehicle's turn signal lamps are 568 cd, or 2.8 times the minimum value of 200 cd;

The substantial distance from the turn signal optical center (bulb filament axes) to the DRL's lighted edge is 82 mm, exceeding 80% of the requirements. In this case, the ''substantial'' distance refers to the distance from the turn signal's optical center to the actual lighted edge ''A'' (as given by the Figure below), although the theoretical lighted edge is point ''C'' (45.6mm). In the Figure, the lighted range from A to C of the reflector emits only light which is parallel to the axis of the DRL, which can only be seen by drivers in oncoming vehicles that are looking along the optical axis of the DRL. However, as one moves off center, this light is no longer visible. Therefore, the perceptible DRL's lighted area, except for the unique case where the eye-point is on the optical axis of the DRL, is actually from A to B (as given in the Figure).



The subject vehicles meet all the requirements of CMVSS 108 and the identical DRL requirements which are found in FMVSS 108 prior to October 1, 1995;

Finally, although Toyota has sold approximately 100,000 of the subject vehicles since the summer of 1999 in USA and Canada, it has not received any customer complaints nor accident reports that alleged problems with turn signal visibility or masking.

Toyota believes that the noncompliance in the subject vehicles is inconsequential to motor vehicle safety for the reasons outlined above, and therefore should be exempted from the notification and remedy requirements of the Safety Act for this specific noncompliance.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket and notice number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: February 8, 2002.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 3, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–555 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34150]

The Belt Railway Company of Chicago—Trackage Rights Exemption—Indiana Harbor Belt Railroad Company

Indiana Harbor Belt Railroad Company (IHB), a Class III rail carrier, has agreed to grant non-exclusive bridge trackage rights to The Belt Railway Company of Chicago (BRC), between the connection of BRC and IHB at Argo, IL, milepost 26.5 and the connection of IHB and Canadian National Railroad Company (CN) at Argo, milepost 27.5, a total distance of approximately 1 mile.

The transaction was scheduled to be consummated on or after December 27, 2001, the effective date of the exemption.

The purpose of the trackage rights is to provide BRC with a new direct connection with CN at Argo to facilitate a new interchange movement.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34150, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas J. Healy, Troutman Sanders LLP, 401 Ninth Street, NW., Suite 1000, Washington, DC 20004.

Board decisions and notices are available on our web site at *''WWW.STB.DOT.GOV.''*

Decided: January 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–413 Filed 1–8–02; 8:45 am]

BILLING CODE 4915–00–P

Federal Register

Wednesday,
January 9, 2002

Part II

National Indian Gaming Commission

25 CFR Part 513
Debt Collection; Interim Rule

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 513

RIN 3141–AA25

Debt Collection

AGENCY: National Indian Gaming Commission.

ACTION: Interim rule: reopening of comment period.

SUMMARY: On November 20, 2001, the National Indian Gaming Commission (Commission) issued an interim rule (66 FR 58056, November 20, 2001) promulgating regulations setting forth procedures for collecting debts, as required by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996. The 45-day period for filing comments is being reopened.

DATES: Comments shall be filed on or before January 14, 2002.

ADDRESSES: Comments may be: mailed to Cynthia Omberg, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday; or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9 a.m. and noon, and between 2 p.m. and 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Cynthia Omberg at 202/632–7003; fax 202/632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: These regulations implement the requirements of the Federal Claims Collection Act of 1966 (Public Law 89–508, 80 Stat. 308) as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 (Public Law 104–134, 110 Stat. 1321). These regulations are issued in conformity with the Federal Claims Collection Standards (31 CFR Chapter IX). Under these regulations, the Commission may collect debts owed to it through various methods, including administrative offset, tax refund offset, or salary offset.

The initial comment period for the regulations closed January 4, 2002. In response to two requests for extensions of time, the Commission grants interested parties 10 additional days to determine and present their views. As an interim rule setting out agency procedure, the regulations continue to be effective during the comment period.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 02–676 Filed 1–8–02; 8:45 am]

BILLING CODE 7565–01–U

Federal Register

Wednesday,
January 9, 2002

Part II

National Indian Gaming Commission

25 CFR Part 513
Debt Collection; Interim Rule

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 513

RIN 3141–AA25

Debt Collection

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